Inspection and Modification

(f) Within 12 months after the effective date of this AD: Inspect the SM–200 power servo motor and housing assembly, part numbers 4006719–904, –913 and –933, to determine if MOD H is marked, and before further flight, do all applicable related investigative action and modifications of the power servo motor and housing assembly, in accordance with the Accomplishment Instructions of Viking Alert Service Bulletin 7–22–20, dated May 29, 2006.

Note 1: The alert service bulletin refers to Honeywell Alert Service Bulletin 4006719–22–A0016 (Pub. No. A21–1146–008), Revision 001, dated November 1, 2004, as an additional source of service information for doing the inspection, related investigative action, and modifications.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(h) Canadian airworthiness directive CF–2006–18, dated July 17, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on June 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13125 Filed 7–5–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53, 54 and 301

[REG–142039–06; REG–139268–06]

RIN 1545–BG18; 1545–BG20

Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements With Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that provide guidance under section 4965 of the Internal Revenue Code (Code), relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; §§ 6033(a)(2) and 6011(g), relating to certain disclosure obligations with respect to such transactions; and §§ 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing cross-referencing temporary regulations that provide guidance under § 6033(a)(2), relating to certain disclosure obligations with respect to prohibited tax shelter transactions; and §§ 6011 and 6071, relating to the requirement of a return and time for filing with respect to § 4965 taxes. This action is necessary to implement § 516 of the Tax Increase Prevention Reconciliation Act of 2005. These proposed regulations affect a broad array of tax-exempt entities, including charities, state and local government entities, Indian tribal governments and employee benefit plans, as well as entity managers of these entities.

DATES: Written or electronic comments and requests for a public hearing must be received by October 4, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142039–06; REG–139268–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–142039–06, REG–139268–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–142039–06; REG–139268–06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Galina Kolomietz, (202) 622–6070 or Michael Blumenfeld, (202) 622–1124; concerning submission of comments and requests for a public hearing, Richard Hurst, *Richard.A.Hurst@irscounsel.treas.gov* (not toll-free numbers). For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Dana Barry, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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.

The collection of information in this proposed regulation is in § 301.6011(g)–1. The collection of information in § 301.6011(g)–1 flows from section 6011(g) which requires a taxable party to a prohibited tax shelter transaction to disclose to any tax-exempt entity that is a party to the transaction that the transaction is a prohibited tax shelter transaction. The likely recordkeepers are taxable entities or individuals that participate in prohibited tax shelter transactions. Estimated number of recordkeepers: 1,250 to 6500. The information that is required to be collected for purposes of § 301.6011(g)–1 is a subset of information that is required to be collected in order to complete and file Form 8886, ''Reportable Transaction Disclosure Statement.'' The estimated paperwork burden for taxpayers filling out Form 8886 is approved under OMB number 1545–1800 and is as follows:

Recordkeeping	6 hr., 13 min.
Learning about the law or the form.	4 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS.	4 hr., 46 min.

Based on the numbers in the preceding paragraph, the total estimated burden per recordkeeper complying with the disclosure requirement in § 301.6011(g)–1 will not exceed 15 hr., 27 min. This burden has been submitted to the Office of Management and Budget for review.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, defines certain transactions as prohibited tax shelter transactions and imposes excise taxes and disclosure requirements with respect to prohibited tax shelter transactions to which a tax-exempt entity is a party. Section 516 of TIPRA creates new § 4965 and amends §§ 6033(a)(2) and 6011(g) of the Code.

On July 11, 2006, the IRS released Notice 2006–65 (2006–31 IRB 102), which alerted taxpayers to the new provisions and solicited comments

regarding these provisions. One hundred written comments and numerous phone calls were received in response to the request for comments contained in Notice 2006–65. On February 7, 2007, the IRS released Notice 2007–18 (2007–9 IRB 608), which provided interim guidance regarding the circumstances under which a tax-exempt entity will be treated as a party to a prohibited tax shelter transaction and regarding the allocation to various periods of net income and proceeds attributable to a prohibited tax shelter transaction, including amounts received prior to the effective date of the § 4965 tax. Notice 2007–18 also solicited comments from the public regarding these and other issues raised by § 4965. Eight written comments and numerous phone calls were received in response to the request for comments contained in Notice 2007–18. See § 601.601(d)(2)(ii)(*b*).

The comments received in response to Notice 2006–65 and Notice 2007–18 addressed all aspects of the new excise taxes and disclosure requirements. While some comments discussed the implications of a broad application of the new excise taxes and disclosure requirements, commentators generally responded favorably to Congress' effort to restrict tax-exempt entities from being involved in Federal tax avoidance schemes. Commentators noted the lack of meaningful penalties prior to TIPRA for tax-exempt entities involved in tax shelter transactions and the need for disclosure in the case where a tax-exempt entity is improperly using its tax-exempt status to facilitate a tax shelter transaction. After consideration of all comments received, the IRS and the Treasury Department are issuing the following proposed regulations and soliciting comments thereon. The major areas of comments and the IRS and Treasury Department's responses thereto are discussed in the following sections.

Explanation of Provisions

Covered Tax-Exempt Entities

Section 4965(c) defines the term ''tax-exempt entity'' for § 4965 purposes by reference to §§ 501(c), 501(d), 170(c), 7701(a)(40), 4979(e) (paragraphs (1), (2) and (3)), 529, 457(b), and 4973(a). The proposed regulations describe the types of entities captured by the statutory cross-references in § 4965(c).

Definition of Prohibited Tax Shelter Transactions

Section 4965(e) defines the term ''prohibited tax shelter transaction'' by reference to § 6707A(c)(1) and (c)(2). In accordance with the statutory definition, the proposed regulations define the term ''prohibited tax shelter transaction'' by reference to the definition of the term ''reportable transaction'' in § 6707A(c)(1) and (c)(2) and the regulations under § 6011. The proposed regulations define a subsequently listed transaction as a transaction (other than a reportable transaction within the meaning of § 6707A(c)(1)) to which a tax-exempt entity becomes a party before the transaction becomes a listed transaction within the meaning of § 6707A(c)(2).

Several commentators expressed concern over the severe penalties imposed on tax-exempt entities and entity managers for participating in many common and legitimate transactions which have no tax avoidance purpose, yet may fall within the definition of prohibited tax shelter transaction. The commentators suggested that the IRS and the Treasury Department carve out certain types of transactions from the definition of ''prohibited tax shelter transaction'' or revise current listing procedures to give taxpayers an opportunity to object to the identification of a specific transaction as a tax avoidance transaction. Some commentators recommended that any future published guidance which designates a transaction as a listed or reportable transaction be issued with a prospective effective date and state that it will not apply retroactively. Several commentators requested that the proposed regulations identify listed, subsequently listed, confidential and contractual protection transactions that would not be treated as prohibited tax shelter transactions for purposes of § 4965. The above recommendations are not adopted in these proposed regulations because § 4965 defines the term ''prohibited tax shelter transaction'' by reference to the existing reportable transaction regime. Any additions to, or exclusions from, the definition of reportable transactions, or any changes to the current listing procedures, must be made within the framework of § 6011 rather than § 4965.

One commentator suggested that the term ''reportable transaction'' should be narrowly interpreted for purposes of § 4965. However, this term already has been defined under § 6011, and consequently, these proposed regulations interpret it consistently for § 4965 and § 6011 purposes.

Definition of Tax-Exempt Party to a Prohibited Tax Shelter Transaction

Excise taxes under § 4965 apply only if a tax-exempt entity is a party to a prohibited tax shelter transaction. A number of commentators requested guidance in determining when a tax-exempt entity is a *party* to a prohibited tax shelter transaction. Notice 2007–18 defined the term *party* as a tax-exempt entity that facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status. The proposed regulations incorporate this definition of the term *party.* Notice 2007–18 also notified the public that the IRS and the Treasury Department would provide a broader definition of the term *party* in future guidance in accordance with § 4965. Consistent with Notice 2007–18, the proposed regulations define the term ''party'' for purposes of §§ 4965 and 6033(a)(2) to include a tax-exempt entity that enters into a listed transaction and reflects on its tax return a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

Several commentators specifically requested that the proposed regulations address under what circumstances, if any, a tax-exempt entity may be treated as a party to a prohibited tax shelter transaction if the tax-exempt entity is an investor in a partnership, hedge fund or other conduit. Invoking the language in the legislative history to § 4965, commentators recommended that the IRS and Treasury Department establish a rule or a safe harbor that would treat an investor in an indirect investment activity as being a party for § 4965 purposes only in limited circumstances.

As illustrated by an example in the proposed regulations, a tax-exempt entity does not become a party to a prohibited tax shelter transaction solely because it invests in an entity that in turn becomes involved in a prohibited tax shelter transaction. To be considered a ''party'' under the proposed regulations, the tax-exempt entity must either facilitate the prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status, or must treat the prohibited tax shelter transaction on its tax return as reducing or eliminating its own Federal tax liability. The IRS and the Treasury Department request comments on any further clarifications that may be helpful in reflecting the intended application of the statute as expressed in the legislative history.

Entity Managers and Related Definitions

The proposed regulations clarify the definition of the term ''entity manager'' in § 4965(d) and provide guidance on

persons who could be entity managers pursuant to a delegation of authority from other entity managers.

The proposed regulations also define the term ''approve or otherwise cause.'' Under § 4965(a)(2), an entity manager may be liable for the manager-level excise tax only if the manager ''approves such entity as (or otherwise causes such entity to be) a party'' to a prohibited tax shelter transaction and knows or has reason to know the transaction is a prohibited tax shelter transaction. The proposed regulations generally limit the definition of ''approving or otherwise causing'' to affirmative actions of persons who, individually or as members of a collective body, have the authority to commit the entity to the transaction.

One commentator requested guidance on whether entity managers may be liable for § 4965 taxes in successor-in-interest situations. Several commentators requested guidance on the consequences under § 4965 of the exercise or nonexercise of certain options pursuant to the terms of the transaction. In response to these comments, the proposed regulations provide rules for successor-in-interest situations and the consequences of the exercise or nonexercise of certain options.

Meaning of ''Knows or Has Reason To Know''

The level of tax imposed on the tax-exempt entity under § 4965(b)(1) depends upon whether the entity knows or has reason to know, at the time it enters into the transaction, that it is becoming a party to a prohibited tax shelter transaction. The liability of the entity manager for the tax under § 4965(b)(2) depends on whether the entity manager knows or has reason to know that the transaction is a prohibited tax shelter transaction at the time of approving or otherwise causing the entity to be a party to the transaction. The proposed regulations treat the entity as knowing or having reason to know if its manager(s) knew or had reason to know and provide rules for determining whether entity managers knew or had reason to know. The ''reason-to-know'' rules in these proposed regulations are consistent with the ''reason-to-know'' and ''should have known'' standards under other provisions of the Code.

Commentators recommended that the IRS and the Treasury Department not treat receipt of a disclosure statement regarding a transaction by the tax-exempt entity as conclusive evidence that the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction. The proposed regulations adopt this recommendation and provide that receipt by an entity manager of a disclosure statement in advance of a transaction is a relevant factor but, by itself, does not necessarily demonstrate that the tax-exempt entity or any of its managers knew or had reason to know that the transaction was a prohibited tax shelter transaction.

Taxes on Prohibited Tax Shelter Transactions

Section 4965(b)(1) provides the rules for computing the entity-level excise tax with respect to prohibited tax shelter transactions. Section 4965(b)(2) imposes a flat $20,000 excise tax on any entity manager that approved or otherwise caused the entity to become a party to a prohibited tax shelter transaction. The proposed regulations follow the computational rules in the statute, define the term ''taxable year'' for purposes of determining the entity-level tax under § 4965, and clarify the timing of the entity manager taxes under § 4965. The proposed regulations provide that entity manager liability for § 4965 taxes is not joint and several.

Definition of Net Income and Proceeds and Their Allocation to Various Periods

The proposed regulations define the terms ''net income'' and ''proceeds'' for § 4965 purposes and provide rules regarding the allocation of net income or proceeds attributable to a prohibited tax shelter transaction to various periods, including the appropriate treatment of net income or proceeds received prior to the effective date of the § 4965(a) tax.

Commentators recommended that net income for purposes of § 4965 be determined in a manner consistent with the determination of net income for other purposes of the Code. The proposed regulations adopt this recommendation.

Numerous commentators requested guidance in determining what amounts constitute proceeds for section 4965 purposes and urged the IRS and the Treasury Department to limit the definition of proceeds to the tax-exempt entity's economic return from the transaction. One commentator recommended that return of basis and return of capital be excluded from the definition of proceeds as these amounts are arguably not ''attributable to'' a prohibited tax shelter transaction. Several commentators recommended that the IRS and the Treasury Department adopt a rule that would exclude from proceeds earnings on certain set-aside amounts that are used to defease the tax-exempt entity's obligations under so-called sale-in, lease-out (SILO) and lease-in, lease-out (LILO) transactions. See Notice 2000–15 (2000–1 CB 826), and Notice 2005–13 (2005–9 IRB 630). Several commentators suggested that nonexercise of options to repurchase in the SILO/LILO context should not be treated as giving rise to net income or proceeds. See § 601.601(d)(2)(ii)(*b*).

The proposed regulations define the term proceeds separately for tax-exempt entities that are involved in prohibited tax shelter transactions to facilitate the tax avoidance of others and tax-exempt entities that are involved in listed transactions for their own tax benefit. In the case of tax-exempt entities that are involved in prohibited tax shelter transactions to facilitate the tax avoidance of others, the proposed regulations define proceeds as the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced by any costs or expenses attributable to the transaction. This definition subjects the tax-exempt party's economic return from the transaction to the entity-level excise tax. In the case of tax-exempt entities that are involved in listed transactions to reduce or eliminate their own tax liability, the proposed regulations define the term proceeds as tax savings purportedly generated by the transaction and claimed by the tax-exempt entity in the tax year.

In Notice 2007–18, the IRS and Treasury Department provided that the allocation of net income and proceeds is determined according to normal tax accounting rules. The proposed regulations incorporate this rule both for purposes of allocating amounts to pre- and post-effective date periods, and allocating amounts to pre- and post-listing periods where a subsequently listed transaction is involved. Under the proposed regulations, tax-exempt entities that have not adopted a method of accounting are required to use the cash method. Several commentators recommended that the IRS adopt a position that net income or proceeds from pre-enactment transactions would not be properly allocable to any periods after the effective date of the section 4965(a) tax. The IRS and the Treasury Department decline to adopt this blanket rule because such rule would be inconsistent with established principles of tax accounting and would conflict with the plain language of the effective date provisions in section 516 of TIPRA.

Effective Dates of the Taxes

In accordance with section 516(d) of TIPRA, the proposed regulations provide that the taxes under section

4965 are effective for taxable years ending after May 17, 2006, with respect to transactions entered into before, on or after such date, except that no tax under section 4965(a) applies with respect to income or proceeds that are properly allocable to any period ending on or before August 15, 2006. The proposed regulations also provide that the 100 percent entity-level tax under section 4965(b)(1)(B) with respect to knowing transactions does not apply to prohibited tax shelter transactions entered into by a tax-exempt entity on or before May 17, 2006 and that the IRS will not assert an entity manager tax under section 4965(b)(2) with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006. In addition, the proposed regulations provide that the 100 percent entity-level tax under section 4965(b)(1)(B) and the entity manager tax under section 4965(b)(2) do not apply with respect to any subsequently listed transaction.

Numerous commentators questioned whether it would be appropriate to apply the new excise taxes to pre-enactment transactions that already have closed and advocated a narrow application of the new excise taxes to pre-enactment transactions. The commentators argued that it would be unfair to apply the new excise taxes to pre-enactment transactions that have already closed and subject tax-exempt entities to unforeseen, harsh penalties. The commentators recommended that all transactions closed prior to May 17, 2006, be ''delisted'' for purposes of section 4965. The proposed regulations do not adopt these recommendations as they are inconsistent with the statutory effective date of section 4965 and the statutory definition of prohibited tax shelter transaction.

When finalized, the regulations under section 4965 are proposed to be applicable for taxable years ending after July 6, 2007. Taxpayers may rely on these proposed regulations for periods ending on or before such date.

Disclosure by Tax-Exempt Entities That Are Parties to Certain Reportable Transactions

Section 6033(a)(2), as amended by TIPRA, requires every tax-exempt entity that is a party to a prohibited tax shelter transaction to disclose to the IRS, in such form and manner and at such time as determined by the Secretary, such entity's being a party to such transaction and the identity of any other party to the transaction which is known to the tax-exempt entity. The statute gives the IRS discretion with respect to the form, manner and timing of this disclosure. The proposed regulations provide rules regarding the form, manner and timing of this disclosure. With respect to the due date for the disclosure, the proposed regulations provide that, in the case of tax-exempt entities that are involved in prohibited tax shelter transactions to facilitate the tax avoidance of others, the disclosure must be filed by May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction (or, in the case of subsequently listed transactions, by May 15 of the calendar year following the close of the calendar year during which the transaction was identified by the Secretary as a listed transaction). In the case of tax-exempt entities that are involved in listed transactions to reduce or eliminate their own tax liability, the proposed regulations provide that the disclosure must be filed on or before the date on which the first tax return (whether an original or an amended return) is filed on which the tax-exempt entity reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction.

Temporary regulations providing the same rules are being issued concurrently with these proposed regulations.

The temporary regulations under section 6033(a)(2) apply to disclosures with respect to transactions entered into by a tax-exempt entity after May 17, 2006. Transition relief is provided with respect to transactions entered into during a transition period beginning on May 18, 2006 and ending on December 31, 2006. The due date for the disclosure with respect to the transactions entered into during the transition period is November 5, 2007 or, in the case of tax-exempt entities that are involved in listed transactions to reduce or eliminate their own tax liability, the later of: the date on which the first tax return (whether an original or an amended return) is filed on which the tax-exempt entity reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or November 5, 2007.

Disclosure by Taxable Party to the Tax-Exempt Entity

Section 6011(g), as amended by TIPRA, requires any taxable party to a prohibited tax shelter transaction to notify any tax-exempt entity which is a party to such transaction that the transaction is a prohibited tax shelter transaction. The statute is silent as to how and when the section 6011(g) disclosure needs to be made. The proposed regulations provide rules regarding the form, timing and frequency of the section 6011(g) disclosure. The proposed regulations also explain to whom the section 6011(g) disclosure must be made. With respect to the due date for the disclosure, the proposed regulations provide that the disclosure to each tax-exempt entity that is a party to the transaction must be made within 60 days after the last to occur of: (1) The date the taxable person becomes a taxable party to the transaction; or (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction. No disclosure is required if the taxable party does not know or have reason to know that the tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the taxable party under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4.

One commentator recommended that the IRS provide an exception to the disclosure requirements for any transactions for which there would be no income or proceeds subject to the taxes imposed by section 4965. The proposed regulations do not adopt this recommendation because one of the purposes of section 6011(g) disclosure is to notify the tax-exempt entity that it may have a disclosure obligation under section 6033(a)(2) with respect to the transaction.

When finalized, the proposed regulations under section 6011(g) will apply to disclosures with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

Payment of Section 4965 Taxes

The proposed regulations amend the existing regulations under sections 6011 and 6071 to specify the forms that must be used to pay section 4965 taxes and to provide the due dates for filing these forms. With respect to the due dates, the proposed regulations provide that a return of the entity-level excise tax under section 4965 must be made on or before the due date (not including extensions) for filing the tax-exempt

entity's annual information return under section 6033(a)(1). If the tax-exempt entity is not required to file an annual information return, the return of section 4965 taxes must be made on or before the 15th day of the fifth month after the end of the tax-exempt entity's annual accounting period. A return of manager-level excise tax under section 4965 must be made on or before the 15th day of the fifth month following the close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

Temporary regulations providing the same rules are being issued concurrently with these proposed regulations.

A commentator recommended that the IRS and the Treasury Department not make the section 4965 excise taxes effective prior to the issuance of final regulations in cases where application of the new law or provisions of the new law is unclear. The proposed regulations do not adopt this recommendation because the effective date for the section 4965 taxes is statutory.

One commentator recommended that the IRS waive the excise taxes under section 4965 in appropriate circumstances. The proposed regulations do not adopt this recommendation as the obligation to pay section 4965 taxes flows directly from the statute, which does not authorize the IRS to waive the entity-level or manager-level taxes.

The amendments and additions to the regulations under sections 6011 and 6071 will be effective on July 6, 2007. Transition relief is provided with respect to returns of section 4965 taxes due on or before October 4, 2007. These returns will be deemed timely if the return is filed and the tax paid before October 4, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this notice of proposed rulemaking. It is hereby certified that the collection of information in § 301.6011(g)–1 will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required.

The effect of these proposed regulations on small entities flows directly from the statutes these regulations implement. Section 6011(g), as amended by TIPRA, requires any taxable party to a prohibited tax shelter transaction to notify any tax-exempt entity which is a party to such transaction that the transaction is a prohibited tax shelter transaction. In implementing this statute, § 301.6011(g)–1 of the proposed regulations requires every taxable party to a prohibited tax shelter transaction (or a single taxable party acting by designation on behalf of other taxable parties) to provide to every tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction a single statement disclosing that the transaction is a prohibited tax shelter transaction within 60 days after the last to occur: (1) The date the taxable person becomes a taxable party to the transaction; or (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction. Moreover, it is unlikely that a significant number of small businesses will engage in transactions that are subject to disclosure under 301.6011(g). The IRS and the Treasury Department request comments concerning the likelihood that small businesses are engaging in transactions subject to disclosure under this provision.

Pursuant to section 7805(f) of the Code, this regulation as 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 a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS at the address listed in the Addresses section of this document. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Galina Kolomietz and Dana Barry, Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise Taxes, Pensions, Reporting and recordkeeping requirements.

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, 53, 54, 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 1.6033–5 is added to read as follows:

§ 1.6033–5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

[The text of this section is the same as the text of § 1.6033–5T published elsewhere in this issue of the **Federal Register**].

PART 53— FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read in part as follows:

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

Par. 4. Sections 53.4965–1 through 53.4965–9 are added to read as follows:

§ 53.4965–1 Overview.

(a) *Entity-level excise tax.* Section 4965 imposes two excise taxes with respect to certain tax shelter transactions to which tax-exempt entities are parties. Section 4965(a)(1) imposes an entity-level excise tax on certain tax-exempt entities that are parties to ''prohibited tax shelter transactions,'' as defined in section 4965(e). See § 53.4965–2 for the discussion of covered tax-exempt entities. See § 53.4965–3 for the

definition of prohibited tax shelter transactions. See § 53.4965–4 for the definition of tax-exempt party to a prohibited tax shelter transaction. The entity-level excise tax under section 4965(a)(1) is imposed on a specified percentage of the entity's net income or proceeds that are attributable to the transaction for the relevant tax year (or a period within that tax year). The rate of tax depends on whether the entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction. See § 53.4965–7(a) for the discussion of the entity-level excise tax under section 4965(a)(1). See § 53.4965–6 for the discussion of ''knowing or having reason to know.'' See § 53.4965–8 for the definition of net income and proceeds and the standard for allocating net income and proceeds that are attributable to a prohibited tax shelter transaction to various periods.

(b) *Manager-level excise tax.* Section 4965(a)(2) imposes a manager-level excise tax on ''entity managers,'' as defined in section 4965(d), of tax-exempt entities who approve the entity as a party (or otherwise cause the entity to be a party) to a prohibited tax shelter transaction and know or have reason to know, at the time the tax-exempt entity enters into the transaction, that the transaction is a prohibited tax shelter transaction. See § 53.4965–5 for the definition of entity manager and the meaning of ''approving or otherwise causing,'' and § 53.4965–6 for the discussion of ''knowing or having reason to know.'' See § 53.4965–7(b) for the discussion of the manager-level excise tax under section 4965(a)(2).

(c) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant effective dates.

§ 53.4965–2 Covered tax-exempt entities.

(a) *In general.* Under section 4965(c), the term ''tax-exempt entity'' refers to entities that are described in sections 501(c), 501(d), or 170(c) (other than the United States), Indian tribal governments (within the meaning of section 7701(a)(40)), and tax-qualified pension plans, individual retirement arrangements and similar tax-favored savings arrangements that are described in sections 4979(e)(1), (2) or (3), 529, 457(b), or 4973(a). The tax-exempt entities referred to in section 4965(c) are divided into two broad categories, non-plan entities and plan entities.

(b) *Non-plan entities.* Non-plan entities are—

(1) Entities described in section 501(c);

(2) Religious or apostolic associations or corporations described in section 501(d);

(3) Entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the United States); and

(4) Indian tribal governments within the meaning of section 7701(a)(40).

(c) *Plan entities.* Plan entities are—

(1) Entities described in section 4979(e)(1) (qualified plans under section 401(a), including qualified cash or deferred arrangements under section 401(k) (including a section 401(k) plan that allows designated Roth contributions));

(2) Entities described in section 4979(e)(2) (annuity plans described in section 403(a));

(3) Entities described in section 4979(e)(3) (annuity contracts described in section 403(b), including a section 403(b) arrangement that allows Roth contributions);

(4) Qualified tuition programs described in section 529;

(5) Eligible deferred compensation plans under section 457(b) that are maintained by a governmental employer as defined in section 457(e)(1)(A);

(6) Arrangements described in section 4973(a) which include—

(i) Individual retirement plans defined in sections 408(a) and (b), including—

(A) Simplified employee pensions (SEPs) under section 408(k);

(B) Simple individual retirement accounts (SIMPLEs) under section 408(p);

(C) Deemed individual retirement accounts or annuities (IRAs) qualified under a qualified plan (deemed IRAs) under section 408(q)); and

(D) Roth IRAs under section 408A.

(ii) Arrangements described in section 220(d) (Archer Medical Savings Accounts (MSAs));

(iii) Arrangements described in section 403(b)(7) (custodial accounts treated as annuity contracts);

(iv) Arrangements described in section 530 (Coverdell education savings accounts); and

(v) Arrangements described in section 223(d) (health savings accounts (HSAs)).

§ 53.4965–3 Prohibited tax shelter transactions.

(a) *In general.* Under section 4965(e), the term *prohibited tax shelter transaction means*—

(1) Listed transactions within the meaning of section 6707A(c)(2), including subsequently listed transactions described in paragraph (b) of this section; and

(2) Prohibited reportable transactions, which consist of the following reportable transactions within the meaning of section 6707A(c)(1)—

(i) Confidential transactions, as described in § 1.6011–4(b)(3) of this chapter; or

(ii) Transactions with contractual protection, as described in § 1.6011–4(b)(4) of this chapter.

(b) *Subsequently listed transactions.* A subsequently listed transaction for purposes of section 4965 is a transaction that is identified by the Secretary as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a prohibited reportable transaction (within the meaning of section 4965(e)(1)(C) and paragraph (a)(2) of this section) at the time the entity entered into the transaction.

(c) *Cross-reference.* The determination of whether a transaction is a listed transaction or a prohibited reportable transaction for section 4965 purposes shall be made under the law applicable to section 6707A(c)(1) and (c)(2).

§ 53.4965–4 Definition of tax-exempt party to a prohibited tax shelter transaction.

(a) *In general.* For purposes of sections 4965 and 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(1) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status;

(2) Enters into a listed transaction and the tax-exempt entity's tax return (whether an original or an amended return) reflects a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or

(3) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(b) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of sections 4965 and 6033(a)(2).

(c) *Examples.* The following examples illustrate the principles of this section:

Example 1. A tax-exempt entity enters into a transaction (Transaction A) with an S corporation. Transaction A is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2004–30 (2004–1 CB 828). The tax-exempt entity's role in

Transaction A is similar to the role of the tax-exempt party, as described in Notice 2004–30. Under the terms of the transaction, as described in Notice 2004–30, the tax-exempt entity receives the S corporation stock and, due to the tax-exempt entity's tax-exempt status, aids the S corporation and its shareholders in avoiding taxable income. The tax-exempt entity facilitates Transaction A by reason of its tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity is a party to Transaction A for purposes of sections 4965 and 6033(a)(2). See § 601.601(d)(2)(ii)(*b*) of this chapter.

Example 2. A tax-exempt entity is a partner in a partnership. The partnership has a number of other taxable and tax-exempt partners. The tax-exempt entity does not control the partnership. The partnership enters into a number of transactions, including a transaction (Transaction B) which is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2002–35 (2002–1 CB 992) (as clarified and modified by Notice 2006–16 (2006–9 IRB 538). The partnership's role in Transaction B is similar to the role of T, as described in Notice 2002–35, that is, the role of the taxpayer claiming the tax benefits from the transaction. The tax-exempt entity's tax returns do not reflect a reduction or elimination of its liability for applicable Federal taxes as a result of Transaction B. The tax and economic consequences from Transaction B to the other partners are not dependent on the tax-exempt entity's tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity does not facilitate Transaction B by reason of its tax-exempt, tax indifferent or tax-favored status. Because the tax-exempt entity's tax returns do not reflect a reduction or elimination of its liability for applicable Federal taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction, the tax-exempt entity is not a party to Transaction B by reason of paragraph (a)(2) of this section. The tax-exempt entity also has not been identified, by type, class or role, as a party to a prohibited tax shelter transaction in published guidance. Therefore, the tax-exempt entity is not a party to Transaction B for purposes of sections 4965 and 6033(a)(2). See § 601.601(d)(2)(ii)(*b*) of this chapter.

(d) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant applicability dates.

§ 53.4965–5 Entity managers and related definitions.

(a) *Entity manager of a non-plan entity*—(1) *In general.* Under section 4965(d)(1), an entity manager of a non-plan entity is—

(i) A person with the authority or responsibility similar to that exercised by an officer, director, or trustee of an organization (that is, the non-plan entity); and

(ii) With respect to any act, the person who has final authority or responsibility (either individually or as a member of a collective body) with respect to such act.

(2) *Definition of officer.* For purposes of paragraph (a)(1)(i) of this section, a person is considered to be an officer of the non-plan entity (or to have similar authority or responsibility) if the person—

(i) Is specifically designated as such under the certificate of incorporation, by-laws, or other constitutive documents of the non-plan entity; or

(ii) Regularly exercises general authority to make administrative or policy decisions on behalf of the non-plan entity.

(3) *Exception for acts requiring approval by a superior.* With respect to any act, any person is not described in paragraph (a)(2)(ii) of this section if the person has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior.

(4) *Delegation of authority.* A person is an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section if, with respect to any prohibited tax shelter transaction, such person has been delegated final authority or responsibility with respect to such transaction (including by transaction type or dollar amount) by a person described in paragraph (a)(1)(i) of this section or the governing board of the entity. For example, an investment manager is an entity manager with respect to a prohibited tax shelter transaction if the non-plan entity's governing body delegated to the investment manager the final authority to make certain investment decisions and, in the exercise of that authority, the manager committed the entity to the transaction. To be considered an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section, a person need not be an employee of the entity. A person is not described in paragraph (a)(1)(ii) of this section if the person is merely implementing a decision made by a superior.

(b) *Entity manager of a plan entity*—(1) *In general.* Under section 4965(d)(2), an entity manager of a plan entity is the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

(2) *Special rule for plan participants and beneficiaries who have investment elections*—(i) *Fully self-directed plans or arrangements.* In the case of a fully self-directed qualified plan, IRA, or other savings arrangement (including the case where a plan participant or beneficiary is given a list of prohibited investments, such as collectibles), if the plan participant or beneficiary selected a certain investment and, therefore, approved the plan entity to become a party to a prohibited tax shelter transaction, the plan participant or the beneficiary is an entity manager.

(ii) *Plans or arrangements with limited investment options.* In the case of a qualified plan, IRA, or other savings arrangement where a plan participant or beneficiary is offered a limited number of investment options from which to choose, the person responsible for determining the pre-selected investment options is an entity manager and the plan participant or the beneficiary generally is not an entity manager.

(c) *Meaning of ''approves or otherwise causes''*—(1) *In general.* A person is treated as approving or otherwise causing a tax-exempt entity to become a party to a prohibited tax shelter transaction if the person has the authority to commit the entity to the transaction, either individually or as a member of a collective body, and the person exercises that authority.

(2) *Collective bodies.* If a person shares the authority described in paragraph (c)(1) of this section as a member of a collective body (for example, board of trustees or committee), the person will be considered to have exercised such authority if the person voted in favor of the entity becoming a party to the transaction. However, a member of the collective body will not be treated as having exercised the authority described in paragraph (c)(1) of this section if he or she voted against a resolution that constituted approval or an act that caused the tax-exempt entity to be a party to a prohibited tax shelter transaction, abstained from voting for such approval, or otherwise failed to vote in favor of such approval.

(3) *Exceptions*—(i) *Successor in interest.* If a tax-exempt entity that is a party to a prohibited tax shelter transaction is dissolved, liquidated, or merged into a successor entity, an entity manager of the successor entity will not, solely by reason of the reorganization, be treated as approving or otherwise causing the successor entity to become a party to a prohibited tax shelter transaction, provided that the reorganization of the tax-exempt entity does not result in a material change to the terms of the transaction. For purposes of this paragraph a material change includes an extension or renewal of the agreement (other than an extension or renewal that results from another party to the transaction unilaterally exercising an option granted by the agreement) or a more than incidental change to any payment under

the agreement. A change for the sole purpose of substituting the successor entity for the original tax-exempt party is not a material change.

(ii) *Exercise or nonexercise of options.* Nonexercise of an option pursuant to a transaction involving the tax-exempt entity generally will not constitute an act of approving or causing the entity to be a party to the transaction. If, pursuant to a transaction involving the tax-exempt entity, the entity manager exercises an option (such as a repurchase option), the entity manager will not be subject to the entity manager-level tax if the exercise of the option does not result in the tax-exempt entity becoming a party to a second transaction that is a prohibited tax shelter transaction.

(4) *Example.* The following example illustrates the principles of paragraph (c)(3)(ii) of this section:

Example. In a sale-in, lease-out (SILO) transaction described in Notice 2005–13 (2005–9 IRB 630), X, which is a non-plan entity, has purported to sell property to Y, a taxable entity and lease it back for a term of years. At the end of the basic lease term, X has the option of ''repurchasing'' the property from Y for a predetermined purchase price, with funds that have been set aside at the inception of the transaction for that purpose. The entity manager, by deciding to exercise or not exercise the ''repurchase'' option is not approving or otherwise causing the non-plan entity to become a party to a second prohibited tax shelter transaction. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(5) *Coordination with the reason-to-know standard.* The determination that an entity manager approved or caused a tax-exempt entity to be a party to a prohibited tax shelter transaction, by itself, does not establish liability for the section 4965(a)(2) tax. For rules on determining whether an entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction, see § 53.4965–6(b).

(d) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant applicability dates.

§ 53.4965–6 Meaning of ''knows or has reason to know.''

(a) *Attribution to the entity.* An entity will be treated as knowing or having reason to know for section 4965 purposes if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction. The entity shall be attributed the knowledge or reason to know of any entity manager described in § 53.4965–5(a)(1)(i) even if that entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

(b) *Determining whether an entity manager knew or had reason to know*—(1) *In general.* Whether an entity manager knew or had reason to know that a transaction is a prohibited tax shelter transaction is based on all facts and circumstances. In order for an entity manager to know or have reason to know that a transaction is a prohibited tax shelter transaction, the entity manager must have knowledge of sufficient facts that would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction. An entity manager will be considered to have ''reason to know'' if a reasonable person in the entity manager's circumstances would conclude that the transaction was a prohibited tax shelter transaction based on all the facts reasonably available to the manager at the time of approving the entity as (or otherwise causing the entity to be) a party to the transaction. Factors that will be considered in determining whether a reasonable person in the entity manager's circumstances would conclude that the transaction was a prohibited tax shelter transaction include, but are not limited to—

(i) The presence of tax shelter indicia (see paragraph (b)(2) of this section);

(ii) Whether the entity manager received a disclosure statement prior to the consummation of the transaction indicating that the transaction may be a prohibited tax shelter transaction (see paragraph (b)(3) of this section); and

(iii) Whether the entity manager made appropriate inquiries into the transaction (see paragraph (b)(4) of this section).

(2) *Tax-shelter indicia.* The presence of indicia that a transaction is a tax shelter will be treated as an indication that the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction. Tax shelter indicia include but are not limited to—

(i) The transaction is extraordinary for the entity considering prior investment activity;

(ii) The transaction promises an economic return for the organization that is exceptional considering the amount invested by, the participation of, or the absence of risk to the organization; or

(iii) The transaction is of significant size relative to the receipts of the entity.

(3) *Effect of disclosure statements.* Receipt by an entity manager of a statement, including a statement described in section 6011(g), in advance of a transaction that the transaction may be a prohibited tax shelter transaction (or a statement that a partnership, hedge fund or other investment conduit may engage in a prohibited tax shelter transaction in the future) is a factor relevant in the determination of whether the entity manager knew or had reason to know that the transaction is a prohibited transaction. However, an entity manager will not be treated as knowing or having reason to know that the transaction was a prohibited tax shelter transaction solely because the entity manager receives such a disclosure.

(4) *Appropriate inquiries.* What inquiries are appropriate will be determined from the facts and circumstances of each case. For example, if one or more tax shelter indicia are present or if an entity manager receives a disclosure statement described in paragraph (b)(3) of this section, an entity manager has a responsibility to inquire further whether the transaction is a prohibited tax shelter transaction.

(c) *Reliance on professional advice*—(1) *In general.* An entity manager is not required to obtain the advice of a professional tax advisor to establish that the entity manager made appropriate inquiries. Moreover, not seeking professional advice, by itself, shall not give rise to an inference that the entity manager had reason to know that a transaction is a prohibited tax shelter transaction.

(2) *Reliance on written opinion of professional tax advisor.* An entity manager may establish that he or she did not have a reason to know that a transaction was a prohibited tax shelter transaction at the time the tax-exempt entity entered into the transaction if the entity manager reasonably, and in good faith, relied on the written opinion of a professional tax advisor. Reliance on the written opinion of a professional tax advisor establishes that the entity manager did not have reason to know if, taking into account all the facts and circumstances, the reliance was reasonable and the entity manager acted in good faith. For example, the entity manager's education, sophistication, and business experience will be relevant in determining whether the reliance was reasonable and made in good faith. In no event will an entity manager be considered to have reasonably relied in good faith on an opinion unless the requirements of this paragraph (c)(2) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the entity manager reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in

good faith if the entity manager knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered.* The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. The requirements of this paragraph (c)(2) are not satisfied if the entity manager fails to disclose a fact that it knows, or reasonably should know, is relevant to determining whether the transaction is a prohibited tax shelter transaction.

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the entity manager or any other person (including another party to the transaction or a material advisor within the meaning of sections 6111 and 6112).

(iii) *''More likely than not'' opinion.* The written opinion of the professional tax advisor must apply the appropriate law to the facts and, based on this analysis, must conclude that the transaction was not a prohibited tax shelter transaction at a ''more likely than not'' level of certainty at the time the entity manager approved the entity (or otherwise caused the entity) to be a party to the transaction.

(3) *Special rule.* An entity manager's reliance on a written opinion of a professional tax advisor will not be considered reasonable if the advisor is, or is related to a person who is, a material advisor with respect to the transaction within the meaning of sections 6111 and 6112.

(d) *Subsequently listed transactions.* An entity manager will not be treated as knowing or having reason to know that a transaction (other than a prohibited reportable transaction as defined in section 4965(e)(1)(C) and § 53.4965–3(a)(2)) is a prohibited tax shelter transaction if the entity enters into the transaction before the date on which the transaction is identified by the Secretary as a listed transaction.

(e) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant applicability dates.

§ 53.4965–7 Taxes on prohibited tax shelter transactions.

(a) *Entity-level taxes*—(1) *In general.* Entity-level excise taxes apply to non-plan entities (as defined in § 53.4965–2(b)) that are parties to prohibited tax shelter transactions.

(i) *Prohibited tax shelter transactions other than subsequently listed transactions*—(A) *Amount of tax if the entity did not know and did not have reason to know.* If the tax-exempt entity did not know and did not have reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the highest rate of tax under section 11 multiplied by the greater of—

(*1*) The entity's net income with respect to the prohibited tax shelter transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(B) *Amount of tax if the entity knew or had reason to know.* If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the greater of—

(*1*) 100 percent of the entity's net income with respect to the transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(ii) *Subsequently listed transactions*—(A) *In general.* In the case of a subsequently listed transaction (as defined in section 4965(e)(2) and § 53.4965–3(b)), the tax-exempt entity's income and proceeds attributable to the transaction are allocated between the period before the transaction became listed and the period beginning on the date the transaction became listed. See § 53.4965–8 for the standard for allocating net income or proceeds to various periods. The tax for each taxable year is the highest rate of tax under section 11 multiplied by the greater of—

(*1*) The entity's net income with respect to the subsequently listed transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year that is allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year; or

(*2*) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction and allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year.

(B) *No increase in tax.* The 100 percent tax under section 4965(b)(1)(B) and § 53.4965–7(a)(1)(i)(B) does not apply to any subsequently listed transaction (as defined in section 4965(e)(2) and § 53.4965–3(b)) entered into by a tax-exempt entity before the date on which the transaction is identified by the Secretary as a listed transaction.

(2) *Taxable year.* The excise tax imposed under section 4965(a)(1) applies for the taxable year in which the entity becomes a party to the prohibited tax shelter transaction and any subsequent taxable year for which the entity has net income or proceeds attributable to the transaction. A taxable year for tax-exempt entities is the calendar year or fiscal year, as applicable, depending on the basis on which the tax-exempt entity keeps its books for Federal income tax purposes. If a tax-exempt entity has not established a taxable year for Federal income tax purposes, the entity's taxable year for the purpose of determining the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction will be deemed to be the annual period the entity uses in keeping its books and records.

(b) *Manager-level taxes*—(1) *Amount of tax.* If any entity manager approved or otherwise caused the tax-exempt entity to become a party to a prohibited tax shelter transaction and knew or had reason to know that the transaction was a prohibited tax shelter transaction, such entity manager is liable for the $20,000 tax. See § 53.4965–5(d) for the meaning of approved or otherwise caused. See § 53.4965–6 for the meaning of knew or had reason to know.

(2) *Timing of the entity manager tax.* If a tax-exempt entity enters into a prohibited tax shelter transaction during a taxable year of an entity manager, then the entity manager that approved or otherwise caused the tax-exempt entity to become a party to the transaction is liable for the entity manager tax for that taxable year if the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction.

(3) *Example.* The application of paragraph (b)(2) of this section is illustrated by the following example:

Example. The entity manager's taxable year is the calendar year. On December 1, 2006, the entity manager approved or otherwise caused the tax-exempt entity to become a party to a transaction that the entity manager

knew or had reason to know was a prohibited tax shelter transaction. The tax-exempt entity entered into the transaction on January 31, 2007. The entity manager is liable for the entity manager level tax for the entity manager's 2007 taxable year, during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(4) *Separate liability.* If more than one entity manager approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction while knowing (or having reason to know) that the transaction was a prohibited tax shelter transaction, then each such entity manager is separately (that is, not jointly and severally) liable for the entity manager-level tax with respect to the transaction.

(c) *Effective dates.* See § 53.4965–9 for the discussion of the relevant effective dates.

§ 53.4965–8 Definition of net income and proceeds and standard for allocating net income or proceeds to various periods.

(a) *In general.* For purposes of section 4965(a), the amount and the timing of the net income and proceeds attributable to the prohibited tax shelter transaction will be computed in a manner consistent with the substance of the transaction. In determining the substance of listed transactions, the IRS will look to, among other items, the listing guidance and any subsequent guidance published in the Internal Revenue Bulletin relating to the transaction.

(b) *Definition of net income and proceeds*—(1) *Net income.* A tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Internal Revenue Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by taxes imposed by Subtitle D, other than by this section, with respect to the transaction.

(2) *Proceeds*—(i) *Tax-exempt entities that facilitate the transaction by reason of their tax-exempt, tax indifferent or tax-favored status.* Solely for purposes of section 4965, in the case of a tax-exempt entity that is a party to the transaction by reason of § 53.4965–4(a)(1) of this chapter, the term *proceeds* means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for section 4965 purposes.

(ii) *Tax-exempt entities that enter into transactions to reduce or eliminate their liability for applicable Federal taxes.* For purposes of section 4965, in the case of a tax-exempt entity that is a party to the transaction by reason of § 53.4965–4(a)(2) of this chapter, the term *proceeds* means tax savings purportedly generated by the transaction and claimed by the tax-exempt entity on its tax return with respect to the tax year. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for section 4965 purposes.

(iii) *Treatment of gifts and contributions.* To the extent not otherwise included in the definition of proceeds in paragraphs (b)(2)(i) and (ii) of this section, any amount that is a gift or a contribution to a tax-exempt entity and is attributable to a prohibited tax shelter transaction will be treated as proceeds for section 4965 purposes, unreduced by any associated expenses.

(c) *Allocation of net income and proceeds*—(1) *In general.* For purposes of section 4965(a), the net income and proceeds attributable to a prohibited tax shelter transaction must be allocated in a manner consistent with the tax-exempt entity's established method of accounting for Federal income tax purposes. If the tax-exempt entity has not established a method of accounting for Federal income tax purposes, solely for purposes of section 4965(a) the tax-exempt entity must use the cash receipts and disbursements method of accounting (cash method) provided for in section 446 of the Internal Revenue Code to determine the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction.

(2) *Special rule.* If a tax-exempt entity has established a method of accounting other than the cash method, the tax-exempt entity may nevertheless use the cash method of accounting to determine the amount of the net income and proceeds—

(i) Attributable to a prohibited tax shelter transaction entered into prior to the effective date of section 4965(a) tax and allocable to pre- and post-effective date periods; or

(ii) Attributable to a subsequently listed transaction and allocable to pre- and post-listing periods.

(d) *Transition year rules.* In the case of the taxable year that includes August 16, 2006 (the transition year), the IRS will treat the period beginning on the first day of the transition year and ending on August 15, 2006, and the period beginning on August 16, 2006, and ending on the last day of the transition year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the transition year in accordance with this section will be treated as allocable to the period—

(1) Ending on or before August 15, 2006 (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on August 15, 2006; and

(2) Beginning after August 15, 2006 (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning August 16, 2006.

(e) *Allocation to pre- and post-listing periods.* If a transaction (other than a prohibited reportable transaction (as defined in section 4965(e)(1)(C) and § 53.4965–3(a)(2)) to which the tax-exempt entity is a party is subsequently identified in published guidance as a listed transaction during a taxable year of the entity (the listing year) in which it has net income or proceeds attributable to the transaction, the net income or proceeds are allocated between the pre- and post-listing periods. The IRS will treat the period beginning on the first day of the listing year and ending on the day immediately preceding the date of the listing, and the period beginning on the date of the listing and ending on the last day of the listing year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the listing year in accordance with this section will be treated as allocable to the period—

(1) Ending before the date of the listing (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would

have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on the day immediately preceding the date of the listing; and

(2) Beginning on the date of the listing (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning on the date of the listing.

(f) *Examples.* The following examples illustrate the allocation rules of this section:

Example 1. (i) In 1999, X, a calendar year non-plan entity using the cash method of accounting, entered into a lease-in/lease-out transaction (LILO) substantially similar to the transaction described in Notice 2000–15 (2000–1 CB 826) (describing Rev. Rul. 99–14 (1999–1 CB 835), superseded by Rev. Rul. 2002–69 (2002–2 CB 760)). In 1999, X purported to lease property to Y pursuant to a ''head lease,'' and Y purported to lease the property back to X pursuant to a ''sublease'' of a shorter term. In form, X received $268M as an advance payment of head lease rent. Of this amount, $200M had been, in form, financed by a nonrecourse loan obtained by Y. X deposited the $200M with a ''debt payment undertaker.'' This served to defease both a portion of X's rent obligation under its sublease and Y's repayment obligation under the nonrecourse loan. Of the remainder of the $268M advance head lease rent payment, X deposited $54M with an ''equity payment undertaker.'' This served to defease the remainder of X's rent obligation under the sublease as well as the exercise price of X's end-of-sublease term purchase option. This amount inures to the benefit of Y and enables Y to recover its investment in the transaction and a return on that investment. In substance, the $54M is a loan from Y to X. X retained the remaining $14M of the advance head lease rent payment. In substance, this represents a fee for X's participation in the transaction. See § 601.601(d)(2)(ii)(b) of this chapter.

(ii) According to the substance of the transaction, the head lease, sublease and nonrecourse debt will be ignored for Federal income tax purposes. Therefore, any net income or proceeds resulting from these elements of the transaction will not be considered net income or proceeds attributable to the LILO transaction for purposes of section 4965(a). The $54M deemed loan from Y to X and the $14M fee are not ignored for Federal income tax purposes.

(iii) Under X's established cash basis method of accounting, any net income received in 1999 and attributable to the LILO transaction is allocated to X's December 31, 1999, tax year for purposes of section 4965. The $14M fee received in 1999, and which constitutes proceeds of the transaction, is likewise allocated to that tax year. Because the 1999 tax year is before the effective date of the section 4965 tax, X will not be subject to any excise tax under section 4965 for the amounts received in 1999.

(iv) Any earnings on the amount deposited with the equity payment undertaker that constitute gross income to X will be reduced by X's original issue discount deductions with respect to the deemed loan from Y, in determining X's net income from the transaction.

Example 2. B, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31, 2006. B entered into a prohibited tax shelter transaction on March 15, 2006. On that date, B received a payment of $600,000 as a fee for its involvement in the transaction. B received no other proceeds or income attributable to this transaction in 2006. Under B's method of accounting, the payment received by B on March 15, 2006, is taken into account in the deemed short year ending on August 15, 2006. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the period ending on or before August 15, 2006, and is not subject to the excise tax imposed by section 4965(a).

Example 3. The facts are the same as in *Example 2*, except that B received an additional payment of $400,000 on September 30, 2006. Under B's method of accounting, the payment received by B on September 30, 2006, is taken into account in the deemed short year beginning on August 16, 2006. Accordingly, solely for purposes of section 4965, the $400,000 payment is treated as allocable to the period beginning after August 15, 2006, and is subject to the excise tax imposed by section 4965(a).

Example 4. C, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31. C entered into a prohibited tax shelter transaction on May 1, 2005. On March 15, 2007, C received a payment of $580,000 attributable to the transaction. On June 1, 2007, the transaction is identified by the IRS in published guidance as a listed transaction. On June 15, 2007, C received an additional payment of $400,000 attributable to the transaction. Under C's method of accounting, the payments received on March 15, 2007, and June 15, 2007, are taken into account in 2007. The IRS will treat the period beginning on January 1, 2007, and ending on May 31, 2007, and the period beginning on June 1, 2007, and ending on December 31, 2007, as short taxable years. The payment received by C on March 15, 2007, is taken into account in the deemed short year ending on May 31, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the pre-listing period, and is not subject to the excise tax imposed by section 4965(a). The payment received by C on June 15, 2007, is taken into account in the deemed short year beginning on June 1, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable to the post-listing period, and is subject to the excise tax imposed by section 4965(a).

(g) *Effective/applicability dates.* See § 53.4965–9 for the discussion of the relevant applicability dates.

§ 53.4965–9 Effective/applicability dates.

(a) *In general.* The taxes under section 4965(a) and § 53.4965–7 are effective for taxable years ending after May 17, 2006, with respect to transactions entered into before, on or after that date, except that no tax under section 4965(a) applies with respect to income or proceeds that are properly allocable to any period ending on or before August 15, 2006.

(b) *Applicability of the regulations.* Except as provided in paragraph (c) of this section, upon publication of final regulations, §§ 53.4965–1 through 53.4965–8 of this chapter will apply to taxable years ending after July 6, 2007. A tax-exempt entity may rely on the provisions of §§ 53.4965–1 through 53.4965–8 for taxable years ending on or before July 6, 2007.

(c) *Effective date with respect to certain knowing transactions*—(1) *Entity-level tax.* The 100 percent tax under section 4965(b)(1)(B) and § 53.4965–7(a)(1)(i)(B) does not apply to prohibited tax shelter transactions entered into by a tax-exempt entity on or before May 17, 2006.

(2) *Manager-level tax.* The IRS will not assert that an entity manager who approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction is liable for the entity manager tax under section 4965(b)(2) and § 53.4965–7(b)(1) with respect to the transaction if the tax-exempt entity entered into such transaction prior to May 17, 2006.

Par. 5. In § 53.6071–1, paragraphs (g) and (h) are added to read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(g) [The text of the proposed amendment to § 53.6071–1(g) is the same as the text of § 53.6071–1T(g) published elsewhere in this issue of the **Federal Register**].

(h) [The text of the proposed amendment to § 53.6071–1(h) is the same as the text of § 53.6071–1T(h) published elsewhere in this issue of the **Federal Register**].

PART 54—EXCISE TAXES, PENSIONS, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 6. The authority citation for part 54 continues to read, in part, as follows:

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

Par. 7. In § 54.6011–1, paragraphs (c) and (d) are added to read as follows:

§ 54.6011–1 General requirement of return, statement or list.

* * * * *

(c) [The text of the proposed amendment to § 54.6011–1(c) is the same as the text of § 54.6011–1T(c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendment to § 54.6011–1(d) is the same as the text of § 54.6011–1T(d) published elsewhere in this issue of the **Federal Register**].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 8. The authority citation for part 301 continues to read, part, as follows:

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

Par. 9. Section 301.6011(g)–1 is added to read as follows:

§ 301.6011(g)–1 Disclosure by taxable party to the tax-exempt entity.

(a) *Requirement of disclosure*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, any taxable party (as defined in paragraph (c) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e) and § 53.4965–3 of this chapter) must disclose by statement to each tax-exempt entity (as defined in section 4965(c) and § 53.4965–2 of this chapter) that the taxable party knows or has reason to know is a party to such transaction (as defined in paragraph (b) of this section) that the transaction is a prohibited tax shelter transaction.

(2) *Determining whether a taxable party knows or has reason to know.* Whether a taxable party knows or has reason to know that a tax-exempt entity is a party to a prohibited tax shelter transaction is based on all the facts and circumstances. If the taxable party knows or has reason to know that a prohibited tax shelter transaction involves a tax-exempt, tax indifferent or tax-favored entity, relevant factors for determining whether the taxable party knows or has reason to know that a specific tax-exempt entity is a party to the transaction include—

(i) The extent of the efforts made to determine whether a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax-indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction); and

(ii) If a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax-indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction), the extent of the efforts made to determine the identity of the tax-exempt entity.

(b) *Definition of tax-exempt party to a prohibited tax shelter transaction*—(1) *In general.* For purposes of section 6011(g), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(i) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status; or

(ii) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(2) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(c) *Definition of taxable party*—(1) *In general.* For purposes of this section, the term *taxable party* means—

(i) A person who has entered into and participates or expects to participate in the transaction under §§ 1.6011–4(c)(3)(i)(A), (B), or (C), 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter; or

(ii) A person who is designated as a taxable party by the Secretary in published guidance.

(2) *Special rules*—(i) *Certain listed transactions.* If a transaction that was otherwise not a prohibited tax shelter transaction becomes a listed transaction after the filing of a person's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction), the person is a taxable party beginning on the date the transaction is described as a listed transaction in published guidance.

(ii) *Persons designated as non-parties.* Published guidance may identify which persons, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(d) *Time for providing disclosure statement*—(1) *In general.* A taxable party to a prohibited tax shelter transaction must make the disclosure required by this section to each tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction within 60 days after the last to occur of—

(i) The date the person becomes a taxable party to the transaction within the meaning of paragraph (c) of this section; or

(ii) The date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section.

(2) *Termination of a disclosure obligation.* A person shall not be required to provide the disclosure otherwise required by this section if the person does not know or have reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section on or before the first date on which the transaction is required to be disclosed by the person under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter.

(3) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) *Frequency of disclosure.* One disclosure statement is required per tax-exempt entity per transaction. See paragraph (h) of this section for rules relating to designation agreements.

(f) *Form and content of disclosure statement.* The statement disclosing to the tax-exempt entity that the transaction is a prohibited tax shelter transaction must be a written statement that—

(1) Identifies the type of prohibited tax shelter transaction (including the published guidance citation for a listed transaction); and

(2) States that the tax-exempt entity's involvement in the transaction may subject either it or its entity manager(s) or both to excise taxes under section 4965 and to disclosure obligations under section 6033(a) of the Internal Revenue Code.

(g) *To whom disclosure is made.* The disclosure statement must be provided—

(1) In the case of a non-plan entity as defined in § 53.4965–2(b) of this chapter, to—

(i) Any entity manager of the tax-exempt entity with authority or responsibility similar to that exercised by an officer, director or trustee of an organization; or

(ii) If a person described in paragraph (g)(1)(i) of this section is not known, to the primary contact on the transaction.

(2) In the case of a plan entity as defined in § 53.4965–2(c) of this chapter, including a fully self-directed qualified plan, IRA, or other savings arrangement, to any entity manager of the plan entity who approved or otherwise caused the entity to become a party to the prohibited tax shelter transaction.

(h) *Designation agreements.* If more than one taxable party is required to disclose a prohibited tax shelter transaction under this section, the taxable parties may designate by written agreement a single taxable party to disclose the transaction. The transaction must then be disclosed in accordance with this section. The designation of one taxable party to disclose the

transaction does not relieve the other taxable parties of their obligation to disclose the transaction to a tax-exempt entity that is a party to the transaction in accordance with this section, if the designated taxable party fails to disclose the transaction to the tax-exempt entity in a timely manner.

(i) *Penalty for failure to provide disclosure statement.* See section 6707A for penalties applicable to failure to disclose a prohibited tax shelter transaction in accordance with this section.

(j) *Effective/applicability date.* This section will apply with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

Par. 11. Section 301.6033–5 is added to read as follows:

§ 301.6033–5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

[The text of this section is the same as the text of § 301.6033–5T published elsewhere in this issue of the **Federal Register**].

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–12902 Filed 7–5–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU53

Endangered and Threatened Wildlife and Plants; Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service, we or us) announces the reopening of the comment period for the proposed rule to establish a distinct population segment (DPS) of the gray wolf (*Canis lupis*) in the Northern Rocky Mountains (NRM) of the United States and to remove the gray wolf in the NRM DPS from the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act). The State of Wyoming has a new statute and has advised the Service that it is appropriate to analyze a new draft wolf management plan that the Service believes could allow the wolves in northwestern Wyoming outside the National Parks to be removed from the protections of the Act. We are reopening the proposal's comment period to ensure that the public has full access to, and an opportunity to comment on, the proposed rule in light of this new information. We also announce the location and time of an additional public hearing to receive public comments on the proposal in light of the new information. If you have previously submitted comments, please do not resubmit them because we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: The public comment period is reopened until August 6, 2007. We may not consider any comments we receive after the closing date. We will hold a public hearing on this proposed rule on July 17, 2007. For more information, see ''Public Hearing and Comments'' below.

Public Hearing

An open house (a brief presentation about the proposed rule and revised plan with a question and answer period) will be held from 4:30 p.m. to 5:30 p.m., and will be followed by a public hearing from 5:30 p.m. to 8:30 p.m., on July 17, 2007, at the Cody Auditorium Facility, 1240 Beck Avenue, Cody, WY 82414.

ADDRESSES: If you wish to comment, you may submit comments and materials concerning this proposal, identified by ''RIN number 1018–AU53,'' by any of the following methods:

1. You may submit comments through the Federal e-Rulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.

2. You may send comments by electronic mail (email) directly to the Service at *WesternGrayWolf@fws.gov*. Include ''RIN number 1018–AU53'' in the subject line of the message.

3. You may mail or hand-deliver comments to the U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, MT 59601.

Comments and materials received, as well as supporting documentation used in preparation of this proposed action, will be available for inspection following the close of the comment period, by appointment, during normal business hours, at our Helena office at the address above.

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone (406) 449–5225, extension 204. Persons who use a Telecommunications Device for the Deaf may call the Federal Information Relay Service at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2007, we published a proposal to establish a DPS of the gray wolf in the NRM of the United States and to remove the NRM DPS from the List of Threatened and Endangered Wildlife (72 FR 6106) if Wyoming adopted a state law and management plan that adequately conserved wolves. The initial comment period on this proposal was open from February 8, 2007 to April 9, 2007. Due to the complexity of this proposed action, we extended the comment period to May 9, 2007 to allow the public ample opportunity to comment (72 FR 14760; March 29, 2007).

At the time of this proposal, Wyoming had not provided an adequate regulatory framework to ensure conservation of a recovered wolf population into the foreseeable future (for more information, see our 12-month finding on Wyoming's petition to establish and delist the NRM gray wolf population (71 FR 43410; August 1, 2006) at *http://www.fws.gov/mountain-prairie/species/mammals/wolf/FR08012006.pdf*). Therefore, in the preamble we indicated we would consider excluding the significant portion of the range of the NRM DPS occurring in Wyoming, outside Yellowstone National Park, John D. Rockefeller Jr. Memorial Parkway, and Grand Teton National Park (hereafter collectively referred to as National Parks) from the delisting. This alternative in the preamble also considered delisting the wolf on National Park Service lands and in those portions of Wyoming not determined to be a significant portion of the range. The exact boundaries are described in the proposed rule (72 FR 6119; February 8, 2007). A map can be found at *http://www.fws.gov/mountain-prairie/species/mammals/wolf/wyomingwolves2006.pdf*. However, the rule proposed to delist all of the NRM DPS if Wyoming adopted a State law and wolf management plan that the Service determined to be in compliance with the Act (72 FR 6138; February 8, 2007).