itself be an intermediate entity that is linked by financing transactions to other persons in a financing arrangement. The DS note held by FS and the FS note held by FP are financing transactions within the meaning of paragraph (a)(2)(ii) of this section, and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section.

* * * * *

(f) *Effective/applicability date.* * * * Paragraph (a)(2)(i)(C) of this section is effective for payments made on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30301 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–160872–04]

RIN 1545–BF59

Section 6707 and the Failure To Furnish Information Regarding Reportable Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6707 of the Internal Revenue Code (Code), which provide the rules relating to the assessment of penalties against material advisors who fail to timely file a true and complete return required under section 6111(a). The regulations implement the amendments to section 6707 by the American Jobs Creation Act and promote material advisors' compliance with the regulations under section 6111. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111.

DATES: Written or electronic comments and request for a public hearing must be received by March 23, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–160872–04), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–160872–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–160872–04).

FOR FURTHER INFORMATION CONTACT: Matthew S. Cooper, (202) 622–4940 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulation Branch at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6707 of the Internal Revenue Code. Section 6707 was originally added to the Code by section 141(b) of the Tax Reform Act of 1984, Public Law 98–369, 98 Stat. 494. At that time, section 6707 imposed a penalty for failing to timely register a tax shelter or for filing false or incomplete information with respect to the tax shelter registration. Treasury Regulation § 301.6707–1T was issued shortly after section 6707 became law.

The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (AJCA), was enacted on October 22, 2004. AJCA section 816 amended section 6707 to impose a penalty on a material advisor who is required to file a return under section 6111(a) with respect to any reportable transaction, and who fails to file a timely return or who files a return with false or incomplete information with respect to the reportable transaction. Section 6707, as amended, is effective for returns due after October 22, 2004. The amount of the penalty for failing to timely file or filing a return with false or incomplete information with respect to any reportable transaction other than a listed transaction is $50,000. For listed transactions, the amount of the penalty is the greater of (1) $200,000, or (2) 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that the material advisor provides with respect to the listed transaction before the date the return is filed under section 6111. If the penalty is imposed with respect to a listed transaction and the failure or action subject to the penalty was intentional, the penalty is the greater of (1) $200,000, or (2) 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that the material advisor provides with respect to the listed transaction before the date the return is filed under section 6111. The provisions of section 6707A(d) regarding rescission of the penalty apply to any penalty assessed under section 6707.

To implement the pertinent provisions of the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004–80 (2004–2 CB 963, December 13, 2004); Notice 2005–17 (2005–1 CB 606, February 22, 2005); Notice 2005–22 (2005–1 CB 756, March 21, 2005); and Notice 2006–6 (2006–1 CB 385, January 30, 2006) (see § 601.601(d)(2)(ii)(*b*)). These notices provided guidance to a material advisor required to file a return under section 6111, including rules regarding the date by which the material advisor must file the return and the information the material advisor must include on the return. Subsequently, the IRS and Treasury Department proposed amendments to the rules relating to the disclosure of reportable transactions by material advisors under section 6111 (see Prop. Treas. Reg. § 301.6111–3, 71 FR 64501) and finalized those proposed regulations as TD 9351 in the **Federal Register** (72 FR 43157). The IRS and Treasury Department are now proposing rules relating to the AJCA amendments to section 6707.

Rev. Proc. 2007–21, 2007–9 IRB 613, which was published on February 26, 2007, provides guidance to persons against whom a penalty under section 6707 or 6707A is assessed regarding procedures for requesting that the Commissioner of the Internal Revenue Service rescind all or a portion of these penalties with respect to a reportable transaction other than a listed transaction.

Explanation of Provisions

These proposed regulations provide rules reflecting the AJCA amendments to the section 6707 penalty for the failure to timely file a return under section 6111 or for filing a return with false or incomplete information regarding reportable transactions. The scope of the changes to the section 6707 penalty provisions by the AJCA necessitates a change to the temporary regulations promulgated under former section 6707.

Under these proposed revisions, a penalty under section 6707 may be assessed against each material advisor required to file a return under section 6111 who fails to file a timely return in accordance with § 301.6111–3(e) or files a return with false or incomplete information. Accordingly, if more than one material advisor is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under

section 6707 may be assessed against each material advisor who fails to timely file a return or files a return with false or incomplete information.

Additionally, § 301.6707–1(b)(4) of these proposed regulations provides that *incomplete information* means a Form 8918, ''Material Advisor Disclosure Statement'' (or successor form), filed with the IRS that does not provide the information required under § 301.6111–3(d). A return will not be considered incomplete when the information not provided on the Form 8918 (or successor form) is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. The proposed regulations also provide that material advisors who complete the form to the best of their ability and knowledge after the exercise of reasonable efforts to obtain the information will not be considered to have filed an incomplete form within the meaning of this section. A Form 8918 (or successor form), however, will be considered intentionally incomplete (and, in the case of a listed transaction, subject to the increased penalty imposed by section 6707(b)) when it omits information required to be provided under § 301.6111–3(d) and contains a statement that the omitted information will be provided upon request.

False information under proposed § 301.6707–1(b)(5) means information provided on a Form 8918 (or successor form) to the IRS that is untrue or incorrect when the Form 8918 (or successor form) was filed. Information filed with the IRS will not be considered false when the return contains untrue or incorrect information by mistake or accident after the exercise of reasonable care or when the untrue or incorrect information is immaterial.

Under proposed § 301.6707–1(b)(6), the failure to timely file or the submission of false or incomplete information is intentional if the material advisor knew of the obligation to file a return under section 6111, and knowingly did not timely file a return with the IRS; or filed a return knowing that it was false or incomplete. In the case of a listed transaction, the failure to timely file a true and complete return will not be considered intentional if the material advisor remedies this failure by filing a true and complete return with the IRS prior to the earlier of the date that any taxpayer files a Form 8886 identifying the material advisor with respect to the reportable transaction in question or the date the IRS contacts the material advisor concerning the reportable transaction. This rule is intended to encourage material advisors to correct material defects in their compliance with section 6111, and recognizes that by voluntarily correcting material defects the material advisors demonstrate an intent to comply with section 6111.

The proposed regulations in § 301.6707–1(c)(2) state that a separate penalty may be assessed against each material advisor for its own failure to timely file the required return. If multiple material advisors (all with filing obligations under section 6111) enter into a designation agreement (within the meaning of § 301.6111–3(f)) designating one material advisor to file the required return on behalf of all parties to the agreement, the section 6707 penalty may be imposed upon each party to the agreement if the material advisor designated to file the return either fails to timely file a return or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to timely file a true and complete return, a nondesignated material advisor will not be considered to have intentionally violated its obligations under section 6111 unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to timely file a true and complete return.

Section 301.6707–1(d) of these proposed regulations provides several examples illustrating the potential application of the section 6707 penalty. Included are examples showing that the gross income derived by the material advisor will be determined in accordance with § 301.6111–3(b)(3)(ii) for purposes of calculating the amount of the penalty with respect to a listed transaction.

Section 301.6707–1(e) of these proposed regulations restates the existing authority of the Secretary to prescribe the procedures to request rescission of a section 6707 penalty with respect to a nonlisted reportable transaction by revenue procedure or other guidance published in the Internal Revenue Bulletin. Rev. Proc. 2007–21 describes the procedures for requesting rescission of a penalty assessed under section 6707, including the deadline by which a person must request rescission; the information the person must provide in the rescission request; the factors that weigh in favor of and against granting rescission; where the person must submit the rescission request; and the rules governing requests for additional information from the person requesting rescission.

These proposed regulations provide factors that the Commissioner (or the Commissioner's delegate) should take into account during the determination whether to rescind all or a portion of any penalty imposed under section 6707. The proposed regulations generally adopt the list of factors stated in Rev. Proc. 2007–21, which factors are consistent with the legislative history of section 6707. See H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. at 599 (2004). The factors identified in these proposed regulations do not represent an exclusive list, and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list, and will generally favor rescission when the relevant factors and circumstances suggest that sustaining assessment of the penalty is against equity and good conscience.

One additional factor identified in the temporary regulations recently promulgated under section 6707A as weighing in favor of granting rescission that is not proposed to be adopted for purposes of rescission of the penalty under section 6707 is the extent to which the penalty assessed is disproportionately larger than the tax benefit received. The material advisor does not receive a tax benefit from the reportable transaction, but rather benefits from the transaction through the gross income derived for aiding, assisting, or advising on the transaction. The threshold of gross income for status as a material advisor under section 6111 in the case of a reportable transaction is $50,000 if substantially all of the tax benefits from the transaction are provided to natural persons (looking through any partnerships, S corporations, or trusts). For all other nonlisted reportable transactions, the threshold amount is $250,000. The gross income levels necessary to be treated as a material advisor substantially ensure that any penalty imposed upon a material advisor under section 6707 will not be disproportionate to the benefit received by the material advisor.

Because it is the policy of the IRS to administer penalties in a manner that promotes voluntary compliance with the tax laws, the fact that a material advisor voluntarily files the form required under section 6111 prior to the earlier of: (i) The date that any taxpayer files a Form 8886 identifying the material advisor with respect to the reportable transaction in question or (ii) the date the IRS contacts the material advisor concerning the reportable transaction will weigh strongly in favor of rescission. See IRS Policy Statement 20–1 (June 29, 2004).

The proposed regulations mirror Rev. Proc. 2007–21 in providing that a rescission request is not the appropriate forum to contest whether the elements necessary to support a penalty under section 6707 exist. That question is for the examining agent, the IRS Office of Appeals, and the courts. A rescission determination is based on the premise that a violation of section 6707 exists but, nonetheless, the penalty should be rescinded (or abated). Accordingly, the proposed regulations provide that the Commissioner (or the Commissioner's delegate) will not consider whether the material advisor in fact failed to comply with section 6111. Furthermore, these regulations provide that the Commissioner (or the Commissioner's delegate) will not take into consideration doubt as to liability for, or collectibility of, the penalties in determining whether to rescind the penalty.

Proposed Effective Date

These regulations are proposed to apply to returns the due date of which is after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 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 Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

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

Par. 2. Section 301.6707–1 is added to read as follows:

§ 301.6707–1 Failure to furnish information regarding reportable transactions.

(a) *In general.* A material advisor who is required to file a return under section 6111(a) with respect to any reportable transaction, who fails to file a timely return in accordance with § 301.6111–3(e) or who files a return with false or incomplete information with respect to the reportable transaction, will be subject to a penalty. The amount of the penalty for failing to timely file or filing a false or incomplete return with respect to any reportable transaction other than a listed transaction is $50,000. The amount of the penalty with respect to a failure relating to any listed transaction is the greater of $200,000 or 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111. If the failure or action subject to the penalty is with respect to a listed transaction and is intentional, the penalty is the greater of $200,000 or 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111. For purposes of calculating the amount of the penalty with respect to a listed transaction, the gross income derived by the material advisor will be determined in accordance with § 301.6111–3(b)(3)(ii).

(b) *Definitions*—(1) *Reportable transaction.* The term ''reportable transaction'' is defined in § 1.6011–4(b)(1) of this chapter.

(2) *Listed transaction.* The term ''listed transaction'' is defined in section 6707A(c) of the Code and § 1.6011–4(b)(2) of this chapter.

(3) *Material advisor.* The term ''material advisor'' is defined in section 6111(b)(1) of the Code and § 301.6111–3(b).

(4) *Incomplete information.* For purposes of this section, *incomplete information* means a Form 8918, ''Material Advisor Disclosure Statement'' (or successor form), filed with the IRS that does not provide the information required under § 301.6111–3(d). Information filed with the IRS will not be considered incomplete when the information not provided on the Form 8918 (or successor form) is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. A material advisor who completes the form to the best of their ability and knowledge after the exercise of reasonable effort to obtain the information will not be considered to have filed incomplete information within the meaning of this section. A Form 8918 (or successor form) will be considered to provide incomplete information when it omits information required to be provided under § 301.6111–3(d) and contains a statement that the omitted information will be provided upon request. For listed transactions, a Form 8918 (or successor form) that omits information required to be provided under § 301.6111–3(d) and contains a statement that the omitted information will be provided upon request will be considered an intentional submission of a return with incomplete information within the meaning of paragraph (b)(6) of this section.

(5) *False information.* For purposes of this section, *false information* means information provided on a Form 8918 (or successor form) filed with the IRS that is untrue or incorrect when the Form 8918 (or successor form) was filed. False information does not include information provided on a Form 8918 (or successor form) filed with the IRS that is immaterial or that is untrue or incorrect due to a mistake or accident after the exercise of reasonable care.

(6) *Intentional.* For purposes of this section, the failure to timely file a return or the submission of a return with false or incomplete information is *intentional* if—

(i) The material advisor knew of the obligation to file a return and knowingly did not timely file a return with the IRS; or

(ii) The material advisor filed a return knowing that it was false or incomplete.

(7) *Derive.* The term ''derive'' is defined in § 301.6111–3(c)(3).

(c) *Assessment of penalty*—(1) *Individual liability.* If there is more than one material advisor who is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under section 6707 may be assessed against each material advisor who fails to timely file or files a false or incomplete return. The determination of whether the failure or action subject to the penalty is intentional will also be made individually for each material advisor with respect to the same reportable transaction. The higher penalty will not apply to any material advisor whose failure to file timely or whose furnishing of false or incomplete information is unintentional. The failure to timely file a return, or filing a return with false or incomplete information, will be considered unintentional if the material advisor subsequently files a true and complete return prior to the earlier of the date that any taxpayer files a Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form), identifying the material advisor with respect to the reportable transaction in question or the date the IRS contacts the material advisor concerning the reportable transaction.

(2) *Designation agreements.* A material advisor who is required to file a return under section 6111 and who is a party to a designation agreement within the meaning of § 301.6111–3(f) is subject to a penalty under section 6707 if the designated material advisor fails to timely file a return or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to timely file a return, or files a return with false or incomplete information, the nondesignated material advisor who is a party to the designation agreement will not be treated as intentionally failing to file the return, or intentionally filing a return with false or incomplete information, unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to timely file a true and complete return.

(d) *Examples.* The rules of paragraphs (a) through (c) of this section are illustrated by the following examples:

Example 1. Advisor A becomes a material advisor as defined under section 6111(b) and § 301.6111–3(b) in the fourth quarter of 2009 with respect to a reportable transaction other than a listed transaction, and Advisor B also becomes a material advisor in the same quarter with respect to the same reportable transaction. Subsequently, Advisors A and B fail to timely file the Form 8918. Because the section 6707 penalty applies to each material advisor independently, Advisors A and B each are subject to a penalty of $50,000.

Example 2. Same as *Example 1*, except that Advisor B timely filed the Form 8918 with the IRS Office of Tax Shelter Analysis (OTSA). Advisors A and B did not enter into a designation agreement. Accordingly, only Advisor A is subject to a $50,000 penalty.

Example 3. Advisor C becomes a material advisor to Client X on January 5, 2009, with respect to a listed transaction. Advisor C derives $400,000 in gross income from his advice to Client X because he expects to receive that amount from Client X, even though he has not yet received that amount. Advisor C unintentionally does not file a Form 8918. On January 5, 2010, Advisor C becomes a material advisor to Client Y with respect to the same type of listed transaction. The gross income Advisor C expects to receive from his advice to Client Y is $100,000. Advisor C does not become a material advisor with respect to any other client and unintentionally does not file a Form 8918. Advisor C is subject to a penalty of $250,000 (50 percent of the gross income he derived) under section 6707.

Example 4. Same as *Example 3*, except that Advisor C files the Form 8918 on November 15, 2009, which is beyond the date prescribed for filing the disclosure statement. Advisor C is subject to a $200,000 penalty under section 6707 because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to the listed transaction did not include gross income for advice to Client Y.

Example 5. Same as *Example 3*, except that Advisor C files the Form 8918 on February 15, 2010, which is beyond the date prescribed for filing the disclosure statement. Advisor C is subject to a $250,000 penalty under section 6707 because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to the listed transaction included gross income for advice to Client X and Client Y.

Example 6. Advisor D becomes a material advisor as defined under section 6111(b) and § 301.6111–3(b) in the first quarter of 2009 with respect to a reportable transaction other than a listed transaction. Advisor D does not file a Form 8918 by April 30, 2009. The transaction is then identified as a listed transaction in published guidance on July 7, 2009. Advisor D knew that it had a new obligation to file a Form 8918 by October 31, 2009, and intentionally fails to file the Form 8918. Advisor D is subject to only one penalty, in the amount of the greater of $200,000 or 75 percent of the gross income he derived from the transaction, for intentionally failing to disclose the listed transaction in accordance with § 301.6111–3(d)(1) and (e).

(e) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707 penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction and

(ii) Rescinding the penalty would promote compliance with the requirements of the Internal Revenue Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a material advisor to request rescission of a section 6707 penalty by revenue procedure or other guidance published in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The material advisor, upon becoming aware that it failed to properly disclose a reportable transaction, filed a complete and proper, albeit untimely, Form 8918 (or successor form). This factor will weigh strongly in favor of rescission provided that the material advisor files the form required under section 6111 prior to the earlier of the date that any taxpayer files a Form 8886 identifying the material advisor with respect to the reportable transaction in question or the date the IRS contacts the material advisor concerning the reportable transaction.

(ii) The material advisor's failure to properly disclose the reportable transaction was due to an unintentional mistake of fact that existed despite the material advisor's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The material advisor has an established history of properly disclosing other reportable transactions and complying with other tax laws, including compliance with any requests made by the IRS under section 6112, if applicable.

(iv) The material advisor demonstrates that the failure to include on any return or statement any information required to be disclosed

under section 6111 arose from events beyond the material advisor's control.

(v) The material advisor cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a material advisor cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the material advisor meets the deadlines described in Rev. Proc. 2007–21 (or successor document) (see § 601.601(d)(2)(ii)(*b*)) for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the material advisor demonstrates that there was reasonable cause for, and the material advisor acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6111. An important factor in determining reasonable cause and good faith is the extent of the material advisor's efforts to determine whether there was a requirement to file the return required under section 6111. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (e)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for, or collectibility of, the penalties.

(f) *Effective/applicability date.* The rules of this section apply to returns the due date for which is after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30303 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2008–0841, FRL–8755–5]

Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to New Jersey's State Implementation Plan (SIP) submitted on November 3, 2008. The proposed SIP revision includes a regulation that allows for continuation of New Jersey's statewide nitrogen oxides (NO_X) budget and NO_X allowance trading program beyond the year 2008. New Jersey's program began in 2003 for large electric generating units and industrial sources. The intended effect of this proposed SIP revision is to allow the continuation of the State's program to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. EPA is proposing this action pursuant to section 110 of the Clean Air Act.

DATES: Written comments must be received on or before January 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2008–0841, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2008–0841. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.