DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–118826–16]

RIN 1545–BN59

De Minimis Error Safe Harbor Exceptions to Penalties for Failure To File Correct Information Returns or Furnish Correct Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to penalties for failure to file correct information returns or furnish correct payee statements. The proposed regulations contain safe harbor rules that, for penalty purposes, generally treat as correct payee statements or corresponding information returns that contain errors relating to de minimis incorrect dollar amounts. They prescribe the time and manner in which a payee may elect not to have the safe harbor rules apply. They also update penalty amounts and update references to information reporting obligations. Finally, they provide rules relating to the reporting of basis of securities by brokers as this reporting relates to the de minimis error safe harbor rules. The proposed regulations affect persons required to either file information returns or to furnish payee statements (filers), and recipients of payee statements (payees).

DATES: Written or electronic comments and requests for a public hearing must be received by December 17, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118826–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118826–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent via the Federal eRulemaking Portal at *www.regulations.gov* (REG–118826–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations Mark A. Bond of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6844; concerning the submission of comments and a request for a public hearing, Regina L. Johnson, (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 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by December 17, 2018. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (see below);

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 the application of automated collection techniques or other forms of information technology; and

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

The collection of information in these proposed regulations is in proposed regulations §§ 301.6722–1(d)(3)(iii) regarding the payee election, 301.6722–1(d)(3)(v)(B) regarding the filer notification, 301.6722–1(d)(3)(vii) regarding the payee revocation, and 301.6722–1(d)(4) regarding record retention. The information in proposed regulations §§ 301.6722–1(d)(3)(iii) and 301.6722–1(d)(3)(vii) will be used by payees to make and revoke elections and by filers to determine whether they are required to furnish corrected payee statements to payees and file corrected information returns with the IRS to avoid application of penalties under sections 6721 and 6722. The information under proposed regulation § 301.6722–1(d)(3)(v)(B) will be used to give filers and payees flexibility in establishing reasonable alternative manners for elections. And the information in proposed regulation § 301.6722–1(d)(4) will be used by the IRS to determine whether filers are subject to penalties under sections 6721 and 6722. The collection of information in proposed regulations §§ 301.6722–1(d)(3)(iii) regarding the payee election, 301.6722–1(d)(3)(v)(B) regarding the filer notification, and 301.6722–1(d)(3)(vii) regarding the payee revocation is voluntary to obtain a benefit. The collection of information in proposed regulation § 301.6722–1(d)(4) regarding record retention is mandatory. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 992,102 hours.

Estimated average annual burden hours per respondent: approximately 0.10 hours.

Estimated number of respondents: 10,057,746.

Estimated annual frequency of responses: 16,123,292.

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

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 6045(g) of the Internal Revenue Code (Code) relating to returns of brokers in the case of securities transactions, as well as proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6721(c)(3) relating to the safe harbor exception for certain de minimis errors from the penalty for failure to file correct information returns, section 6722(c)(3) relating to the safe harbor exception for certain de minimis errors from the penalty for failure to furnish correct payee statements, and section 6724 relating to the reasonable cause waiver to the section 6721 and section 6722 penalties. It also contains proposed amendments to the regulations under sections 6721, 6722, and 6724 to update penalty amounts and references to specific information reporting obligations.

Section 6045 provides for information reporting by persons doing business as

brokers. Section 6045(g) provides for specific rules in the case of reporting of securities transactions, including for the reporting of basis amounts.

Section 6721 imposes a penalty when a person fails to file an information return on or before the prescribed date, fails to include all of the information required to be shown on the information return, or includes incorrect information on the information return. Section 6722 imposes a penalty when a person fails to furnish a payee statement on or before the prescribed date, fails to include all of the information required to be shown on the payee statement, or includes incorrect information on the payee statement. Section 6724 provides definitions, special rules, and a reasonable cause waiver from penalties for a failure relating to an information reporting requirement.

PATH Act Amendments

Section 202(a) of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (129 Stat. 2242, 3077 (2015)) (PATH Act), added section 6721(c)(3), effective for information returns required to be filed after December 31, 2016. Section 202(b) of the PATH Act added section 6722(c)(3), effective for payee statements required to be furnished after December 31, 2016. Section 202(c) of the PATH Act added section 6045(g)(2)(B)(iii), effective for information returns required to be filed, and payee statements required to be furnished, after December 31, 2016.

Sections 6721(c)(3)(A) and 6722(c)(3)(A) provide that an information return or payee statement that includes one or more de minimis errors in a dollar amount appearing on the information return or payee statement shall be treated as correct for penalty purposes. An error in a dollar amount is de minimis if the difference between any single amount in error and the correct amount does not exceed $100 and, if the difference is with respect to an amount of tax withheld, the difference is not more than $25.

Under section 6722(c)(3)(B), the safe harbor exception does not apply to any payee statement when the person to whom the payee statement is required to be furnished (that is, the payee) makes an election, at the time and in the manner as the Secretary may prescribe, that the safe harbor exception not apply with respect to such statement. Under section 6721(c)(3)(B), an election by the payee with respect to a payee statement operates to make the safe harbor exception for de minimis errors inapplicable to errors on the corresponding information return.

Sections 6721(c)(3)(C) and 6722(c)(3)(C) provide that the Secretary may issue regulations to prevent the abuse of the safe harbor exceptions, including regulations providing that the safe harbor exceptions shall not apply to the extent necessary to prevent abuse.

Section 6045(g)(2)(B)(iii) provides that except as otherwise provided by the Secretary, a customer's adjusted basis for purposes of section 6045 shall be determined by treating any incorrect dollar amount which is not required to be corrected by reason of section 6721(c)(3) or section 6722(c)(3) as the correct amount.

Other Statutory Amendments

Section 1211(b)(2) of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780, 1073 (2006)), added section 6721(e)(2)(D), providing for calculation of the section 6721 penalty for failures due to intentional disregard in the case of a return required to be filed under section 6050V, effective for acquisitions of contracts after August 17, 2006.

Section 2102 of the Creating Small Business Jobs Act of 2010, Public Law 111–240 (124 Stat. 2504, 2561–64 (2010)), increased penalty amounts throughout sections 6721 and 6722 for information returns required to be filed and payee statements required to be furnished on or after January 1, 2011.

Section 208 of the Tax Increase Prevention Act of 2014, Public Law 113–295 (128 Stat. 4010, 4074 (2014)), amended sections 6721(f)(1) and 6722(f)(1) effective for information returns required to be filed and payee statements required to be furnished after December 31, 2014. The amended paragraphs provide for annual inflationary adjustments to the section 6721 and section 6722 penalties.

Section 806 of the Trade Preferences Extension Act of 2015, Public Law 114–27 (129 Stat. 362, 416–18 (2015)), increased the penalty amounts throughout sections 6721 and 6722, effective for returns required to be filed and statements required to be furnished after December 31, 2015.

Section 6724 and the regulations thereunder define the terms ''information return'' and ''payee statement'' and provide that the penalties under sections 6721 and 6722 will not be imposed with respect to any failure if it is shown that the failure was due to reasonable cause and not to willful neglect.

Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114–41 (129 Stat. 443, 454–55 (2015)), amended section 6724(d)(1) and 6724(d)(2) to add information reporting under section 6035, relating to basis information with respect to property acquired from decedents, to the definitions of information return and payee statement, respectively.

Section 13520(c) of An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115–97 (131 Stat. 2054, 2150 (2017)) (Pub. L. 115–97), amended section 6724(d)(1) and 6724(d)(2) to add information reporting under section 6050Y, regarding returns relating to certain life insurance contract transactions, to the definitions of information return and payee statement, respectively.

Section 206(o) of the Consolidated Appropriations Act of 2018, Public Law 115–141 (132 Stat. 348, 1182 (2018)), amended section 6724(d)(2) to add information reporting under section 6226(a)(2) (regarding statements relating to alternative to payment of imputed underpayment by a partnership) or under any other provision of Title 26 which provides for the application of rules similar to section 6226(a)(2), to the definition of payee statement.

Notice 2017–09, 2017–4 I.R.B. 542, and Comments in Response to the Notice

On January 4, 2017, the Treasury Department and the IRS released Notice 2017–09, 2017–4 I.R.B. 542, ''De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties,'' to provide guidance regarding the de minimis error safe harbor exceptions from information reporting penalties under sections 6721 and 6722. The notice provided requirements for the payee election under section 6722(c)(3)(B), including the time and manner for making the election. The notice clarified that the de minimis error safe harbor exceptions do not apply in the case of an intentional error or if a filer fails to file an information return or furnish a payee statement. The notice required filers to retain certain records. The notice announced the intention of the Treasury Department and the IRS to issue regulations with respect to the de minimis error safe harbor exceptions and the payee election to have the safe harbor exceptions not apply, and stated that to the extent the regulations incorporate the rules contained in the notice, the regulations will be effective for returns required to be filed, and payee statements required to be furnished, after December 31, 2016. The notice solicited comments regarding the rules contained in the notice and regarding any potential abuse of the de minimis error safe harbor exceptions. In

response to the notice, the Treasury Department and IRS received 11 comments. The Treasury Department and IRS have considered all of the comments and addressed them in this preamble.

One comment in response to the notice focused on the administrative burden of the election process provided for by Notice 2017–09 and requested that the IRS consider this burden. The comment stated that the framework in Notice 2017–09 misses Congressional intent to reduce the burden of increased penalties as a result of the Trade Preferences Extension Act of 2015 and the costs of correcting information returns for de minimis amounts. Additionally, the comment stated that it could not envision a single reason an individual, financial institution, or the IRS would want a corrected information return issued for a de minimis amount. Congress determined that there was a need for the payee election; therefore, the Treasury Department and the IRS do not propose to deny payees the ability to elect to have a corrected information return filed and payee statement furnished when an error is de minimis, in particular, prior to the issuance of regulations providing the time and manner for how such an election is to be made. The Treasury Department and the IRS have determined that potential administrative burden on filers is one, but not the only, factor that must be considered in implementing these provisions.

The comment requested that the concept of de minimis and the minor dollar amounts subject to the payee election be weighed against the cost and complexity of instituting and monitoring the payee election process described in Notice 2017–09. It stated that a way to ensure reasonability is to integrate the payee election process into existing procedures, systems, and data structures. The Treasury Department and the IRS acknowledge the potential administrative burden on filers inherent to any new rules; however, the Treasury Department and the IRS note that filers are free to integrate the payee election process allowed by the proposed regulations within existing procedures, systems, and data structures. Further, the Treasury Department and the IRS have determined that potential administrative burden on filers is one, but not the only, factor that must be considered in implementing these provisions and that the need to provide an effective framework for payees to make the payee election is an additional factor that must be considered.

The comment further stated that the best framework to satisfy Congressional intent would be one in which a filer could alert a payee at account opening, or on a one-time basis for currently opened accounts, to the fact that the filer will not issue a corrected statement for any errors that fall within the de minimis error limits of $100 and $25. Under the comment's proposal, the notice would specify that the payee could elect to receive corrected payee statements by making an election in a manner prescribed by the filer. The Treasury Department and the IRS note that proposed regulation § 301.6722–1(d)(3)(v) incorporates rules similar to this proposal by providing the option for filers to give notification to every payee to whom the filer furnishes a payee statement of the payee's ability to elect that the safe harbor exception for de minimis errors not apply and by providing the payee reasonable alternative options to make the election, such as by telephone or through a website. Proposed regulation § 301.6722–1(d)(3)(v)(D)(*2*) provides that in cases where valid notification has been provided with respect to a particular account, no further notification is required unless the filer wishes to change the reasonable alternative manner. This rule balances the need for payees to have up-to-date information of any reasonable alternative manners proposed by each filer furnishing statements to the payee with the administrative costs to filers who opt to provide notifications.

The comment stated that the payee election should be on an annual basis, applied only to transactions reportable in the year the election is made. Because this suggestion would place considerable burden on payees to make annual elections, either as a precautionary measure or after monitoring payee statements for accuracy, proposed regulation § 301.6722–1(d)(3)(ii) adopts a different rule, providing that the election shall remain in effect until revoked. This rule allows payees to elect to receive corrections whenever they may become necessary, regardless of whether it is the payee or the filer who becomes aware of the de minimis error. In general, the filer will be best positioned to first become aware of any de minimis error. An election with indefinite effect obviates the need for payees to make annual cautionary elections, in case there is an error of which they are not aware.

The comment also stated that an election without the specific account number associated with it should not be valid and that the election should not include the payee's taxpayer identification number (TIN) and address information. The comment raised the issue of fraudulent activity through identity theft, but the comment did not provide details regarding how providing TIN and address information in a payee election raises identify theft concerns. The Treasury Department and the IRS recognize that in some instances the provision of an account number will be expedient for filers, but also recognize that payees, particularly those who have had accounts for extended periods, may not have ready access to their full account numbers. Further, the provision of a payee's TIN and address information ensures that filers will have at their disposal information reasonably sufficient to identify the payee that is making the payee election. Proposed regulation § 301.6722–1(d)(3)(iii) therefore provides that as a default rule a filer shall treat an election as valid regardless of whether the payee provides an account number, and it requires the payee's TIN and address information.

Proposed regulation § 301.6722–1(d)(3)(v), however, also provides that if the filer provides notification to the payee under proposed regulation § 301.6722–1(d)(3)(v)(B), the filer may specify that an election using a reasonable alternative manner under proposed regulation § 301.6722–1(d)(3)(v) need not include the payee's TIN and address information, and must include the payee's account information. These rules would apply only if the payee decides to make use of the alternative election manner proposed by the filer under proposed regulation § 301.6722–1(d)(3)(v) and not the default election manner under proposed regulation § 301.6722–1(d)(3)(iii). The proposed rules thus generally provide for flexibility for filers who choose to send notifications to payees, while maintaining a simple default election option for payees.

The comment also proposed that an election relating to a specific account should apply to all payee statements or to no payee statements in that account. It focused on the burden to filers of elections applied on a statement-by-statement basis, and the potential that an election might apply to payee statements made in composite form. Additionally, the comment requested that the IRS provide some of the reasons it expects a taxpayer will request corrected returns in the de minimis error context on a statement-by-statement basis. The comment's suggested rule is inconsistent with the statutory framework of sections 6721 through 6724, which applies generally on a per statement basis. Section 6722(c)(3)(A) prescribes the de minimis

error safe harbor exception ''with respect to any payee statement.'' Additionally, the comment's proposal would significantly limit payees' options for making elections. Further, the Treasury Department and the IRS note that the Code permits filers to provide corrected statements regardless of the de minimis error safe harbor exceptions or payee election. Thus, filers may provide corrections on an account-wide basis once a payee makes an election with respect to a single type of payee statement associated with that account. For example, if a payee submits an election to a filer with respect to the Form 1099–DIV, ''Dividends and Distributions,'' that the filer is required to furnish to the payee, the filer is required under sections 6721(c)(3) and 6722(c)(3) and these proposed regulations to issue corrections even for de minimis errors. Under the proposed regulations, if the filer is also required to furnish a Form 1099–B, ''Proceeds From Broker and Barter Exchange Transactions,'' to the payee, and the payee specifically made the payee's election with respect to the Form 1099–DIV (and not the Form 1099–B), the election under proposed regulation § 301.6722–1(d)(3)(i) does not apply with respect to the Form 1099–B, and the filer is not required to correct Forms 1099–B for de minimis errors. But the filer may decide that it is more administrable for the filer to correct for de minimis errors for every payee statement the filer sends to the payee, including the Form 1099–B. Thus, the per-statement election provides flexibility to filers. In addition, proposed regulation § 301.6722–1(d)(3)(iv) provides that if a payee does not identify the type of payee statement to which the election relates, the filer shall treat the election as applying to all types of payee statements the filer is required to furnish to the payee. Finally, as described above, filers who choose to provide notification and a reasonable alternative manner for the election may provide that as a condition of using the reasonable alternative manner the payee must provide the filer the payee's account number, and the filer may then provide corrections on an account-wide basis. For these reasons, proposed regulation § 301.6722–1(d)(3)(iii) does not adopt the comment's suggested rule.

The comment noted that section 202 of the PATH Act does not contain explicit language regarding a payee's ability to revoke a prior election under section 6722(c)(3)(B). The comment stated that providing for a revocation is unnecessary to accomplish Congress's specific mandate and may prove to be more costly and burdensome than continuing to issue corrections for de minimis errors. The comment further stated that, if revocations are permitted, they should be permitted only on an annual basis applied to the next year after the year in which the revocation was made. The comment's concern is that the language regarding revocations in section 3.02 of Notice 2017–09 could lead to a revocation being applicable to a portion of a calendar year, with an election applicable to a separate portion of that year. The Treasury Department and the IRS do not agree that this will cause significant burden to filers because a revocation does not mandate changes in behavior on behalf of the filer, but rather provides penalty relief for the filer if an information return contains a de minimis error and is not corrected. As a result, proposed regulation § 301.6722–1(d)(3)(vii) provides that a revocation will apply to payee statements that are furnished or are due to be furnished after the revocation is received by the filer.

The Treasury Department and the IRS note that while the revocation may cause the election to apply for only the first part of a calendar year, nothing prevents filers from continuing to issue corrections for the rest of the calendar year (as they had been doing with respect to the portion of the year when the election was in effect). Immediate effect of the revocation provides immediate penalty relief for filers in the case of a de minimis error that is uncorrected and allows filers to stop issuing corrections for de minimis errors as soon after receipt of the revocation as they wish. In the unlikely scenario of an election in a calendar year, followed by a revocation in the same calendar year, followed by another election in the same calendar year, the situation will not be that of various rules for various periods within the calendar year—rather, because the election is effective for the entire calendar year and subsequent years until revoked under proposed regulations §§ 301.6721–1(e)(3) and 301.6722–1(d)(3)(ii), the last, valid election would apply to the same period it would absent the prior election and prior revocation. Because the Treasury Department and the IRS do not view the potential for multiple filings of elections and revocations within a year as a significant concern, the proposed regulations do not complicate the rules in an effort to further address this issue. Regarding the length of the effectiveness of a revocation, an indefinite revocation, rather than an annual revocation system, should impose less administrative burden both on filers and payees given the decreased frequency of filing.

The comment also stated that brokers should be specifically permitted to ignore the use of the de minimis error safe harbor exceptions and continue to issue corrections for de minimis amounts. The Treasury Department and the IRS agree that brokers, like other filers, may do so without specific permission. Because there is no need for the regulations to provide brokers with specific permission, this comment was not adopted.

The comment also commented on the final and temporary regulations under §§ 1.6081–8 and 1.6081–8T contained in TD 9730, stating that the automatic extension to file various information returns should, as a general matter, remain in place. This portion of the comment is beyond the scope of these regulations.

In addition the comment asked for clarification of a filer's reporting obligations under the de minimis error safe harbor exceptions where the threshold reporting obligation is not initially met, but upon a subsequent corrective event, the reportable dollar amount exceeds the threshold amount but does not exceed the de minimis error limit. The de minimis error safe harbor exceptions do not apply to this situation, because they do not apply to a failure to file; the safe harbor exceptions apply only to inadvertent errors on a filed information return or furnished payee statement. This rule is reflected in proposed regulation § 301.6722–1(d)(1). The comment further asked whether an election applies only to payee statements and information returns required to be furnished or filed in the year of the election, or later, or to any corrections made after the election, regardless of when the reporting to which the correction is related is required. Proposed regulation § 301.6722–1(d)(3)(ii) addresses this question by providing that an election under proposed regulation § 301.6722–1(d)(3)(i) applies to payee statements required to be furnished and information returns required to be filed during the calendar year of the election, or later; if a payee statement is required to be furnished or an information return is required to be filed before the beginning of the calendar year of the election, the election would not apply, regardless of when the filer realizes a reporting error was made. The comment asked whether the language in Notice 2017–09 reading ''within 30 days of the date of the election'' should instead reference 30 days from discovery of the error for purposes of the error being

treated as due to reasonable cause and not willful neglect. The ''within 30 days of the date of the election'' language in the notice is now reflected in proposed regulation § 301.6724–1(h). The Treasury Department and the IRS determined that the election, rather than the discovery of the error, is the appropriate focus because a special rule is needed only in those situations where a payee election causes the de minimis error safe harbor exceptions to not apply. In cases where a payee has made an election under proposed regulation § 301.6722(d)(3)(i) and a filer subsequently discovers an error, whether the error is de minimis or not, the normal reasonable cause rules under section 6724, such as in § 301.6724–1(d)(1) relating to responsible manner, apply. Examples 8 and 9 in proposed regulation § 301.6724–1(k) illustrate these rules.

The comment also requested clarification regarding the following language in section 3.02 of Notice 2017–09:

> Nothing in this notice prevents a payee from requesting that the filer file a corrected information return or furnish a corrected payee statement required to be filed or furnished in a calendar year preceding the calendar year in which the payee makes the election.

The comment asked whether the ''or'' in the phrase ''filed or furnished'' should be ''and'' because, regardless of the payee's request, the filer would both furnish the corrected payee statement and file the corrected information return. The comment also asked whether this language places any obligation upon the filer to oblige the payee's request pursuant to this language. The Treasury Department and the IRS note that the proposed regulations do not include the quoted language, so the comment's inquiries regarding it are not applicable.

Six additional comments concurred with the comments and questions made by the one comment that has been described thus far in this preamble. One of these six additional comments also emphasized the administrative burden needed for financial firms to implement the rules described in Notice 2017–09, and the impact especially on smaller or midsized firms. The comment stated that the increased cost has no tangible benefit or demonstrated revenue-raising impact. The Treasury Department and the IRS note that the statute provides payees with the ability to elect that the de minimis error safe harbor exceptions not apply. The regulations strike a balance between the benefit of the de minimis error safe harbor exceptions for filers and the statutory ability for payees to elect that the de minimis error safe harbor exceptions not apply. The statutory ability for payees to make an election that the de minimis error safe harbor exceptions not apply, rather than any revenue-raising metric, is the benefit to be weighed against administrative burdens to filers.

The comment also stated that the framework set forth in Notice 2017–09 runs contrary to the intent of the notice, existing regulations, and the Trade Preferences Extension Act of 2015, but the comment does not provide details as to how this is the case and we cannot therefore address this portion of the comment.

An additional comment quoted the following language from Notice 2017–09, section 3.01: ''This notice does not prohibit a filer from filing corrected information returns and furnishing corrected payee statements if the payee does not make an election.'' The comment stated that the mitigation of administrative burden of processing corrections under the de minimis error safe harbor exceptions is realized not only by filers but by payees as well, and recommended that guidance discourage corrected statements for de minimis errors. The Treasury Department and the IRS do not agree; accurate reporting is an important goal that should not be discouraged. Thus, the proposed regulations do not adopt the comment's suggestion.

The comment also stated that requiring a filer to provide each payee with written notification of the de minimis error safe harbor exception rules and election out provisions would be unduly burdensome to filers, shifting administrative burden from processing corrected statements to the notification process. The comment recommended that the IRS include a general disclosure regarding the de minimis error safe harbor exceptions in general instructions relating to information returns. The Treasury Department and the IRS decided to not include a notification requirement in the proposed regulations. Rather, the proposed regulations provide only that if filers wish to set up election systems that vary from the default contained in proposed regulation § 301.6722–1(d)(3)(iii), a notification is required for that reasonable alternative manner of election under proposed regulation § 301.6722–1(d)(3)(v). For this reason, the proposed regulations do not reflect this comment. The Treasury Department and the IRS are considering whether to include references to the de minimis error safe harbor exceptions, the election under § 301.6722–1(d)(3)(i), and other information in general instructions or in specific forms or instructions, and note that the current (2018) General Instructions for Certain Information Returns as well as the current (2018) General Instructions for Forms W–2 and W–3 contain discussions of the de minimis error safe harbor exceptions and related information.

The comment also requested clarification regarding whether the de minimis error safe harbor exception is for the cumulative total of multiple errors, or one particular error. The comment noted that the safe harbor exception would be easier to apply if it is calculated on an error-by-error basis. Proposed regulation § 301.6722–1(d)(2) clarifies that the safe harbor exception is calculated on an error-by-error basis.

The comment further stated that if an error is discovered by the filer, the payee should not be able to elect that the de minimis error safe harbor exceptions not apply and that the filer should make the determination of whether a corrected form is needed, in light of the threshold amounts of $100 and $25. The comment stated that the election process does not lead to a reduction in the administrative burden. Because this suggestion is contrary to section 6722(c)(3)(B), which specifically provides for the payee to make the election under section 6722(c)(3)(B), the proposed regulations do not adopt the suggestion.

The comment also stated, regarding any notification requirement, that errors may be identified by the payee and communicated to the filer and then at that point, if the dollar amount is below the applicable threshold, the filer should inform the payee of the de minimis error safe harbor exceptions and the payee's ability to elect that the safe harbor exceptions not apply. As noted above, the proposed regulations do not contain a notification requirement.

The comment stated that additional consideration should be given to allow the payee election to expire, noting that such a rule could reduce administrative burden for filers, given a resulting decrease in required corrections. Because a rule under which the payee election expires after a set amount of time would increase the complexity of the election and revocation framework both for filers (tracking years in which the election is in effect) and for payees (same, and refiling elections after expiration, if desired), proposed regulation § 301.6722–1(d)(3)(ii) does not adopt such a rule.

The comment also requested examples of what a de minimis error correction would look like. A de

minimis error correction would be substantially similar to a correction of an error greater than a de minimis error in the context of corrected information reporting—that is, the filing of a corrected information return, and the furnishing of a corrected payee statement (for example, filing a corrected Form 1099–MISC with the IRS, and furnishing a corrected Form 1099–MISC to the payee).

The comment also requested explanation of what ''de minimis'' is and is not. Proposed regulation § 301.6722–1(d)(2) provides the definition of de minimis error, and proposed regulation § 301.6722–1(d)(5) illustrates this definition with examples.

The comment requested an opt-out provision for filers that, if selected, would remove any responsibility to collect information and keep records under Notice 2017–09. The Treasury Department and the IRS have considered potential expenses that filers might incur in meeting the record retention requirements in proposed regulation § 301.6722–1(d)(4) and have determined that an opt-out provision, while potentially reducing expenses borne by filers, would render the record retention rules ineffective. The record retention requirements facilitate tax administration by providing proof of compliance and assisting filers to avoid penalties under sections 6721 and 6722. The Treasury Department and the IRS note that the notification under proposed regulation § 301.6722–1(d)(3)(v)(B) is a voluntary collection of information because the notification is optional. Therefore, the proposed regulations do not adopt this comment.

Finally, the comment asked whether any notification requirement will be effective for payees receiving their statements in 2016. The effective/applicability date provisions in proposed regulation § 301.6722–1(g) provide that the rules relating to the optional notification by filers under proposed regulation § 301.6722–1(d)(3)(v) are proposed to apply with respect to information returns and payee statements due on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

An additional comment requested that the payee election provisions under section 6722(c)(3)(B) and proposed regulation § 301.6722–1(d)(3)(i) not apply to Form 8937, ''Report of Organizational Actions Affecting Basis of Securities.'' The comment noted that under section 6045B(e) and regulation § 1.6045B–1(a)(3) a filer need not file and issue individual Forms 8937, but can opt to post a single Form 8937 on its public website. The comment noted that the Form 8937 is not specific to an individual payee, but instead describes tax basis adjustments in the abstract for use by brokers in determining the basis reporting for their customers. It noted that the individually-focused nature of the payee election is at odds with the public reporting enabled by section 6045B(e) and regulation § 1.6045B–1(a)(3). And it noted that a single election with respect to a posted Form 8937 could lead to inefficiencies for numbers of brokers (including those who did not make the election) once a correction is issued.

The Treasury Department and the IRS acknowledge these concerns. However, Congress presumably was aware of the public reporting option under section 6045B(e) and regulation § 1.6045B–1(a)(3) (enacted October 3, 2008, and published October 18, 2010, respectively) when it enacted the de minimis error safe harbor exceptions. Congress did not provide for authority to exclude information returns or payee statements from the de minimis error safe harbor, or the payee election, based on administrative inconvenience. The proposed regulations therefore do not adopt this comment's suggested rule.

A final comment requested that the payee election be available only as a one-time election and apply prospectively only. The comment stated that nothing in the notice prevents a payee from requesting that the filer file a corrected information return or furnish a corrected payee statement from years preceding the election, and noted that this presents burdens and potential for abuse by payees. The comment may have misconstrued Notice 2017–09, in part, because nothing in the notice provided for an election for a year preceding the year in which the election was made. In like manner, proposed regulation § 301.6722–1(d)(3)(ii) provides that an election made by October 15 of a calendar year—for example, Calendar Year 1—can apply retrospectively to a Form 1099–MISC required to be furnished in January of Calendar Year 1, but the election would have no validity with respect to any payee statements required to be furnished in any calendar years preceding Calendar Year 1. Thus, the retrospective application is limited to the current calendar year, along with the potential administrative burden and any potential for abuse. The comment does not adequately establish that ''cherry picking'' the corrections of de minimis dollar amounts poses a significant threat of abuse. Regarding potential administrative burden to filers, while a one-time prospective election might be less burdensome, this is but one factor that must be considered; flexibility for payees in requesting corrected statements is another. As discussed below, proposed regulation § 301.6722–1(d)(3)(ii) balances these factors.

The comment requested the information required for a payee election be streamlined to simplify elections as a matter of customer service. Proposed regulation § 301.6722–1(d)(3)(v) allows filers to provide a reasonable alternative manner that they view as satisfactory to their customers.

The comment also echoed previous comments in requesting the flexibility to issue corrections, despite generally taking advantage of the de minimis error safe harbor exceptions, for purposes of cost basis adjustments under section 6045. To address this and similar comments, proposed regulation § 1.6045–1(d)(6)(vii) provides that when a broker both files a corrected information return and issues a corrected payee statement showing the correct dollar amount, even though not required by section 6721(c)(3) or section 6722(c)(3), the corrected amount is the adjusted basis for section 6045 purposes.

The comment asked that the recordkeeping requirement in section 3.05 of Notice 2017–09, of ''. . . as long as that information may be relevant to the administration of any internal revenue law'' be reduced from a potentially open-ended length of time to a range of three years (the general statute of limitations on assessment under section 6501) to seven years (the time period used for various Securities and Exchange Commission and Financial Industry Regulatory Authority recordkeeping requirements), stating that the open-ended retention schedule is unnecessary and burdensome. Proposed regulation § 301.6722–1(d)(4) does not adopt this comment, because the records under this section (such as an election, until revoked) may be relevant to tax administration in years beyond the general statute of limitations on assessment under section 6501 for a particular year. For example, if an election is made in 2019 and not revoked until 2025, that election will be relevant with respect to information returns required to be filed and payee statements required to be furnished in 2024. The rules in proposed regulation § 301.6722–1(d)(4) therefore reflect the general record retention rules in section 6001 and § 1.6001–1(e), providing for record retention as long as the contents of an election, revocation, or

notification may be material in the administration of any internal revenue law.

Finally, the comment requested guidance regarding how a payee election that the de minimis error safe harbor exceptions not apply would apply to joint accounts, such as when joint account payees submit contrary elections, or one joint account payee submits an election but another does not. Absent contrary provisions under the Internal Revenue Code or Code of Federal Regulations, the rules that typically govern issues of authority over joint accounts should address these matters, and a special rule for purposes of de minimis error reporting is unnecessary. The Treasury Department and the IRS note that filers have the option to ignore the availability of the de minimis error safe harbor exceptions and issue corrections for de minimis amounts as was required to avoid penalties prior to the enactment of the PATH Act. Filers can therefore issue corrections to all joint account payees even if joint account payees submit contrary elections, or one joint account payee submits an election but another does not.

Explanation of Provisions

1. Safe Harbor Exceptions From Penalties for Certain De Minimis Errors

In accord with sections 6721(c)(3)(A) and 6722(c)(3)(A), proposed regulations §§ 301.6721–1 and 301.6722–1 provide for safe harbor exceptions to the section 6721 and section 6722 penalties. With certain exceptions discussed below, the safe harbor exceptions apply in circumstances when an information return or payee statement is otherwise correct and is timely filed or furnished and includes a de minimis error in a dollar amount reported on the information return or payee statement. When the safe harbor exception applies to an information return or payee statement and the information return or payee statement is otherwise correctly and timely filed or furnished, no correction is required and, for purposes of sections 6721 or 6722, respectively, the information return or payee statement is treated as having been filed or furnished with all of the correct required information.

Pursuant to sections 6721(c)(3)(A) and 6722(c)(3)(A), an error is a de minimis error if the difference between any single amount in error and the correct amount is not more than $100, or, if the difference is with respect to an amount of tax withheld, it is not more than $25. Proposed regulation § 301.6722–1(d)(2) defines tax withheld to include any amount required to be shown on an information return or payee statement (as defined in section 6724(d)(1) and (d)(2), respectively) withheld under section 3402, as well as any such amount that is creditable under sections 27, 31, 33, or 1474. This is not an exclusive definition but is intended to ensure that all amounts giving rise to dollar-for-dollar reductions in tax, including foreign tax credits under section 27, are included as tax withheld.

2. Errors Due to Intentional Disregard of Information Reporting Requirements

In accord with sections 6721(e) and 6722(e), proposed regulations §§ 301.6721–1(e)(1) and 301.6722–1(d)(1) provide that the safe harbor exceptions for certain de minimis errors do not apply in cases of intentional disregard of the requirements to file correct information returns or furnish correct payee statements. In those cases, higher penalty amounts imposed by sections 6721(e) and 6722(e) and proposed regulations §§ 301.6721–1(g) and 301.6722–1(c) apply. For example, a person may not choose to forgo filing information returns or furnishing payee statements that the person is required to file or furnish under the Code and that report amounts less than $100 and tax withheld less than $25. To do so would be an intentional disregard of the filing requirement and result in higher penalties.

3. Payee Election To Receive Corrected Payee Statement

In accord with sections 6721(c)(3)(B) and 6722(c)(3)(B), proposed regulations §§ 301.6721–1(e)(3) and 301.6722–1(d)(3)(i) allow a payee to elect to have the safe harbor exceptions for certain de minimis errors not apply to the information reporting penalties. The proposed regulations provide that a payee may elect that the safe harbor exception to section 6722 penalties not apply to a payee statement, and that the election will also apply to the safe harbor exception to section 6721 penalties with respect to corresponding information returns. Proposed regulation § 301.6722–1(d)(3)(vi) provides that the election is not available with respect to information that may not be altered under specific information reporting rules. For example, § 1.6045–4(i)(5) provides special rules for defining gross proceeds in the context of multiple transfers for information reporting on real estate transactions, and prohibits altering information after the due date for filing the Form 1099–S, ''Proceeds From Real Estate Transactions.'' Allowing an election under proposed regulation § 301.6722–1(d)(3)(i) with respect to the Form 1099–S would suggest that a correction would or should be made. To resolve any ambiguity between these provisions, proposed regulation § 301.6722–1(d)(3)(vi) prohibits an election with respect to information that may not be altered under specific information reporting rules, such as under § 1.6045–4(i)(5).

Proposed regulation § 301.6722–1(d)(3)(ii) provides that a payee must make any election no later than the later of 30 days after the date on which the payee statement is required to be furnished to the payee, or October 15 of the calendar year, to receive a correct payee statement required to be furnished in that calendar year without having the safe harbor exceptions for certain de minimis errors apply. The October 15 date coincides with the fully-extended due date an individual may have to file an income tax return. In arriving at this date, the Treasury Department and the IRS considered both the needs of persons who furnish payee statements and the needs of payees, who will generally have a filing due date no later than October 15 if their taxable year corresponds to the calendar year referenced on the payee statements they receive. Prior to promulgation of these proposed regulations, the IRS advised payees to request corrected payee statements from filers in cases in which information is incorrect, without time limit on making this request. Imposing a deadline to elect before October 15 could limit a taxpayer's ability to correct errors discovered while the payee is preparing his or her return. The allowance of an election after the due date for most payee statements and through October 15 allows payees to inspect payee statements and make elections for purposes of timely filing their income tax returns. On the other hand, the existence of an election cutoff date of October 15 in the case of most payee statements reduces administrative burden on filers by eliminating elections after October 15. The 30-day rule provides a deadline in cases of payee statements required to be furnished later in the calendar year, such as the Schedule K–1 (Form 1065), ''Partner's Share of Income, Deductions, Credits, etc.,'' required to be furnished to payees by fiscal year partnerships.

To reduce the administrative burden of yearly elections on both payees and filers, an election remains in effect for all subsequent years until revoked under proposed regulation § 301.6722–1(d)(3)(vii). The effect of a revocation of a prior election is that the safe harbor exceptions for de minimis errors apply. The revocation will be effective for

payee statements furnished or due to be furnished after the revocation is received. Because a revocation makes the safe harbor for certain de minimis errors applicable, potentially reducing the accuracy of information returns and payee statements, payees have no need to be able to make a retroactive revocation after receipt of any payee statements and during the period of preparing individual income tax returns. Likewise, the immediate effect of the revocation is beneficial to the filer, because it immediately applies the de minimis error safe harbor exceptions, eliminating the requirement to issue corrected information returns containing only de minimis errors incurred by an election under proposed regulation § 301.6722–1(d)(3)(i). If issuing corrections is easier for the filer, the filer can always do so. A revocation will remain in effect until the payee makes a valid and timely election under proposed regulation § 301.6722–1(d)(3)(i).

For determining the ''date of receipt'' by the filer, paragraphs (ii) and (vii) of proposed regulation § 301.6722–1(d)(3), relating to elections and revocations, respectively, provide that for purposes of proposed regulation § 301.6722–1 the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date an election under proposed regulation § 301.6722–1(d)(3)(ii) or revocation under proposed regulation § 301.6722–1(d)(3)(vii) is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under section 7502, so that the date of mailing may control the timeliness of an election or revocation. These rules provide for more clarity regarding the date of an election or revocation.

Under proposed regulation § 301.6722–1(d)(3)(iii), the default manner for an election by the payee that the de minimis error safe harbor exceptions not apply is by writing on paper, mailed to the address for the filer appearing on the payee statement the payee received from the filer with respect to which the election is being made, or as provided to them by the filer. Proposed regulation § 301.6722–1(d)(3)(iii)(A) through (D) provide the requirements for what information must be included in the written election, such as the payee's name, address, and taxpayer identification number (TIN). This information is necessary for the filer to implement the election.

Proposed regulation § 301.6722–1(d)(3)(v) provides that the payee may make the election under proposed regulation § 301.6722–1(d)(3)(i) in a reasonable alternative manner if the filer provides a valid notification to the payee describing the reasonable alternative manner. The reasonable alternative manner, as described in proposed regulation § 301.6722–1(d)(3)(v)(E), may include electronic elections by email or telephonic elections. For a notification under proposed regulation § 301.6722–1(d)(3)(v) to be valid, and make available the reasonable alternative manner, the notification must be written (paper or electronic), must be timely under the provisions of proposed regulation § 301.6722–1(d)(3)(v)(D), must explain to the payee the payee's ability to make the election under proposed regulation § 301.6722–1(d)(3)(i), must provide an address to which the payee may send a written election under proposed regulation § 301.6722–1(d)(3)(i) and (iii), and must describe the information required for making the election as described by proposed regulation § 301.6722–1(d)(3)(iii)(A) through (D). To be timely under proposed regulation § 301.6722–1(d)(3)(v)(D), a notification must be provided to the payee with, or at the time of, the furnishing of the payee statement, or have previously been timely provided (under the with, or at the time of, rule) to the payee with a payee statement associated with the relevant account. Under proposed regulation § 301.6722–1(d)(3)(v)(D)(*2*), if a filer wishes to provide for a different reasonable alternative manner than a previous reasonable alternative manner, the applicable timeliness rule is under proposed regulation § 301.6722–1(d)(3)(v)(D)(*1*) (the with, or at the time of, rule) and the filer must accept payee elections under the previous reasonable alternative manner for a period of at least 60 days after the receipt of the new notification by the payee.

To ease the administrative burden on filers, the notification may provide that certain of the information otherwise required under proposed regulation § 301.6722–1(d)(3)(iii)(B) is not required, and that certain of the information (the otherwise optional account number) is required, if the payee decides to use the reasonable alternative manner rather than the default manner.

The combination of the default election under proposed regulation § 301.6722–1(d)(3)(iii) and the reasonable alternative manner, including electronic and telephonic elections, pursuant to a valid notification by the filer, provides a straightforward election process for payees who do not have notification provided them, as well as additional flexibility to filers who wish to provide notification to payees of the election and alternative methods for making the election.

Proposed regulation § 301.6722–1(d)(3)(vii)(A) through (F) provides requirements for a revocation that are similar to the requirements for an election.

4. Reasonable Cause

When a payee makes an election under § 301.6722–1(d)(3)(i) by the later of 30 days after the date on which the payee statement is required to be furnished to the payee, or October 15 of the calendar year, the safe harbor exceptions for de minimis errors no longer apply with respect to the payee statement, and corresponding information return, required to be furnished and filed that year. If the payee statement has already been furnished or the information return already been filed, and they contain de minimis errors, the section 6721 and 6722 penalties will apply absent the applicability of an exception other than the safe harbor exceptions for certain de minimis errors. Proposed regulation § 301.6724–1(h) provides special rules to determine whether the exception for reasonable cause applies in this situation. Section 301.6724–1(h) only applies when the safe harbor for certain de minimis errors would have applied, but for an election under § 301.6722–1(d)(3)(i).

Under this provision, a filer may establish that a failure caused by the presence of de minimis errors and an election under § 301.6722–1(d)(3)(i) is due to reasonable cause and not willful neglect by filing a corrected information return or furnishing a corrected payee statement, or both, as applicable, within 30 days of the date of the election. Where specific rules provide for additional time in which to furnish a corrected payee statement and file a corrected information return, for example with Forms W–2C, the 30-day rule does not apply and the specific rules will apply. In the case of filing or furnishing outside of the 30-day period the determination of reasonable cause will be on a case-by-case basis. Examples 8 and 9 in proposed regulation § 301.6724–1(k) illustrate reasonable cause under this provision and when reasonable cause might occur under a separate provision.

5. Cost Basis

To encourage correct reporting, and to facilitate brokers with the accurate maintenance of cost basis systems, proposed regulation § 1.6045–1(d)(6)(vii) provides that voluntary

corrections by brokers will result in updated adjusted basis under section 6045, even when the incorrect dollar amounts are not ''required to be corrected by reason of section 6721(c)(3) or section 6722(c)(3).'' See I.R.C. section 6045(g)(2)(B)(iii). This proposed regulation allows brokers who identify a de minimis error in their cost basis systems to fix the mismatch between their systems and the previously-reported (incorrect) dollar amount through voluntary subsequent reporting. The updated adjusted basis under section 6045 has no effect on calculating basis under other basis determination sections, such as section 1012.

6. Record Retention

To facilitate proof of compliance, proposed regulation § 301.6722–1(d)(4) provides that filers must retain records of any election, revocation, or notification for as long as the contents of the election, revocation, or notification may be material in the administration of any internal revenue law. Whether an election, revocation, or notification was effectively made under these regulations can affect whether the section 6721 or 6722 penalties apply. Thus, records of any election, revocation, or notification are relevant to determining the tax liability of any person under sections 6721 or 6722. See section 6001 and § 1.6001–1(e).

7. Updates and Conforming Amendments

To reflect increased penalty amounts due to section 2102 of the Creating Small Business Jobs Act of 2010 and section 806 of the Trade Preferences Extension Act of 2015, the proposed regulations update dollar amounts throughout. Additionally, to reflect the provision for annual inflationary adjustments in section 208 of the Tax Increase Prevention Act of 2014, proposed regulations §§ 301.6721–1(i) and 301.6722–1(f) provide for adjustments for inflation.

To reflect the amendments by section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, section 13520(c) of Public Law 115–97, and section 206(o) of the Consolidated Appropriations Act of 2018 to sections 6724(d)(1) and 6724(d)(2), proposed regulations §§ 301.6721–1(h)(2)(xii) and (h)(3)(xxvi) and 301.6722–1(e)(2)(xxxv), (xxxvi), and (xxxvii) are added to update the definitions of information return and payee statement.

To reflect the amendments by section 1211(b)(2) of the Pension Protection Act of 2006 to section 6721(e)(2), proposed regulation § 301.6721–1(g)(4)(iv)(D) provides for the calculation of the section 6721 penalty in case of intentional disregard in the case of a return required to be filed under section 6050V.

Proposed regulation § 301.6724–1(m) provides for updated procedures for a taxpayer to use to seek an administrative waiver that a failure is due to reasonable cause and not due to willful neglect, as the prior language referencing the district director was out of date.

The proposed regulations remove outdated references to various taxable years, replacing with updated years where necessary, such as in examples.

The proposed regulations make numerous conforming amendments to reflect the addition and renumbering of paragraphs. Proposed regulation § 301.6721–0 provides an updated table of contents.

Proposed Effective/Applicability Date

The regulations, as proposed, would generally apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Proposed regulation § 301.6724–1(h), however, would apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2017. See I.R.C. section 7805(b)(1)(C) and section 4 of Notice 2017–09, IRB–2017–4 (January 23, 2017).

Effect on Other Documents

Upon the publication of final regulations pursuant to the proposed regulations under sections 6045, 6721, 6722, and 6724 in this notice of proposed rulemaking in the **Federal Register**, Notice 2017–09 will be superseded with respect to information returns required to be filed and payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in these regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. As stated in this preamble, the proposed regulations would implement the de minimis error safe harbor exceptions in sections 6721(c)(3) and 6722(c)(3) to the section 6721 and 6722 penalties. Pursuant to section 6722(c)(3)(B), the proposed regulations would also provide for the time and manner for elections by payees that the de minimis error safe harbor exceptions not apply, including optional notifications by filers to provide for an alternative reasonable manner for the election. Finally, the proposed regulations would provide rules for revocations by payees of elections and record retention rules.

Although the proposed regulations may potentially affect a substantial number of small entities, the economic impact on these entities is not expected to be significant. The de minimis error safe harbor exceptions are expected to greatly reduce the burden on filers to file corrected information returns and furnish corrected payee statements because of de minimis errors. In those cases where payees opt to elect that the de minimis error safe harbor exceptions not apply, the expense of making the election will be borne by the payees, which generally will not be small entities.

Filers that are small entities receiving elections may incur costs in processing the elections, including initial costs in implementing systems or modifying existing systems to process elections, and subsequently in time incurred administering these systems. However, because section 6722(c)(3)(B) provides for a payee election, costs flow from the statute regardless of the proposed regulations. Additionally, filers that are small entities generally will have information reporting systems currently in place, and any costs incurred pursuant to the proposed regulations in modifying and implementing these systems are not expected to be significant. The rules in the proposed regulations provide clarity regarding the election process, which is expected to result in a more streamlined process.

Similarly, in those cases where payees opt to revoke a prior election, the expense of making the revocation will be borne by the payees, which generally will not be small entities. Filers that are small entities receiving revocations will benefit from the resulting applicability

of the de minimis error safe harbor exceptions, resulting in reduced burden to file corrected information returns and furnish corrected payee statements because of de minimis errors. Filers that are small entities receiving revocations may incur costs in processing the revocations similar to those incurred in processing elections; however, it is expected that systems implementing payee elections can be modified with minimal additional cost to account for revocations in addition to elections. Filers that are small entities opting to provide the optional notification to payees regarding an alternative reasonable manner for making the election may incur costs in providing the notification. However, it is expected that filers will only provide optional notifications when they have determined that any cost in providing the notification is offset by a resulting economic benefit to the filer, such as a more cost-efficient election system. The record retention rules may also increase expenses for filers that are small entities; however, any added expenses are expected to be minimal given existing record retention systems. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its 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 timely submitted to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. All comments submitted will be made available at *www.regulations.gov* or upon request. A public hearing may 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 author of these regulations is Mark A. Bond of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes.

26 CFR Part 301

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

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6045–1 is amended by redesignating paragraph (d)(6)(vii) as paragraph (d)(6)(viii), adding paragraphs (d)(6)(vii) and (ix), and revising paragraphs (k)(4), (l), and (q) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(d) * * *

(6) * * *

(vii) *Treatment of de minimis errors.* For purposes of this section, a customer's adjusted basis shall generally be determined by treating any incorrect dollar amount which is not required to be corrected by reason of section 6721(c)(3) or section 6722(c)(3) as the correct amount. However if a broker, upon identifying a dollar amount as incorrect, voluntarily both files a corrected information return and issues a corrected payee statement showing the correct dollar amount, then regardless of any requirement under section 6721 or section 6722, the adjusted basis shall be the correct dollar amount as reported on the corrected information return and corrected payee statement.

* * * * *

(ix) *Applicability date.* Paragraph (d)(6)(vii) of this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

(k) * * *

(4) *Cross-reference to penalty.* For provisions for failure to furnish timely a correct payee statement, see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) *Use of magnetic media.* See § 301.6011–2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

* * * * *

(q) *Applicability date.* Except as otherwise provided in paragraphs (d)(6)(ix), (m)(2)(ii), and (n)(12)(ii) of this section, and in this paragraph (q), this section applies on or after January 6, 2017. Paragraphs (k)(4) and (l) of this section apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. (For rules that apply after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016.)

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

■ **Par. 4.** Section 301.6721–0 is revised to read as follows:

§ 301.6721–0 Table of Contents.

In order to facilitate the use of §§ 301.6721–1 through 6724–1, this section lists the paragraph headings contained in these sections.

§ 301.6721–1 Failure to file correct information returns.

(a) Imposition of penalty.

(1) General rule.

(2) Failures subject to the penalty.

(b) Reduction in the penalty when a correction is made within specified periods.

(1) Correction within 30 days.

(2) Correction after 30 days but on or before August 1.

(3) Required filing date defined.

(4) Penalty amount for return with multiple failures.

(5) Examples.

(6) Applications to returns not due on January 31, February 28, or March 15.

(c) Exception for inconsequential errors or omissions.

(1) In general.

(2) Errors or omissions that are never inconsequential.
(3) Examples.
(d) Exception for a de minimis number of failures.
(1) Requirements.
(2) Calculation of the de minimis exception.
(3) Examples.
(4) Nonapplication to returns not due on January 31, February 28, or March 15.
(e) Safe harbor exception for certain de minimis errors.
(1) In general.
(2) Definition of de minimis error.
(3) Election to override the safe harbor exception.
(f) Lower limitations on the $3,000,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000.
(1) In general.
(2) Gross receipts test.
(g) Higher penalty for intentional disregard of requirement to file timely correct information returns.
(1) Application of section 6721(e).
(2) Meaning of ''intentional disregard.''
(3) Facts and circumstances considered.
(4) Amount of the penalty.
(5) Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.
(6) Examples.
(h) Definitions.
(1) Information return.
(2) Statements.
(3) Returns.
(4) Other items.
(5) Payee.
(6) Filer.
(i) Adjustment for inflation.
(j) Applicability date.

§ 301.6722–1 Failure to furnish correct payee statements.

(a) Imposition of penalty.
(1) General rule.
(2) Failures subject to the penalty.
(b) Exception for inconsequential errors or omissions.
(1) In general.
(2) Errors or omissions that are never inconsequential.
(3) Examples.
(c) Higher penalty for intentional disregard of requirement to furnish timely correct payee statements.
(1) Application of section 6722(e).
(2) Amount of the penalty.
(3) Computation of the penalty; aggregate dollar amount of items required to be shown correctly.
(d) Safe harbor exception for certain de minimis errors.
(1) In general.
(2) Definition of de minimis error.
(3) Election to override the safe harbor exception.
(4) Record retention.
(6) Examples.
(e) Definitions.
(1) Payee.
(2) Payee statement.
(3) Other items.
(4) Filer.
(f) Adjustment for inflation.
(g) Applicability date.

§ 301.6723–1 Failure to comply with other information reporting requirements.

(a) Imposition of penalty.
(1) General rule.
(2) Failures subject to the penalty.
(3) Exception for inconsequential errors or omissions.
(4) Specified information reporting requirement defined.
(b) Examples.

§ 301.6724–1 Reasonable cause.

(a) Waiver of the penalty.
(1) General rule.
(2) Reasonable cause defined.
(b) Significant mitigating factors.
(c) Events beyond the filer's control.
(1) In general.
(2) Unavailability of the relevant business records.
(3) Undue economic hardship relating to filing on magnetic media.
(4) Actions of the Internal Revenue Service.
(5) Actions of agent—imputed reasonable cause.
(6) Actions of the payee or any other person.
(d) Responsible manner.
(1) In general.
(2) Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.
(e) Acting in a responsible manner—special rules for missing TINs.
(1) In general.
(i) Initial solicitation.
(ii) First annual solicitation.
(iii) Second annual solicitation.
(iv) Additional requirements.
(v) Failures to which a solicitation relates.
(vi) Exceptions and limitations.
(2) Manner of making annual solicitations—by mail or telephone.
(i) By mail.
(ii) By telephone.
(f) Acting in a responsible manner—special rules for incorrect TINs.
(1) In general.
(i) Initial solicitation.
(ii) First annual solicitation.
(iii) Second annual solicitation.
(iv) Additional requirements.
(2) Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.
(3) Manner of making annual solicitation if notified pursuant to section 6721.
(4) Failures to which a solicitation relates.
(5) Exceptions and limitations.
(g) Due diligence safe harbor.
(1) In general.
(2) Special rules relating to TINs.
(3) Effective dates.
(h) Reasonable cause safe harbor after election under section 6722(c)(3)(B).
(i) [Reserved]
(j) Failures to which this section relates.
(k) Examples.
(l) [Reserved]
(m) Procedure for seeking a waiver.
(n) Manner of payment.
(o) Applicability date.

■ **Par. 5.** Section 301.6721–1 is amended by:
■ 1. Revising paragraph (a)(1).
■ 2. Revising the ninth sentence of paragraph (a)(2)(ii).
■ 3. Revising paragraphs (b)(1), (2), (5), and (6), (c)(1), (c)(2)(iii), (c)(3), and (d).
■ 4. Redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h).
■ 5. Adding a new paragraph (e).
■ 6. Revising newly redesignated paragraphs (f)(1), (g)(1) and (4) through (6), (h)(1), and (h)(2)(x) and (xi) and adding paragraph (h)(2)(xii).
■ 7. Revising newly redesignated paragraphs (h)(3)(xvii), (xviii), (xxiv), and (xxv) and adding paragraph (h)(3)(xxvi).
■ 8. Revising newly redesignated paragraphs (h)(4) and (6).
■ 9. Adding paragraphs (i) and (j).

The revisions and additions read as follows:

§ 301.6721–1 Failure to file correct information returns.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $250 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (h) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed $3,000,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the

penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a de minimis number of failures. See paragraph (e) of this section for a safe harbor exception for certain de minimis errors. See paragraph (f) of this section for lower limitations to the $3,000,000 maximum penalty. See paragraph (g) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (i) of this section for inflation adjustments to penalty amounts. See § 301.6724–1(a)(1) for waiver of the penalty for a failure that is due to reasonable cause.

(2) * * *

(ii) * * * Except as provided in paragraph (c)(1) or (e)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms and form instructions). * * *

(b) *Reduction in the penalty when a correction is made within specified periods*—(1) *Correction within 30 days.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $50 in lieu of $250 if the failure is corrected on or before the 30th day after the required filing date (''within 30 days''). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed $500,000.

(2) *Correction after 30 days but on or before August 1.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $100 in lieu of $250 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs (''after 30 days but on or before August 1''). See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on January 31, February 28, or March 15. The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed $1,500,000.

* * * * *

(5) *Examples.* The provisions of paragraphs (a) and (b)(1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the de minimis exception under paragraph (d) of this section, the safe harbor exception for certain de minimis errors under paragraph (e) of this section, the lower small business limitations under paragraph (f) of this section, the penalty for intentional disregard under paragraph (g) of this section, any adjustments for inflation under paragraph (i) of this section, or the reasonable cause waiver under § 301.6724–1(a):

(i) Example 1. Corporation R fails to file timely 23,000 Forms 1099–MISC (relating to miscellaneous income) for the 2018 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 18,000 after 30 days but on or before August 1, 2019. For the same year R fails to file timely 400 Forms 1099–INT (relating to payments of interest) which R eventually files on September 28, 2019, after the period for reduction of the penalty has elapsed. R is subject to a penalty of $100,000 for the 400 forms which were not filed by August 1 ($250 x 400 = $100,000), $1,500,000 for the 18,000 forms filed after 30 days ($100 x 18,000 = $1,800,000, limited to $1,500,000 under paragraph (b)(2) of this section), and $250,000 for the 5,000 forms filed within 30 days ($50 x 5,000 = $250,000), for a total penalty of $1,850,000.

(ii) Example 2. Corporation T fails to file timely 14,000 Forms 1099–MISC for the 2018 calendar year. T files the 14,000 Forms 1099–MISC on September 1, 2019. Because T does not correct the failure by August 1, 2019, T is subject to a penalty of $3,000,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a), T would be subject to a $3,500,000 penalty ($250 x 14,000 = $3,500,000).

(iii) Example 3. Corporation U files timely 300 Forms 1099–MISC on paper for the 2018 calendar year with correct information. Under section 6011(e)(2) a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 2019. It is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of $12,500 for 50 returns ($250 x 50 = $12,500).

(iv) Example 4. Corporation V files 300 Forms 1099–B (relating to proceeds from broker and barter exchange transactions) on paper for the 2018 calendar year. The forms were filed on March 15, 2019, rather than on the required filing date of February 28, 2019. Under section 6011(e)(2), a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 2019. V is subject to a penalty of $12,500 for filing 250 of the returns late ($50 x 250) and $12,500 for failing to file 50 returns on magnetic media ($250 x 50) for a total penalty of $25,000.

(6) *Application to returns not due on January 31, February 28, or March 15.* For returns that are not due on January 31, February 28, or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more), the penalty is $50 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is $250 rather than $100. There is no period during which the penalty is reduced to $100 under paragraph (b)(2) of this section.

(c) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term ''inconsequential error or omission'' means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (h)(5) of this section for the definition of ''payee.''

(2) * * *

(iii) Any monetary amounts, except as provided in paragraph (e) of this section. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (g) of this section or the reasonable cause waiver under § 301.6724–1(a):

(i) Example 1. A filer files a Form 1099–MISC (relating to miscellaneous income) with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the word ''street'' is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

(ii) Example 2. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's first name, William, is misspelled as ''Willaim.'' The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information

shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (c)(2) of this section. Therefore, no penalty is imposed under paragraph (a) of this section.

(iii) Example 3. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's name, ''John Doe,'' is misspelled as ''John Ode.'' Under paragraph (c)(2) of this section, supplying an incorrect surname for a payee is never considered an inconsequential error. Therefore, a penalty is imposed under paragraph (a) of this section.

(d) *Exception for a de minimis number of failures*—(1) *Requirements.* The penalty under paragraph (a) of this section is not imposed for a de minimis number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. See paragraph (d)(4) of this section for special rules relating to returns that are not due on January 31, February 28, or March 15.

(2) *Calculation of the de minimis exception.* The number of returns to which the de minimis exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the de minimis exception applies, the de minimis exception applies to those returns that will afford the filer the greatest reduction in penalty. The de minimis exception applies to failures to include correct information that exist after the application (if any) of the safe harbor exception for certain de minimis errors under paragraph (e) of this section and after the application (if any) of the waiver for reasonable cause under section 6724(a) and § 301.6724–1. Returns to which the de minimis exception applies are treated as having been originally filed with correct information.

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of the safe harbor exception for certain de minimis errors under paragraph (e) of this section, the lower small business limitations under paragraph (f) of this section, the penalty for intentional disregard under paragraph (g) of this section, any adjustment for inflation under paragraph (i) of this section, or the reasonable cause waiver under § 301.6724–1(a).

(i) Example 1. Corporation T files timely 10,000 Forms 1099–INT (relating to payments of interest) for 2018 by February 28, 2019. The 10,000 returns are all the information returns that T is required to file during the 2019 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 2019. No penalty is imposed for 50 of the failures (that is, the greater of 10 or .005 x 10,000 = 50) even though the total failures, 70, exceed the number to which the de minimis exception may apply. The $100 penalty under paragraph (b)(2) of this section is imposed, in lieu of $250, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of $2000 ($100 × 20 = $2000).

(ii) Example 2. Corporation U files timely 9,500 Forms 1099–INT for 2018 by February 28, 2019. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 2019. U also files 500 Forms 1099–INT for 2018 on August 30, 2019, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 2019 calendar year. The calculation of the de minimis exception is based on the 10,000 returns required to be filed during the 2019 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the de minimis exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099–INT that were corrected on August 1, 2019. However, the $250 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely, resulting in a total penalty of $125,000 ($250 × 500 = $125,000).

(iii) Example 3. Corporation V files timely 9,950 Forms 1099–INT for 2018 by February 28, 2019. However, V fails to file timely 50 of its Forms 1099–INT. The 10,000 returns are all the information returns that V is required to file during the 2019 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 2019. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 2019. Absent application of the de minimis exception, the penalty imposed for the failure to include correct information would be $5,000 ($100 x 50 = $5,000). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the de minimis exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the de minimis exception does not apply to the penalty for the failure to file timely. Hence, a penalty of $2,500 ($50 × 50 = $2500) is imposed.

(iv) Example 4. Corporation W files timely 100 Forms 1099–DIV and files an additional 50 Forms 1099–DIV late, but within 30 days of February 28, 2019. These are all the information returns that W was required to file during the 2019 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The de minimis exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (that is, applying the exception to a return filed late with incorrect information would save W $50, by reducing the penalty on that return from $100 to $50, but applying the exception to a return filed timely would save W $100, by reducing the penalty on that return from $100 to $0). (See paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on January 31, February 28, or March 15.* The exception for a de minimis number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on January 31, February 28, or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more). Nevertheless, the returns that are not due on January 31, February 28, or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the de minimis exception under paragraph (d)(2) of this section.

(e) *Safe harbor exception for certain de minimis errors*—(1) *In general.* Except as provided in paragraph (e)(3) or (g)(4) of this section, the penalty under section 6721(a) and paragraph (a) of this section is not imposed for a failure described in section 6721(a)(2)(B) and paragraph (a)(2)(ii) of this section (failure to include correct information on information return) when the failure relates to an incorrect dollar amount and is a de minimis error. When this safe harbor applies to an information return and the information return was otherwise correct and timely filed, no correction is required and, for purposes of this section, the information return is treated as having been filed with all of the correct required information.

(2) *Definition of de minimis error.* For the definition of de minimis error, see § 301.6722–1(d)(2).

(3) *Election to override the safe harbor exception.* The safe harbor exception provided for by paragraph (e)(1) of this section does not apply to any information return if the incorrect dollar amount that would qualify as a de minimis error for purposes of this paragraph (e) relates to an amount with respect to which an election has been made (and has not been revoked) under section 6722(c)(3)(B) and § 301.6722–

1(d)(3). See § 301.6722–1(d)(3) for additional rules relating to the election under section 6722(c)(3)(B) and § 301.6722–1(d)(3), including rules relating to the revocation of the election and the inapplicability of the election to certain information. See § 301.6724–1(h) for rules relating to waiver of the section 6721 penalty in cases where the safe harbor exception provided for by paragraph (e)(1) of this section does not apply because of an election under § 301.6722–1(d)(3).

(f) *Lower limitations on the $3,000,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000*—(1) *In general.* If a person meets the gross receipts test (as defined in paragraph (f)(2) of this section) for any calendar year, the total amount of the penalty imposed on such person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during such calendar year shall not exceed $1,000,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed $175,000 for such calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed $500,000 for such calendar year.

* * * * *

(g) *Higher penalty for intentional disregard of requirement to file timely correct information returns*—(1) *Application of section 6721(e).* If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (h) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (g)(4) of this section.

* * * * *

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each such failure determined under this paragraph (g)—

(i) Paragraphs (b), (d), (e), and (f) of this section shall not apply;

(ii) The $3,000,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (g) shall not be taken into account in applying the $3,000,000 limitation (or any similar limitation under paragraph (b) or (f) of this section) to penalties not determined under this paragraph (g);

(iii) The penalty imposed under paragraph (a) of this section shall be $500 or, if greater, the statutory percentage; and

(iv) The term ''statutory percentage'' means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, 6050L, or 6050V, 10 percent of the aggregate dollar amount of the items required to be reported correctly;

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly;

(C) In the case of a return required to be filed under section 6050I(a), for any transaction (or related transactions), the greater of $25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed $100,000; or

(D) In the case of a return required to be filed under section 6050V, 10 percent of the value of the benefit of any contract with respect to which information is required to be included on the return.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (g) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (that is, backup withholding) is required to be reported, only the $800 amount is taken into account in computing the penalty.

(6) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples, which do not take into account any adjustments for inflation under paragraph (i) of this section:

(i) Example 1. On December 1, 2018, Automobile dealer P receives $55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as ''John Doe.'' However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the filer. Because P knew at the time of filing the Form 8300 that the filer's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (g)(2) of this section. Therefore, the penalty under paragraph (g)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (g)(5) of this section is $55,000 (that is, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (g)(4)(iv)(C) of this section is $55,000 (that is, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

(ii) Example 2. On December 1, 2018, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F $20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the filer, F writes ''confidential.'' Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (g)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (g)(5) of this section is $20,000 (that is, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (g)(4)(iv)(C) of this section is $25,000 (that is, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

(iii) Example 3. Corporation M deliberately does not include $5,000 of dividends on a Form 1099–DIV (relating to payments of dividends) on which a total of $200,000 (including the $5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) is determined under paragraph (g)(4) of this section. Because the Form 1099–DIV is required to be filed under section 6042(a), under paragraph (g)(4)(iv)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (g)(5) of this section, $5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is $500 ($5,000 x .10 = $500).

(iv) Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of

the information reporting requirement, reported gross receipts of $1,000,000, when the correct amount was $1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show $80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of $120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as $80,000. Thus A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of $40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be $4,000 (that is, 10 percent of the difference between the $40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(h) *Definitions*—(1) *Information return.* For purposes of this section, the term ''information return'' has the same meaning as ''information return'' as defined in section 6724(d)(1), including any statement described in paragraph (h)(2) of this section, any return described in paragraph (h)(3) of this section, and any other items described in paragraph (h)(4) of this section.

(2) * * *

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.'');

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099–R); or

(xii) Section 6035 (relating to basis information with respect to property acquired from decedents, generally Form 8971, ''Information Regarding Beneficiaries Acquiring Property From a Decedent'' and the Schedule(s) A required to be filed along with it).

(3) * * *

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, ''Asset Acquisition Statement''), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities);

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils);

* * * * *

(xxiv) Section 6055 (relating to information returns reporting minimum essential coverage);

(xxv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members); or

(xxvi) Section 6050Y (relating to returns relating to certain life insurance contract transactions).

(4) *Other items.* The term information return also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally Forms 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax.'' The provisions of this paragraph (h)(4) referring to Form 8805, shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 of this chapter apply by reason of an election under § 1.1446–7 of this chapter.

* * * * *

(6) *Filer.* For purposes of this section the term ''filer'' means a person that is required to file an information return as defined in paragraph (h)(1) of this section under the applicable information reporting section described in paragraphs (h)(2) through (4) of this section.

(i) *Adjustment for inflation.* Each of the dollar amounts under paragraphs (a), (b), (f) (other than (f)(2)), and (g) of this section and paragraphs (a), (b), (d) (other than paragraph (2)(A)), and (e) of section 6721 shall be adjusted for inflation pursuant to section 6721(f).

(j) *Applicability date.* This section applies with respect to information returns required to be filed on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 6.** Section 301.6722–1 is amended by:

■ 1. Revising paragraphs (a)(1), (a)(2)(ii), and (b)(2)(i).

■ 2. In paragraphs (b)(2)(ii) and (iii), removing the comma at the end of each paragraph and adding a semicolon in its place.

■ 3. Revising paragraph (b)(3) introductory text.

■ 4. In paragraph (b)(3), designate *Examples 1* and *2* as paragraphs (b)(3)(i) and (ii).

■ 5. Revising paragraph (c)(1).

■ 6. Redesignating paragraphs (c)(2)(i), (ii), and (iii) as paragraphs (c)(2)(ii), (iii), and (iv).

■ 7. Adding a new paragraph (c)(2)(i).

■ 8. Revising newly redesignated paragraphs (c)(2)(ii) and (iii).

■ 9. Redesignating paragraphs (d) and (e) as paragraphs (e) and (g).

■ 10. Adding a new paragraph (d).

■ 11. Revising newly redesignated paragraphs (e)(1), (e)(2) introductory text, and (e)(2)(xxxiii) and (xxxiv).

■ 12. Adding paragraphs (e)(2)(xxxv), (xxxvi), and (xxxvii), (e)(4), and (f).

■ 13. Revising newly redesignated paragraph (g).

The revisions and additions read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $250 is imposed for each payee statement (as defined in section 6724(d)(2) and paragraph (e)(2) of this section) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A ''composite substitute payee statement'' is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed $3,000,000. See section 6722(e) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (d) of this section for a safe harbor exception for certain de minimis errors. See paragraph (f) of this section for inflation adjustments to penalty amounts. See § 301.6724–1(a)(1) for a waiver of the penalty for a failure that is due to reasonable cause.

(2) * * *

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information (''failure to include correct information''). A failure to furnish timely includes a failure to

furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) or (d) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) * * *

(2) * * *

(i) A dollar amount, except as provided in paragraph (d) of this section;

* * * * *

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section, the safe harbor exception for certain de minimis errors under paragraph (d) of this section, or the reasonable cause waiver under § 301.6724–1(a):

* * * * *

(c) *Higher penalty for intentional disregard of requirement to furnish timely correct payee statements*—(1) *Application of section 6722(e).* If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under § 301.6721–1(g)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) * * *

(i) Paragraph (d) of this section shall not apply;

(ii) The $3,000,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the $3,000,000 limitation to penalties not determined under this paragraph (c)(2);

(iii) The penalty imposed under paragraph (a) of this section shall be $500 or, if greater, the statutory percentage; and

* * * * *

(d) *Safe harbor exception for certain de minimis errors*—(1) *In general.* Except as provided in paragraphs (c) and (d)(3) of this section, the penalty under section 6722(a) and paragraph (a) of this section is not imposed for a failure described in section 6722(a)(2)(B) and paragraph (a)(2)(ii) of this section (failure to include correct information on payee statement) when the failure relates to an incorrect dollar amount and is a de minimis error. When this safe harbor applies to a payee statement and the payee statement was otherwise correct and timely furnished no correction is required and, for purposes of this section, the payee statement is treated as having been furnished with all of the correct required information.

(2) *Definition of de minimis error.* For purposes of paragraph (d) of this section, an error in a dollar amount is de minimis if the difference between any single amount in error and the correct amount is not more than $100, and, if the difference is with respect to an amount of tax withheld, it is not more than $25. For purposes of this paragraph (d)(2), tax withheld includes any amount required to be shown on an information return or payee statement (as defined in section 6724(d)(1) and (d)(2), respectively) withheld under section 3402, as well as any such amount that is creditable under sections 27, 31, 33, or 1474.

(3) *Election to override the safe harbor exception*—(i) *In general.* Except as provided in paragraphs (d)(3)(vi) and (vii) of this section, the safe harbor exception provided for by this paragraph (d) does not apply to any payee statement if the person to whom the statement is required to be furnished (the payee) makes an election that the safe harbor not apply with respect to the statement.

(ii) *Timing of election.* The payee must elect no later than the later of 30 days after the date on which the payee statement is required to be furnished to the payee, or October 15 of the calendar year, to receive a correct payee statement required to be furnished in that calendar year without having the safe harbor under paragraph (d)(1) of this section apply. The date of an election is the date the election is received by the filer. For purposes of this section, the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date an election is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under such section. The election shall remain in effect for all subsequent years unless revoked under paragraph (d)(3)(vii) of this section.

(iii) *Manner for making the election.* Except as provided in paragraph (d)(3)(v) of this section, the payee must make the election by delivering the election in writing to the filer. Except as provided in paragraph (d)(3)(v) of this section, the written election must be made in writing on paper. The payee may deliver the election in person, by mail by United States Postal Service, or by a designated delivery service as defined under section 7502(f)(2). If the filer has not otherwise provided an address under paragraph (d)(3)(v) of this section, the payee shall send the written election to the filer's address appearing on the payee statement furnished by the filer to the payee with respect to which the election is being made or as directed by that person upon appropriate inquiry by the payee. The written election must:

(A) Clearly state that the payee is making the election;

(B) Provide the payee's name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41) of the Internal Revenue Code) to the filer;

(C) If the payee wants the election to apply only to specific types of statements, identify the type of payee statement(s) and account number(s), if applicable, to which the election applies (for example, Form 1099–DIV, ''Dividends and Distributions''); and

(D) Provide any other information required by the Internal Revenue Service in forms, instructions, or publications.

(iv) *Payee statements to which the election applies.* An election by a payee under paragraph (d)(3)(i) of this section applies to all types of payee statements the filer is required to furnish to the payee, unless the payee specifies otherwise on the election under paragraph (d)(3)(iii)(C) of this section.

(v) *Reasonable alternative manner for making the election in cases of notification by the filer*—(A) *In general.* If the filer satisfies the requirements of paragraph (d)(3)(v)(B) of this section, and provides for a reasonable alternative manner as described in paragraph (d)(3)(v)(E) of this section, a payee may decide to make the election under paragraph (d)(3)(i) of this section pursuant to that reasonable alternative manner.

(B) *Notification of payee of reasonable alternative manner for making election.* The filer may elect to provide notification to the payee of a reasonable alternative manner to make the election under paragraph (d)(3)(i) of this section, as described in paragraph (d)(3)(v)(E) of this section. To provide a valid notification under this paragraph

(d)(3)(v)(B), the filer must provide notification to the payee that:

(*1*) Is in writing (either on paper or in electronic format);

(*2*) Is timely provided to the payee under paragraph (d)(3)(v)(D) of this section;

(*3*) Explains to the payee to whom that filer is required to furnish a payee statement of the payee's ability to elect, under paragraph (d)(3)(i) of this section, that the safe harbor exceptions for de minimis errors not apply, and of the payee's ability to choose to make the election using the default method under paragraph (d)(3)(iii) of this section;

(*4*) Provides an address to which the payee may send an election under paragraphs (d)(3)(i) and (iii) of this section;

(*5*) Provides any reasonable alternative manner or manners, as described in paragraph (d)(3)(v)(E) of this section, that the filer is making available for the payee to make the election under paragraph (d)(3)(i) of this section; and

(*6*) Describes the information required for making the election described by paragraphs (d)(3)(iii)(A) through (D) of this section. Solely for purposes of the reasonable alternative manner, the notification may provide that some or all of the information described in paragraph (d)(3)(iii)(B) of this section is not required and may provide that the provision of an account number as referenced in paragraph (d)(3)(iii)(C) of this section is required if the payee decides to use the reasonable alternative manner for the election.

(C) *Notification of revocation procedures.* A notification under this paragraph (d)(3)(v) may also provide the procedures for making a revocation of an election under paragraph (d)(3)(vii) of this section. Solely for purposes of the reasonable alternative manner, the notification may provide that some or all of the information described in paragraph (d)(3)(vii)(B) of this section is not required and may provide that the provision of an account number as referenced in paragraph (d)(3)(vii)(E) of this section is required if the payee decides to use a reasonable alternative manner for making a revocation.

(D) *Time for providing notification of reasonable alternative manner for making payee election.* A notification under this paragraph (d)(3)(v) will be timely under paragraph (d)(3)(v)(B)(*2*) of this section if:

(*1*) The notification is provided with, or at the time of, the furnishing of the payee statement; or

(*2*) The filer previously provided a valid notification under paragraph (d)(3)(v) of this section to the payee with, or at the time of, the furnishing of a payee statement associated with a particular account, in which case notification will be considered to have been timely provided with respect to subsequent payee statements associated with that particular account. If the filer wishes to provide for a different reasonable alternative manner than a previous reasonable alternative manner, the filer must provide new notification in compliance with the timeliness rule of paragraph (d)(3)(v)(D)(*1*) of this section, and must accept payee elections under the previous reasonable alternative manner for a period of at least 60 days after the receipt of the new notification by the payee.

(E) *Reasonable alternative manner.* A reasonable alternative manner described in a notification under paragraph (d)(3)(v)(B) of this section may include that a payee election under paragraph (d)(3)(i) of this section may be made electronically (for example, via email or website) or telephonically. The reasonable alternative manner may not impose any prerequisite, condition, or time limitation on, or otherwise limit, the payee's ability to make an election under paragraph (d)(3)(iii) of this section, except as described in paragraphs (d)(3)(ii) and (iii) of this section; it may only offer a reasonable alternative manner or manners for making this election under this paragraph (d)(3)(v).

(vi) *Election not available for certain information.* The election to override the safe harbor exception provided for by paragraph (d)(3)(i) of this section is not available with respect to information that may not be altered under specific information reporting rules. See, for example, § 1.6045–4(i)(5) of this chapter.

(vii) *Revocation of election.* The payee may revoke a prior election by submitting a revocation to the filer. The effect of a revocation of a prior election is that the safe harbor for certain de minimis errors will apply to the payee statements that the payee identifies and that are furnished or are due to be furnished after the revocation is received. The revocation will remain in effect until the payee makes a valid and timely election under paragraph (d)(3)(i) of this section. The date of a revocation is the date the revocation is received by the filer. For purposes of this section, the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date a revocation is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under such section. The revocation must be made in the same manner or manners described for making the election, that is pursuant to either paragraph (d)(3)(iii) or (v) of this section, as the payee chooses if paragraph (d)(3)(v) of this section is applicable. Except as provided under paragraph (d)(3)(v)(B)(*6*) of this section, the revocation must:

(A) Clearly state that the payee is revoking the payee's prior election;

(B) Provide the payee's name, address, and TIN to the filer;

(C) Provide the name of the filer;

(D) Identify the type of payee statement(s) (for example, Form 1099–DIV) to which the revocation applies;

(E) Identify the account number(s), if applicable, to which the revocation applies; and

(F) Provide any other information required by the Internal Revenue Service in forms, instructions or publications.

(viii) *Reasonable cause.* See § 301.6724–1(h) for rules relating to waiver of the section 6722 penalty in cases where the safe harbor exception provided for by paragraph (d)(1) of this section does not apply because of an election under paragraph (d)(3)(i) of this section.

(4) *Record retention.* To facilitate proof of compliance with reporting and other obligations under the internal revenue laws, filers must retain records of any election or revocation by the payee under paragraph (d)(3)(i) or (vii) of this section, respectively, and any notification made under paragraph (d)(3)(v) of this section for as long as the contents of the election, revocation, or notification may be material in the administration of any internal revenue law. For rules regarding record retention, see section 6001 and § 1.6001–1 of this chapter. For additional procedures applicable to record retention in the context of electronic storage, see Rev. Proc. 97–22, 1997–1 C.B. 652, Rev. Proc. 98–25, 1998–1 C.B. 689, and any subsequently published guidance.

(5) *Examples.* The provisions of paragraphs (d)(1) through (4) of this section may be illustrated by the following examples, which do not address any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under § 301.6724–1(a):

(i) Example 1. (A) Filer W is required to file with the IRS by February 28, 2019, and furnish to Payee A by February 15, 2019, Form 1099–B ''Proceeds From Broker and Barter Exchange Transactions,'' because Filer W is a broker who sold stocks on behalf of Payee A resulting in proceeds of $5000 during calendar year 2018. Filer W properly

withheld an amount of $1736 under applicable backup withholding rules because Payee A failed to furnish Payee A's TIN to Filer W. On the Form 1099–B, Filer W reports as follows: Box 1d, Proceeds, $4900; and Box 4, Federal income tax withheld, $1761. Filer W otherwise correctly and timely files and furnishes the Form 1099–B. Payee A does not make an election under paragraph (d)(3)(i) of this section.

(B) The safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section applies, because the differences between each of the amounts reported in error and the correct amounts are not more than the applicable limits. The error in the dollar amount reported in Box 1d, Proceeds, is de minimis because the difference between the amount in error ($4900) and the correct amount ($5000) is not more than $100; it is exactly $100. The error in the dollar amount reported in Box 4, Federal income tax withheld, is de minimis because the $25 difference between the amount in error ($1761) and the correct amount ($1736) is not more than $25, the limit for an error with respect to an amount reported for tax withheld.

(ii) Example 2. (A) The facts are the same as in *Example 1* in paragraph (d)(5)(i) of this section, except that Filer W reports $1710 as the amount in Box 4, Federal income tax withheld.

(B) The safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section does not apply because the Form 1099–B contains a failure that is not a de minimis error. The difference between the amount in error ($1710) and the correct amount ($1736) is $26, which is more than the $25 limit for de minimis errors with respect to an amount reported for tax withheld.

(iii) Example 3. (A) In 2019, Filer X provides Payee B with valid notification of a reasonable alternative manner under paragraph (d)(3)(v) of this section for making the payee election under paragraph (d)(3)(i) of this section. Payee B timely elects pursuant to the reasonable alternative manner during 2019. Payee B elects with respect to all payee statements that Filer X is required to furnish to Payee B. In January 2020, Filer X decides to provide for a different, but also valid, reasonable alternative manner; Filer X provides notification of this different reasonable alternative manner to Payee B, and Payee B receives notification of this different reasonable alternative manner, pursuant to paragraph (d)(3)(v)(B) of this section, on January 16, 2020.

(B) Payee B decides to revoke Payee B's prior election, with respect to the Forms 1099–DIV that Filer X is required to furnish to Payee B. Under paragraph (d)(3)(vii) of this section, Payee B may provide the revocation to Filer X in any of three different manners. First, Payee B may provide the revocation to Filer X in the same manner as if Payee B were making an election under the default manner of paragraph (d)(3)(iii) of this section; Payee B may do so at any time. Second, having received notification from Filer X of the different reasonable alternative manner on January 16, 2020, Payee B may provide the revocation to Filer X in the same manner as if Payee B were making an election under the different reasonable alternative manner pursuant to paragraph (d)(3)(v) of this section. Third, because Filer X previously provided notification of a reasonable alternative manner (2019 alternative) before providing notification of a different reasonable alternative manner on January 16, 2020, (2020 alternative), Payee B may provide the revocation to Filer X in the same manner as if Payee B were making an election under the previous reasonable alternative manner (2019 alternative); Payee B may do so for a period of 60 days after January 16, 2020, pursuant to paragraph (d)(3)(v)(D)(*2*) of this section.

(e) *Definitions*—(1) *Payee.* See § 301.6721–1(h)(5) for the definition of ''payee.''

(2) *Payee statement.* For purposes of this section the term ''payee statement'' has the same meaning as payee statement as defined by section 6724(d)(2), including any statement required to be furnished under—

* * * * *

(xxxiii) Section 6055 (relating to information returns reporting minimum essential coverage);

(xxxiv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members);

(xxxv) Section 6035, other than a statement described in section 6724(d)(1)(D), (relating to basis information with respect to property acquired from decedents, generally Schedule A of Form 8971, ''Information Regarding Beneficiaries Acquiring Property From a Decedent'');

(xxxvi) Section 6050Y(a)(2), 6050Y(b)(2), or 6050Y(c)(2) (relating to certain life insurance contract transactions); or

(xxxvii) Section 6226(a)(2) (regarding statements relating to alternative to payment of imputed underpayment by a partnership) or under any other provision of this title which provides for the application of rules similar to section 6226(a)(2).

* * * * *

(4) *Filer.* For purposes of this section the term ''filer'' means a person that is required to furnish a payee statement as defined in paragraphs (e)(2) and (3) of this section under the applicable information reporting section described in paragraphs (e)(2) and (3) of this section.

(f) *Adjustment for inflation.* Each of the dollar amounts under paragraphs (a), (b), and (c) of this section and paragraphs (a), (b), (d)(1), and (e) of section 6722 shall be adjusted for inflation pursuant to section 6722(f).

(g) *Applicability date.* This section applies with respect to payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 7.** Section 301.6724–1 is amended by:

■ 1. Revising paragraphs (a)(1) and (a)(2)(ii).

■ 2. Designating the undesignated paragraph following paragraph (a)(2)(ii) as paragraph (a)(2)(iii) and revising newly designated paragraph (a)(2)(iii).

■ 3. Revising paragraphs (b) introductory text and (b)(2)(i) and (ii).

■ 4. Designating the undesignated paragraph following paragraph (b)(2)(ii) as paragraph (b)(3).

■ 5. Revising paragraphs (c)(3)(ii), (e)(1) introductory text, (e)(1)(i), (e)(1)(vi)(E) and (F), (f)(1) introductory text, (f)(1)(i), (f)(5)(i) and (ii), (g), (h), (k), (m) introductory text, and (m)(1).

■ 6. Adding paragraph (o).

The revisions and additions read as follows:

§ 301.6724–1 Reasonable cause.

(a) *Waiver of the penalty*—(1) *General rule.* The penalty for a failure relating to an information reporting requirement as defined in paragraph (j) of this section is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) * * *

(ii) The failure arose from events beyond the filer's control (''impediment''), as described in paragraph (c) of this section.

(iii) Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence. See paragraph (h) of this section for the reasonable cause safe harbor after an election under section 6722(c)(3)(B) and § 301.6722–1(d)(3).

(b) *Significant mitigating factors.* In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant

mitigating factors for the failure. See paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent. The applicable mitigating factors include, but are not limited to—

* * * * *

(2) * * *

(i) Whether the filer has incurred any penalty under § 301.6721–1, § 301.6722–1, or § 301.6723–1 in prior years for the failure; and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

* * * * *

(c) * * *

(3) * * *

(ii) The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions);

* * * * *

(e) *Acting in a responsible manner—special rules for missing TINs*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN on an information return resulted from the failure of the payee to provide information to the filer (that is, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (''required solicitations''). For purposes of this section, a number is treated as a ''missing TIN'' if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral) as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. See paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. See paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term ''account'' includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)–3(a) of this chapter. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations (''annual solicitations'').

* * * * *

(vi) * * *

(E) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, that is, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(F) Except as provided in paragraphs (e)(1)(vi) (A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

* * * * *

(f) *Acting in a responsible manner—special rules for incorrect TINs*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (that is, inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). See paragraph (e)(1) of this section for the definition of the term ''solicitation.'' See paragraph (f)(5)(i) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term ''account'' includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)–3(a) of this chapter. No additional solicitation is required after the filer receives the TIN unless the Internal Revenue Service or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraphs (f)(1)(ii) and (iii) of this section.

* * * * *

(5) *Exceptions and limitations.* (i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a return, as defined in § 301.6721–1(h), is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no return as defined in § 301.6721–1(h) is required to be filed for the account for such year.

* * * * *

(g) *Due diligence safe harbor*—(1) *In general.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section if the filer exercises due diligence with respect to failures described in sections 6721 through 6723.

(2) *Special rules relating to TINs*—(i) *Questions and answers.* The following questions and answers provide guidance on the exercise of due diligence for an exception to a penalty under sections 6721 through 6723 for a failure to provide a correct TIN on any information return as defined in § 301.6721–1(h), payee statement as defined in § 301.6722–1(e), document as described in § 301.6723–1(a)(4), or the failure merely to provide a TIN as described in § 301.6723–1(a)(4)(ii).

(ii) *General rule*—(A) *Q–1.* Is a filer subject to a penalty for a failure to provide a correct TIN on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the TIN furnished to the filer is the payee's correct number, the filer provided that number on an information return, and the number is later determined not to be the payee's correct number?

(B) *A–1.* A filer is not subject to a penalty for failure to provide the payee's

correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the filer was his correct number, and the filer included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

(iii) *Due Diligence Defined for Accounts Opened and Instruments Acquired After December 31, 1983*—(A)(*1*) *Q–2.* In order for a filer of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the filer take?

(2) *A–2.* (*i*) In general, the filer of an account or instrument that is not a pre–1984 account nor a window transaction must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS to satisfy the due diligence requirement. Therefore, if a filer permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the filer will be liable for the $250 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the filer exercises due diligence in processing such number, that is, the filer uses the same care in processing the TIN provided by the payee that a reasonably prudent filer would use in the course of the filer's business in handling account information such as account numbers and balances.

(*ii*) Once notified by the IRS (or a broker) that a number is incorrect, a filer is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the filer has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the filer that the number is incorrect unless the filer undertakes the actions described in § 31.3406(d)–5(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A)(i) through (iv).

(B)(*1*) *Q–3.* Is a filer as described in paragraph (g)(2)(iii)(A)(*2*) of this section liable for the penalty if the filer obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

(*2*) *A–3.* Yes. The filer is liable for the penalty unless the filer exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent filer would use in the course of the filer's business in handling account information, such as account numbers and account balances.

(iv) *Special rules.* (A)(*1*) *Q–4.* With respect to an instrument transferred without the assistance of a broker, is a filer liable for the penalty for filing an information return with a missing or an incorrect TIN if the filer records on its books a transfer of a readily tradable instrument in a transaction in which the filer was not a party?

(*2*) *A–4.* Generally, a filer as described in paragraph (g)(2)(iv)(A)(*1*) of this section will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the filer if the filer records on its books a transfer in which the filer was not a party. This exception applies until the calendar year in which the filer receives a certified TIN from the payee.

(B)(*1*) *Q–5.* Is the filer described in paragraph (g)(2)(iv)(A)(*2*) of this section required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year?

(*2*) *A–5.* There is no requirement on the filer to solicit the TIN in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in paragraph (g)(2)(iv)(A)(*2*) of this section.

(C)(*1*) *Q–6.* Is a filer as described in paragraph (g)(2)(iv)(A)(*1*) of this section considered to have exercised due diligence if the payee provides a TIN to the filer (whether or not certified), the filer uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

(*2*) *A–6.* A filer as described in paragraph (g)(2)(iv)(A)(*1*) of this section who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in paragraph (g)(2)(iv)(A)(*2*) of this section where the transfer is accompanied with a TIN provided that the filer uses the same care in processing the TIN provided by a payee that a reasonably prudent filer would use in the course of the filer's business in handling account information, such as account numbers and account balances. Thus, a filer will not be liable for the penalty if the filer uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is later determined to be incorrect. However, a filer will not be considered as having exercised due diligence under paragraph (g)(2)(iv)(A)(*2*) of this section after the IRS or a broker notifies the filer that the number is incorrect unless the filer undertakes the required additional actions described in paragraph (g)(2)(iii)(A)(*2*)(*ii*) of this section.

(D)(*1*) *Q–7.* Is a filer liable for a penalty for filing an information return with a missing or an incorrect TIN with respect to a post-1983 account or instrument if the filer could have met the due diligence requirements but for the fact that the filer incurred an undue hardship?

(*2*) *A–7.* A filer of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the filer could have satisfied the due diligence requirements but for the fact that the filer incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the filer by fire or other casualty (or the place of business of the filer's agent who under a pre-existing written contract had agreed to fulfill the filer's due diligence obligations with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the filer). Undue hardship will also be found to exist if the filer could have met the due diligence requirements only by incurring an extraordinary cost.

(E)(*1*) *Q–8.* How does a filer obtain a determination from the IRS that the filer has met the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the filer is subject to the penalty?

(*2*) *A–8.* A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the filer could have satisfied the due diligence requirements but for the occurrence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the filer

either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A filer may request an undue hardship determination by submitting a written statement to the address provided with the notice proposing penalty assessment (for example, Notice 972CG) or the notice of penalty assessment (for example, CP15 or CP215), or as otherwise directed by the Internal Revenue Service in forms, instructions or publications.

(F)(*1*) *Q–9.* Is a pre-1984 account or instrument of a filer that is exchanged for an account or instrument of another filer as a result of a merger of the other filer or acquisition of the accounts or instruments of such filer transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

(*2*) *A–9.* No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee.

(G)(*1*) *Q–10.* May the acquiring taxpayer described in paragraph (g)(2)(iv)(F)(*2*) of this section rely upon the business records and past procedures of the merged filer or the filer whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

(*2*) *A–10.* Yes. The acquiring filer may rely upon the business records and past procedures of the merged filer or of the filer whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

(H)(*1*) *Q–11.* To what extent may a filer rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 2001 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1999).

(*2*) *A–11.* A filer may rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 2001 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1999) solely for the definitions of terms or phrases used in this paragraph (g)(2).

(3) *Effective dates.* This paragraph (g) is effective for information returns as defined in section 6724(d)(1) required to be filed, payee statements as defined in section 6724(d)(2) required to be furnished, and specified information as described in section 6724(d)(3) required to be reported on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. See § 301.6724–1(g) in effect prior to January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register** for substantially similar rules applicable prior to January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(h) *Reasonable cause safe harbor after election under section 6722(c)(3)(B).* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section under this paragraph (h) if the failure is a result of an election under § 301.6722–1(d)(3)(i) and the presence of a de minimis error or errors as described in sections 6721(c)(3) and 6722(c)(3) and §§ 301.6721–1(e) and 301.6722–1(d) on a filed information return or furnished payee statement. This paragraph (h) applies only when the safe harbor exceptions provided for by § 301.6721–1(e)(1) or § 301.6722–1(d)(1) would have applied, but for an election under § 301.6722–1(d)(3)(i). To establish reasonable cause and not willful neglect under this paragraph (h), the filer must file a corrected information return or furnish a corrected payee statement, or both, as applicable, within 30 days of the date of the election under § 301.6722–1(d)(3)(i). Where specific rules provide for additional time in which to furnish a corrected payee statement and file a corrected information return, the 30-day rule does not apply and the specific rules will apply. See for example §§ 31.6051–1(c) through (d) and 31.6051–2(b). If the filer rectifies the failure outside of this 30-day period, the determination of reasonable cause will be on a case-by-case basis.

* * * * *

(k) *Examples.* The provisions of this section may be illustrated by the following examples:

(1) Example 1. (i) On August 1, 2015, Individual A, an independent contractor, establishes a relationship (''an account'') with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his TIN. On October 1, 2015, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (e)(1)(ii) of this section. A does not provide a TIN to L during 2015. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 2015 calendar year with respect to A's account. A penalty is imposed on L pursuant to § 301.6721–1(a)(2) for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, L must satisfy both paragraphs (c)(6) and (d) of this section. The criteria for obtaining a waiver under these paragraphs are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section; and

(B) L demonstrates that the failure arose from events beyond L's control, as described in paragraph (c)(6) of this section.

(iii) Pursuant to paragraph (d)(2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c)(6) of this section because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under § 301.6721–1(a)(2) for the failure on the 2015 information return is waived. See section 3406(a)(1)(A) which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

(2) Example 2. (i) On August 1, 2015, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 29, 2016, M includes the TIN that B provided on the Form 1099–INT for the 2015 calendar year. In October 2016 the Internal Revenue Service, pursuant to section 3406(a)(1)(B), notifies M that the 2015 return filed for B contains an incorrect TIN. In April 2017 a penalty is imposed on M pursuant to § 301.6721–1(a)(2) for M's failure to file a correct information return for the 2015 calendar year, that is, the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c)(6) and (d) of this section. Pursuant to paragraph (d)(2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f)(4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 2015 in the time and manner prescribed in paragraph (f)(1)(i) of this section and reflected the TIN received from B on the 2015 return as required by paragraph (f)(1)(iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under § 301.6721–1(a)(2) for the failure on the 2015 information return is waived. See section 3406(a)(1)(B) which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

(3) Example 3.—(i) Table.

TABLE 1 TO PARAGRAPH (k)(3)(i)

2015	2/2016	10/2016	2/2017
Account opened (solicits TIN)	2015 return	B-notice w/respect to 2015 return	2016 return filed.
4/2017	10/2017	2/2018	4/2018
6721 penalty notice for 2015 return	B-notice w/respect to 2016 return	2017 return filed	6721 penalty notice for 2016.

(ii) The facts are the same as in Example 2 in paragraph (k)(2) of this section. Under § 31.3406(d)–5(d)(2)(i) of this chapter and paragraph (f)(3) of this section, within 15 days of the October 2016 notification of the incorrect TIN from the Internal Revenue Service, M solicits the correct TIN from B. B fails to respond. M timely files the return for 2016 with respect to the account setting forth B's incorrect TIN. In October 2017 the Internal Revenue Service notifies M pursuant to section 3406(a)(1)(B) that the 2016 return contains an incorrect TIN. In April 2018, a penalty is imposed on M pursuant to § 301.6721–1(a)(2) for M's failure to include B's correct TIN on the return for 2016. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

(iii) M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the Internal Revenue Service notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial solicitation for the TIN in 2015 and, after being notified of the incorrect TIN in October 2016, the first annual solicitation within the time and manner prescribed by § 31.3406(d)–5(d)(2)(i) of this chapter and paragraphs (f)(1)(ii) and (f)(2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under § 301.6721–1(a)(2) for the failure on the 2016 return is waived due to reasonable cause.

(4) Example 4.—(i) Table.

TABLE 2 TO PARAGRAPH (k)(2)(i)

2015	2/2016	10/2016	2/2017
Account opened (solicits TIN)	2015 return filed	B-notice w/respect to 2015 return	2016 return filed.
4/2017	10/2017	2/2018	4/2018
6721 penalty notice for 2015 return	B-notice w/respect to 2016 return	2017 return filed	6721 penalty notice for 2016 return.

(ii) The facts are the same as in Example 3 in paragraph (k)(3) of this section. M timely solicits B's TIN in October 2017, which B fails to provide. M files the return for 2017 with the incorrect TIN. In April 2019 the Internal Revenue Service informs M that the 2017 return contains an incorrect TIN. M does not solicit a TIN from B in 2018 and files a return for 2018 with B's incorrect TIN. M seeks a waiver of the penalty under § 301.6721–1(a)(2) for reasonable cause. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 2018. See paragraph (f)(5)(iv) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

(5) Example 5. In 2016, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H and to section 6721. As part of the transaction, C gives N a promissory note providing for repayment of principal and the payment of interest. At the time C incurs the obligation N requests C's TIN, as required under § 1.6050H–2(f) of this chapter. C fails to provide the TIN as required by § 1.6050H–2(f) of this chapter. N sends solicitations by mail in 2016 and 2017 for the missing TIN, which C fails to provide. However, for 2018 M fails to send the solicitation required by § 1.6050H–2(f) of this chapter. N files returns for the 2016, 2017, and 2018 calendar years pursuant to section 6050H without C's TIN. Although N made the initial and the first annual solicitations in 2016 and the second annual solicitation in 2017, N did not solicit the TIN in 2018 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under § 301.6721–1(a) for the 2018 information return is not waived.

(6) Example 6.—(i) Table.

TABLE 3 TO PARAGRAPH (k)(6)(i)

10/2015	2/2016	10/2016	2/2017
Account opened (solicits TIN)	2015 return filed	B-notice w/respect to 2015 return	2016 return filed.
4/2017	10/2017	02/2018	4/2018
6721 penalty notice for 2015 return	B-notice w/respect to 2016 return	2017 return filed	6721 penalty notice for 2016 return.

(ii) On October 1, 2015, Individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 2015 calendar year. In October 2016 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 2015 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 2016, R telephones E pursuant to paragraphs (f)(2) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 2016 calendar year, that is, in February 2017.

(iii) In April 2017, the Internal Revenue Service notifies R pursuant to § 301.6721–1(a)(2) that the information return filed for the 2015 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iv) To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (that is, 2015) and for subsequent years until the calendar year in which the filer receives a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 2015 calendar year information return is waived due to reasonable cause.

(7) Example 7. (i) The facts are the same as in Example 6 in paragraph (k)(6) of this section. In April 2018 the Internal Revenue Service notifies R pursuant to § 301.6721–1(a)(2) that the information return filed for the 2016 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(3) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under § 31.3406(d)–5(g)(1)(ii) of this chapter. Section 31.3406(d)–5(g)(1)(ii) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 2016 information return, and the penalty will not be waived due to reasonable cause.

(8) Example 8. (i) On January 31, 2017, Institution Q timely furnishes Form 1099–MISC to Individual F. Also on January 31, 2017, Q timely files a corresponding Form 1099–MISC with the Internal Revenue Service. On March 15, 2017, Q becomes aware of de minimis errors (within the meaning of § 301.6722–1(d)(2)) made on the Form 1099–MISC furnished to F and filed with the Internal Revenue Service. On March 20, 2017, F makes an election under § 301.6722–1(d)(3)(i) with respect to the Form 1099–MISC that Q furnished to F. Q furnishes a corrected Form 1099–MISC to F and files a corrected Form 1099–MISC with the Internal Revenue Service by April 19, 2017, which date is 30 days from March 20, 2017.

(ii) The election by F and the presence of de minimis errors on the Forms 1099–MISC make the penalties under sections 6721 and 6722 applicable to Q. See §§ 301.6721–1(e)(3) and 301.6722–1(d)(3). Q, however, rectified the failures within 30 days of March 20, 2017, the date F made the election under § 301.6722–1(d)(3)(i) with respect to the Form 1099–MISC that Q furnished to F. Therefore, under paragraph (h) of this section, Q is considered to have established reasonable cause, and under section 6724 and paragraph (a)(1) of this section the penalties under sections 6721 and 6722 are inapplicable.

(9) Example 9. (i) The facts are the same as in Example 8 in paragraph (k)(8) of this section, except that Q does not become aware of de minimis errors made on the Form 1099–MISC furnished to F and filed with the Internal Revenue Service until June 28, 2017. Additionally, Q furnishes the corrected Form 1099–MISC to F and files the corrected Form 1099–MISC with the Internal Revenue Service after June 28, 2017, but by July 28, 2017, which date is 30 days from June 28, 2017.

(ii) As in the example in paragraph (k)(9)(i), the election by F and the presence of de minimis errors on the Forms 1099–MISC make the penalties under sections 6721 and 6722 applicable to Q. Additionally, because Q did not furnish a corrected Form 1099–MISC to F and file a corrected Form 1099–MISC with the Internal Revenue Service within 30 days of the date of F's election under § 301.6722–1(d)(3)(i), paragraph (h) of this section does not apply. However, Q may be able to demonstrate reasonable cause under the provisions of paragraph (a) of this paragraph. As part of this demonstration, for example, Q may be able to demonstrate that Q acted in a responsible manner under paragraph (d)(1) of this section by rectifying the failure (the de minimis errors) within 30 days of discovery.

* * * * *

(m) *Procedure for seeking a waiver.* In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the address provided with the notice proposing penalty assessment (for example, Notice 972CG) or the notice of penalty assessment (for example, CP15 or CP215), or as otherwise directed by the Internal Revenue Service in forms, instructions or publications. The statement must—

(1) State the specific provision under which the waiver is being requested, that is, paragraph (b) or under paragraphs (c)(2) through (6) or paragraph (h);

* * * * *

(o) *Applicability date.* In general, this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1 of the calendar year immediately following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. See paragraph (g)(3) of this section for effective dates applicable to paragraph (g) of this section. Paragraph (h) of this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2017. See I.R.C. section 7805(b)(1)(C) and

section 4 of Notice 2017–09, IRB–2017–4 (January 23, 2017).

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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