

§ 1.6043-3 Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

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(b) * * *

(8) [The text of this proposed amendment to § 1.6043-3(b)(8) is the same as the text of § 1.6043-3T(b)(8) published elsewhere in this issue of the **Federal Register**.]

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(d) [The text of this proposed amendment to § 1.6043-3(d) is the same as the text of § 1.6043-3T(d) published elsewhere in this issue of the **Federal Register**.]

(e) [The text of this proposed amendment to § 1.6043-3(e) is the same as the text of § 1.6043-3T(e)(1) and (e)(2) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-128841-07]

RIN 1545-BG91

Public Approval Guidance for Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations on the public approval requirements under section 147(f) of the Internal Revenue Code (Code) applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations affect State and local governmental issuers of tax-exempt private activity bonds. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 8, 2008. Outlines of topic to be discussed at the public hearing scheduled for January 26, 2009, at 10 a.m., must be received by December 29, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-128841-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station,

Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128841-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-128841-07). The public hearing will be held in the auditorium beginning at 10 a.m. at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, David White, (202) 622-3980; concerning submissions of comments and the hearing, contact Fummi Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the proposed regulations has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 10, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collection of information in this proposed regulation is in § 1.147(f)-1(b). This information is required to meet the

public approval requirement under section 147(f). The likely respondents are issuers of qualified private activity bonds.

Estimated total annual reporting burden: 2,600 hours.

Estimated average annual burden per respondent: 1.3 hours.

Estimated number of respondents: 2,000.

Estimated frequency of responses: Not applicable (this is a third-party disclosure requirement).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to add new § 1.147(f)-1 (the "Proposed Regulations") relating to the public approval requirement for tax-exempt private activity bonds under section 147(f) of the Internal Revenue Code.

Explanation of Provisions

I. Introduction

In general, interest on State and local bonds is excludable from gross income under section 103 of the Internal Revenue Code of 1986 (the "Code"). Interest on a private activity bond is excludable from gross income under section 103 only if the bond meets the requirements for a "qualified bond" under section 141(e) and other applicable requirements under section 103. Section 141(e) requires that a bond meet the public approval requirement of section 147(f), among other requirements, to be a qualified bond.

II. Statutory Predecessor and Existing Regulations

The predecessor to section 147(f) was section 103(k) of the Internal Revenue Code of 1954 ("1954 Code"), which was added by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, 96 Stat. 324 (1982). Section 103(k) of the 1954 Code imposed a public approval requirement on industrial development bonds. Temporary Income Tax Regulations § 5f.103-2 were published under section

103(k) of the 1954 Code in the **Federal Register** on May 11, 1983 (TD 7892; 48 FR 21115) (the “Existing Regulations”).

In the Tax Reform Act of 1986, Public Law 99–514 (the “1986 Act”), Congress reorganized the tax-exempt bond provisions and largely carried forward the provisions of section 103(k) of the 1954 Code into new section 147(f) of the Code. In new section 147(f), Congress also expanded this public approval requirement to apply to all types of tax-exempt private activity bonds under section 141. The legislative history to the 1986 Act provides that “[t]he conferees intend that, to the extent not amended, all principles of present law continue to apply under the reorganized provisions.” 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–686 (1986), 1986–3 CB (Vol. 4) at 686.

III. Proposed Regulations

A. In General

In general, the Proposed Regulations provide updating, clarifying, and simplifying guidance on discrete aspects of the public approval requirement under section 147(f) (the “*public approval requirement*”). The Proposed Regulations provide guidance that focuses generally on the scope, content, process, and timing for reasonable public notices, public hearings, and public approvals of tax-exempt private activity bonds under section 147(f).

The Proposed Regulations provide some special rules to address certain changes to the *public approval requirement* made by the 1986 Act that expanded the application of this requirement to include all types of tax-exempt private activity bonds. The Proposed Regulations also provide guidance to simplify compliance and reduce administrative burdens on State and local governments associated with the *public approval requirement*, including guidance to recognize advances in technology and electronic communication. The Proposed Regulations also ensure that the affected public will receive reasonable public notice and an opportunity for a public hearing and that appropriate governmental units will approve a bond issue following public notice and a public hearing.

The Proposed Regulations generally do not update the portions of the Existing Regulations relating to the applicable governmental units that are required to provide public approvals for a bond issue and the applicable elected representatives of those governmental units. One special rule in the Proposed Regulations provides that only the governmental unit by or on behalf of

which bonds are issued is required for certain types of financings and that no separate public approval is required by a host governmental unit with respect to the location, if any, of financed facilities due to the absence of financed facilities (for example, qualified student loan bonds under section 144(b) or qualified 501(c)(3) bonds under section 145 for working capital expenditures) or the widespread or unknown locations of the financed facilities (for example, mortgage revenue bonds). The Treasury Department and the IRS solicit public comment on whether or in what respects those portions of the Existing Regulations should be updated or modified further.

The Proposed Regulations provide that the Existing Regulations continue to apply for purposes of section 147(f) to the extent that the Existing Regulations are not inconsistent with the final version of the Proposed Regulations, the 1986 Act, or subsequent law.

B. Content of Public Approval in General

The Proposed Regulations provide updated guidance on the content of information required to be included in a reasonable public notice and public approval. The Proposed Regulations continue and modify in limited respects the existing general standard from the Existing Regulations. Under the Proposed Regulations, required information for this purpose generally includes the information described in this preamble.

The Existing Regulations require a functional description of the type and use of the facility to be financed with the bond issue. In response to public comment, the Proposed Regulations streamline this requirement to allow a general reference to the type of exempt facility bond being issued or, for other types of private activity bonds, a reference to the type of qualified bond and a general description of the type and use of the facility to be financed. (for example, an exempt facility bond for an airport under section 142(a)(1), or a qualified 501(c)(3) bond to finance a hospital).

The Existing Regulations also require the maximum stated principal amount of bonds expected to be issued for the facility. The Proposed Regulations continue this requirement.

The Existing Regulations require the name of the expected initial legal owner, operator, or manager of the facility. The Proposed Regulations modify this requirement. Under the Proposed Regulations, the name provided may be either the name of the legal owner or principal user (as defined

under section 144(a)) or, alternatively, the name of the true beneficial party of interest (for example, the name of a 501(c)(3) organization, which is the sole member of a limited liability company owner).

The Existing Regulations require a general description of the prospective location of the facility by street address, or, if none, by a general description that is reasonably designed to inform the public about the location of the project. The Existing Regulations assume that bond issues finance a single capital project. The Proposed Regulations provide that, for a facility that involves multiple capital projects on the same site, or adjacent or reasonably proximate sites used for similar purposes, a consolidated description of the geographic boundaries of all such capital projects may be a sufficient description of the location.

The Proposed Regulations also modify and expand the existing definition of a “facility” to include within the scope of that defined term the principle that a facility may include multiple capital projects.

C. Special Rules for Mortgage Revenue Bonds, Qualified Student Loan Bonds, and Certain Qualified 501(c)(3) Bonds

The 1986 Act extended the *public approval requirement* beyond traditional facility-focused industrial development bonds under the 1954 Code to include qualified mortgage bonds and qualified veterans mortgage bonds under section 143(a) and 143(b) of the Code (together, “mortgage revenue bonds”), qualified student loan bonds under section 144(b) of the Code, and qualified 501(c)(3) bonds under section 145 of the Code. The expansion of the *public approval requirement* to these types of bonds raises questions about the scope of information appropriately needed for public approvals for these types of bonds. Section 147(f) and congressional intent generally suggest that the *public approval requirement* must be met before the issuance of the bonds. For these types of bonds, however, certain information generally required for public approvals about specific borrowers or specific projects may be unknown before the issuance of the bonds or may be inappropriate for portfolio loan financings.

The Treasury Department and IRS realize there may have been uncertainty on how to apply certain aspects of the public approval requirement to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) pooled financing bonds under section 145 after the 1986 Act in light

of special characteristics of these financings (for example, the absence of financed facilities for qualified student loan bonds or the widespread or unknown locations of the facilities to be financed for mortgage revenue bonds or certain 501(c)(3) pooled bonds). Therefore, issuers of these types of bonds that made a good faith effort to comply with section 147(f) and section 5f.103-2(f)(2) of the Existing Regulations, taking into account Congressional intent and the special characteristics of these types of financings, will not be subject to audit by the IRS merely because the issuer did not include all of the information required to be included in the public notice and public approval for industrial development bonds under section 5f.103-2(f)(2) of the Existing Regulations.

The Proposed Regulations provide special rules that allow less specific information for public approvals of mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds that finance loans described in the special rule for pooled financings under section 147(b)(4).

For mortgage revenue bonds, the Proposed Regulations generally require that reasonable public notice and public approval state the maximum stated principal amount of the bonds that will be issued to finance mortgage loans under section 143 and a general description of the geographic jurisdiction in which residences financed with proceeds of the mortgage revenue bonds will be located (for example, residences located throughout a state for an issuer with a statewide jurisdiction). No information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

For qualified student loan bonds, the Proposed Regulations generally require that reasonable public notice and public approval state the maximum stated principal amount of the bonds that will be issued to finance student loans and a general description of the type of student loan program that the loans will be made under (for example, a Federally-guaranteed student loan program under the Higher Education Act of 1965 or a state supplemental student loan program). Recognizing that these bonds do not finance facilities, the Proposed Regulations do not require names of specific student loan borrowers or locations of facilities.

For qualified 501(c)(3) bonds that finance loans described in the special provision for pooled loan financings under section 147(b)(4), the Proposed Regulations provide for a two-stage

public approval process. First, within the time specified in the Proposed Regulations for public approval generally, public approval must be obtained based on the stated maximum principal amount of bonds to be issued to finance such loans and a general description of the types of facility or facilities to be financed with the loans (for example, loans for hospital facilities). No statement need be made about the location of the facility or the initial user of the facility if that information is not known at that time. Second, before a loan is originated and potentially after the issue date of the issue, a supplemental public approval for that loan must be obtained based on specific information about the borrower and the particular facility to be financed with the loan, including the location of the facility. In applying the supplemental public approval requirement to specific loans, the public approval requirement applies generally as if the bonds that financed the specific loans were reissued for purposes of section 147(b). This requirement is similar to the remedial action requirement in § 1.141-12(e)(2) and (f), which treats bonds as reissued for purposes of section 147 when complying with certain remedial action rules. The Treasury Department and the IRS solicit comments on whether a rule similar to the special two-stage public approval requirement for qualified 501(c)(3) bonds in pooled bond issues should apply to other types of pooled bond issues.

D. Insubstantial and Substantial Deviations in Public Approval Information

The Proposed Regulations provide generally that a substantial deviation between information required to be conveyed in a reasonable public notice and public approval and actual information causes the issue to fail to meet the *public approval requirement*. Whether a deviation is substantial is generally based on all the facts and circumstances.

The Proposed Regulations continue and clarify a rule from the Existing Regulations that provides that insubstantial deviations in public approval information do not invalidate a public approval. Public commentators have indicated that questions often arise about what changes are substantial.

The Proposed Regulations provide two objective safe harbors under which certain changes will not be considered substantial deviations. The Proposed Regulations provide that each of the following is an insubstantial deviation: (1) a difference in the amount of

proceeds used for a facility when the amount used for the facility differs from the amount the public approval stated would be used for the facility by an amount that is not more than five percent (5%) of net proceeds of the issue; and (2) a change in initial owner or principal user of a project when the new owner or principal user is a related party (as defined in § 1.150-1) to the initial owner or principal user named in the public approval on the issuance date.

The prohibition against substantial deviations has created problems when an issuer reasonably expected at the time the bonds were issued to use the bonds proceeds for the facility stated in the public approval, but later determined, as a result of unexpected events or unforeseen changes in circumstances, that the original planned use was no longer feasible or that it did not need all of the proceeds for the facility. In these circumstances, an issuer may be unable to use the bond proceeds for another purpose because the new use was not covered by the information in the public approval.

The Proposed Regulations propose a special rule for certain cases in which there is a substantial deviation between the information required to be provided in a reasonable public notice and public approval and subsequent events. This rule provides that, if certain conditions are met, an issuer can cure a substantial deviation in public approval information through a subsequent public approval. This remedial action is similar to the permitted post-issuance public approval used for remedial actions under § 1.141-12(e)(2) and (f).

In general, the Proposed Regulations provide that an issuer may cure a substantial deviation if it satisfies several conditions. First, the issuer must have obtained a timely public approval for the bond issue in accordance with the *public approval requirement* and the issuer must have reasonably expected on the issue date to use the proceeds of the issue in accordance with the public approval information. Second, the issuer must encounter unexpected events or unforeseen changes in circumstances after the issue date as a result of which it determines either that it is no longer feasible or viable to use the proceeds of some or all of the bonds in the manner set forth in the original public approval, or that it did not need to use the full amount of the proceeds stated in the public approval for the facility. Third, the issuer must obtain a supplemental public approval for the bonds affected by the substantial deviation that meets the *public approval requirement* applied by treating those

bonds as if they were reissued for this purpose.

E. Reasonable Public Notice and Public Hearing

The Proposed Regulations update and simplify the rules in the Existing Regulations on reasonable public notice and public hearings in several ways. First, in addition to the existing permitted methods for providing reasonable public notice, which include newspaper publication or television or radio broadcast, the Proposed Regulations allow a governmental unit to provide reasonable public notice of a public hearing by posting notice of the hearing electronically on its Web site if it regularly uses that Web site to inform its residents about events affecting the residents (including notice of public meetings of the governmental unit) and it offers a reasonable alternative method for obtaining this information for residents without access to computers (such as phone recordings). In addition, the Proposed Regulations define a "writing" generally to include electronic communication if permitted by the governmental unit. Thus, the public may submit electronic comments to the governmental unit if permitted by the governmental unit. The proposed regulations also reduce the time required between the reasonable public notice and public hearing from fourteen days to seven business days. These revisions recognize the current market environment and the increasing importance of electronic communication.

In addition, the Proposed Regulations expand the types of governmental units that may provide public notice in an alternative manner under a general State law on public notice procedures for public hearings to include all approving governmental units.

Finally, the Proposed Regulations allow a governmental unit to cancel a public hearing if it provides reasonable public notice of the hearing and receives no requests to participate in the hearing.

III. Proposed Effective/Applicability Date

The proposed regulations will apply to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to section 147(f).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed

regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on considerations which are summarized. In general, the proposed regulations involve an existing statutory public approval requirement for tax-exempt private activity bonds under Section 147(f) of the Internal Revenue Code, which requires reasonable public notice, a public hearing, and public approval of these bonds by certain affected State or local governmental units and which imposes certain information requirements for this purpose. These proposed regulations generally address matters regarding the scope, content, process, and timing for public notices and public hearings in connection with these public approvals. These proposed regulations will affect all issuers of tax-exempt private activity bonds, including a substantial number of small State or local governmental units. These proposed regulations are not expected to have a significant economic impact on the affected entities, however, because these proposed regulations primarily are intended to streamline, simplify, and clarify the application of the existing public approval requirement in various ways, such as by allowing certain public notices on Web sites to reduce costs associated with print publication of public notices, by limiting the information required for certain types of bond issues, and by providing certain safe harbors and curative ways to assist with compliance in connection with changes in bond issues. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. The IRS and the Treasury Department specifically solicit comments from any party, particularly affected small entities, on the accuracy of this certification. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Small Business Administration for comment on its impact on small governmental jurisdictions.

Comments and Public Hearing

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

All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 26, 2009, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by December 8, 2008 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by December 29, 2008. A period of 10 minutes will be allotted to each person for making comments.

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

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal and David White, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 1.147(f)–1 is added to read as follows:

§ 1.147(f)–1 Public approval of private activity bonds.

(a) *In general.* Interest on a private activity bond is excludable from gross income under section 103(a) only if the bond meets the requirements for a qualified bond under section 141(e) and other applicable requirements under section 103. In order to be a qualified bond under section 141(e), one of the requirements that must be met is the public approval requirement under section 147(f). This section provides guidance on the public approval requirement under section 147(f). In addition, to the extent not inconsistent with this section, the Tax Reform Act of 1986 (Pub. L. 99–514), or subsequent law, § 5f.103–2 of this chapter continues to apply for purposes of the public approval requirement under section 147(f).

(b) *Scope, content, process, and timing for public approvals—(1) In general.* This paragraph (b) provides guidance on the scope, content, process, and timing required for public approval of an issue of private activity bonds under section 147(f). In general, except as otherwise provided in this section, to meet the public approval requirement under section 147(f) for an issue (as defined in § 1.150–1) of private activity bonds, reasonable public notice (as defined in paragraph (c)(3) of this section) must be given in advance for a public hearing (as defined in paragraph (c)(2) of this section), a public hearing must be held, and the applicable governmental units under section 147(f)(2)(A) must provide public approval within the time set forth in paragraph (b)(8) of this section and in the manner set forth in section 147(f)(2)(B).

(2) *General rule on information required for a reasonable public notice and public approval.* Except as otherwise provided in this section, a facility (as defined in paragraph (c) of this section) to be financed with an issue is within the scope of a public approval under section 147(f) if the reasonable public notice of the public hearing and the public approval include the information set forth in paragraphs (b)(2)(i) through (iv) of this section.

(i) *The facility.* The information includes a general functional description of the type and use of the facility to be financed with the issue. For this purpose, a facility description generally is sufficient if it identifies the facility by reference to a particular category of exempt facility bond to be issued (for example, an exempt facility bond for an airport under section 142(a)(1) or an enterprise zone facility bond under section 1394(a)), or if not an

exempt facility bond, by reference to another general category of private activity bond, together with accompanying information on the type and use of the facility to be financed with the issue (for example, a qualified small issue bond under section 144(b) for a manufacturing facility, a qualified 501(c)(3) bond under section 145 for a hospital facility and working capital expenditures, or a qualified mortgage bond for qualified mortgage loans for single-family housing residences under section 143).

(ii) *The maximum stated principal amount of bonds.* The information includes the maximum stated principal amount of the issue of private activity bonds to be issued to finance the facility.

(iii) *The name of the initial owner or principal user of the facility.* The information includes the name of the expected initial owner or principal user (as defined under section 144(a) of the facility. The name provided may be either the name of the legal owner or principal user of the facility or, alternatively, the name of the true beneficial party of interest for such legal owner or user (for example, the name of a 501(c)(3) organization which is the sole member of a limited liability company owner).

(iv) *The location of the facility.* The information includes a general description of the prospective location of the facility by street address, reference to boundary streets or other geographic boundaries, or other description of the specific geographic location that is reasonably designed to inform readers of the location. For a facility involving multiple capital projects located on the same site, or on adjacent or reasonably proximate sites with similar uses, a consolidated description of the location of those capital projects may provide a sufficient description of the location of the facility. For example, a facility for a 501(c)(3) educational entity involving multiple buildings on the entity's main urban college campus may describe the location of the facility by reference to the outside street boundaries of that campus with a reference to any noncontiguous features of that campus.

(3) *Special rule for mortgage revenue bonds.* Mortgage revenue bonds under section 143 are treated as within the scope of a public approval under paragraph (b)(2) of this section if the reasonable public notice of the public hearing and the public approval state that the bonds are to be issued under section 143, the maximum stated principal amount of mortgage revenue bonds expected to be issued, and a

general description of the geographic jurisdiction in which the residences to be financed with the proceeds of the mortgage revenue bonds are expected to be located, recognizing the issuer jurisdictional limitations on such financing under section 143(c)(1)(B) (for example, residences located throughout a state for an issuer with a statewide jurisdiction or residences within a particular local geographic jurisdiction, such as within a city or county, for a local issuer). In applying paragraph (b)(2) of this section to mortgage revenue bonds, no information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

(4) *Special rule for qualified student loan bonds.* Qualified student loan bonds under section 144(b) are treated as within the scope of a public approval under paragraph (b)(2) of this section if the reasonable public notice of the public hearing and the public approval state that the bonds will be issued under section 144(b), the maximum stated principal amount of qualified student loan bonds expected to be issued for qualified student loans, and a general description of the type of student loan program that the loans are to be made under (for example, a Federally-guaranteed student loan program under the Higher Education Act of 1965 or a state supplemental student loan program). In applying paragraph (b)(2) of this section to qualified student loan bonds, and recognizing that these bonds do not finance facilities, no information is required with respect to names of specific student loan borrowers or locations of facilities.

(5) *Special rule for certain qualified 501(c)(3) bonds.* Qualified 501(c)(3) bonds under section 145 to be used to finance loans described in section 147(b)(4)(B) (without regard to any election under section 147(b)(4)(A)) are treated as within the scope of a public approval under paragraph (b)(2) of this section if both of the following requirements are met—

(i) *Pre-issuance general public approval.* Within the time period defined in paragraph (b)(8) of this section, public approval is obtained after reasonable public notice of a public hearing is provided and a public hearing is held. For this purpose, a facility is treated as described in a public notice of a public hearing and public approval if the notice and public approval provide that the bonds will be qualified 501(c)(3) bonds to be used to finance loans described in section 147(b)(4)(B), the maximum stated principal amount of bonds expected to be issued to finance loans to other

501(c)(3) organizations or governmental units as described in section 147(b)(4)(B), a general description of the type of facility to be financed with such loans (for example, loans for hospital facilities or college facilities), and a statement that an additional public approval that includes specific project information will be obtained before any such loans are originated; and

(ii) *Post-issuance public approval for specific loans.* Before a loan described in section 147(b)(4)(B) is originated, a supplemental public approval for the bonds to be used to finance that loan is obtained, and that supplemental public approval meets all the requirements of section 147(f) and this section applied by treating the bonds to be used to finance such loan as if they were reissued for purpose of section 147(f) (applied without regard to this paragraph (b)(5)).

(6) *Deviations in public approval information—(i) In general.* Except as otherwise provided in this paragraph (b)(6), a substantial deviation between the information required to be provided in a public notice of public hearing and public approval under paragraph (b)(2) of this section and actual information causes that issue to fail to meet the public approval requirement under section 147(f). Conversely, insubstantial deviations between information required to be provided in a notice of public hearing and public approval and actual information do not cause a failure to meet section 147(f). In general, for purposes of this paragraph (b)(6), the determination of whether a deviation is substantial is based on all the facts and circumstances. However, a change in the fundamental nature or type of a project is a substantial deviation.

(ii) *Certain insubstantial deviations in public approval information.* For purposes of this paragraph (b)(6), the following deviations are treated as insubstantial deviations:

(A) *Use of proceeds.* A deviation between the amount of proceeds of the issue that the notice of public hearing and public approval stated would be used for a facility and the amount of proceeds actually used for that facility is insubstantial if the amount of the difference does not exceed an amount equal to five percent (5%) of the net proceeds (as defined in section 150(a)(3)) of the issue.

(B) *Initial owner or principal user.* A deviation between the initial owner or principal user of the facility named in a notice of public hearing and public approval and the actual initial owner or principal user of the facility is treated as insubstantial if such parties are related

parties (as defined in § 1.150–1) on the issue date of the issue.

(iii) *Special rule to address certain substantial deviations in public approval information.* A substantial deviation between the information required to be conveyed in the notice of public hearing and the public approval under paragraph (b)(2) and the actual information does not cause that issue to fail to meet the public approval requirement under section 147(f) if the following requirements are met:

(A) *Original public approval and reasonable expectations.* The issuer obtained a timely public approval (as set forth in paragraph (b)(8) of this section) for the issue in accordance with section 147(f) and, on the issue date of the issue, the issuer reasonably expected there would be no substantial deviations between the information required to be conveyed in the notice of public hearing and public approval and actual information.

(B) *Unexpected events or unforeseen changes in circumstances.* As a result of unexpected events or unforeseen changes in circumstances that arise after the issue date of the issue, the issuer determines that it cannot use some or all of the proceeds in the manner provided in the public approval either because such use is no longer feasible or viable, or because the cost of the facility was less than expected so the issuer did not need all of the proceeds specified in the public approval for the facility.

(C) *Supplemental public approval.* Before using the proceeds of the bonds that are affected by the substantial deviation for a different use, the issuer obtains a supplemental public approval for those bonds, and that supplemental public approval meets all the requirements of section 147(f) applied by treating those bonds as if they were reissued for purpose of section 147(f).

(7) *Certain timing requirements.* Except as otherwise provided in this section, a public approval of an issue under section 147(f) is timely only if the issuer obtains the public approval within one year before the issue date (as defined in section 1.150–1) of the issue. For a plan of financing described in section 147(f)(2)(C), public approval is timely for the plan of financing if the issuer obtains public approval for the plan of financing within one year before the issue date of the first issue issued under the plan of financing and the issuer issues all issues under the plan of financing within three years after the issue date of such first issue.

(c) *Definitions—*Unless otherwise stated, for purposes of this section, the following definitions apply:

(1) *Facility.* In general, for purposes of this section and section 5f.103–2, the term *facility* means one or more capital projects, including land, buildings, equipment, and other property to be financed with an issue that is located on the same site, or adjacent or proximate sites used for similar purposes, and that is subject to the public approval requirement under section 147(f). For an issue of mortgage revenue bonds under section 143 or qualified student loan bonds under section 144(b), the term *facility* means the mortgage loans or qualified student loans to be financed with the proceeds of the issue. For an issue of qualified 501(c)(3) bonds under section 145, the term *facility* means a facility, as defined in the first sentence of this paragraph (c)(1), and also includes working capital expenditures to be financed with proceeds of the issue.

(2) *Public hearing.* The term *public hearing* means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of bonds and the location and nature of the proposed facility to be financed. In general, a governmental unit may select its own procedure for a public hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, a governmental unit may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing make a written request to speak at least 24 hours before the hearing or that they limit their oral remarks to a prescribed time. If a governmental unit provides reasonable public notice for a public hearing and receives no timely requests to participate in the hearing, then the governmental unit may cancel the hearing and, for purposes of this section, the public hearing requirement will be treated as met. For purposes of this public hearing requirement, it is unnecessary, for example, to have the applicable elected representative of the approving governmental unit present at the hearing, to submit a report on the hearing to that applicable elected representative, or to meet State administrative procedural requirements for public hearings. Except to the extent in conflict with a specific requirement of this paragraph (c)(2), compliance with State procedural requirements for public hearings generally satisfies the requirements of this paragraph (c)(2). A public hearing may be conducted by an individual appointed or employed to perform such function by the

governmental unit or its agencies, or by the issuer. Thus, for example, for bonds to be issued by an authority that acts on behalf of a county, the hearing may be conducted by the authority, the county, or an appointee of either.

(3) *Reasonable public notice.*

Reasonable public notice means notice that is reasonably designed to inform residents of the affected governmental units, including residents of the issuing governmental unit and the governmental unit where a facility is to be located, of the proposed issue. The notice must state the time and place for the public hearing and contain the information required under paragraph (b) of this section. Notice is presumed reasonable if given no fewer than seven (7) business days before the public hearing in one of the ways permitted by this paragraph (c)(2). Notice is treated as reasonably designed to inform affected residents of an approving governmental unit if it is given in one of the following ways:

(i) *Newspaper publication.* Public notice may be given by publication in one or more newspapers of general circulation available to the residents of the governmental unit.

(ii) *Radio or television broadcast.* Public notice may be given by radio or television broadcast to the residents of the governmental unit.

(iii) *Governmental unit Web site posting.* Public notice may be given by electronic posting on the approving governmental unit's Web site for its residents, provided that the governmental unit regularly uses that Web site to inform its residents about events affecting the residents (including notice of public meetings of the governmental unit) and the governmental unit offers a reasonable, publicly known alternative method for obtaining this information for residents without access to computers (such as phone recordings).

(iv) *Alternative State law public notice procedures.* Public notice may be given in a way that is permitted under a general State law for public notices for public hearings for the approving governmental unit.

(4) *Writing.* Unless specifically stated otherwise in this section, if permitted by the governmental unit, the term writing includes electronic communication.

(5) *Mortgage revenue bonds.* The term *mortgage revenue bonds* means qualified mortgage bonds under section 143(a) of the Code or qualified veterans' mortgage bonds under section 143(b) of the Code.

(d) *Special rule on required governmental unit approvals for certain types of financings.* In applying section

147(f)(2) and § 5f.103–2(c) of this chapter to mortgage revenue bonds under section 143, to qualified student loan bonds under section 144(b), and to the portion of an issue of qualified 501(c)(3) bonds under section 145 that finance working capital expenditures, the governmental unit by or on behalf of which those types of bonds are issued is treated as the only governmental unit required to provide a public approval and no separate public approval is required by a host governmental unit with respect to the location, if any, of a financed facility.

(e) *Effective/applicability date.* Except as otherwise provided in this section, § 1.147(f)–1 applies to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to section 147(f).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–0534–200816; FRL–8712–5]

Approval and Promulgation of Implementation Plans North Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina in three submittals dated November 30, 2005, March 16, 2007, and June 20, 2008. The proposed revisions modify North Carolina's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the "2002 NSR Reform Rules"). In addition, the proposed revisions address an update to the NSR regulations promulgated by EPA on November 29, 2005 ("Ozone

Implementation NSR update") relating to the implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits (PALs), recordkeeping and reporting requirements, and provisions recognizing nitrogen oxides (NO_x) as a precursor to ozone. The June 20, 2008, SIP submittal also contains proposed revisions that are not related to EPA's 2002 NSR Reform Rules. EPA will propose action on those revisions in a separate **Federal Register** notice.

DATES: Comments must be received on or before October 9, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–0534, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* adams.yolanda@epa.gov.

3. *Fax:* 404–562–9019.

4. *Mail:* "EPA–R04–OAR–2005–0534" Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2005–0534." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you