

insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements.* The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN—(i) In general.* In the case of a failure to include a correct TIN on Form 1098-T or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner.* An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments, or bills amounts, for qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (e)(3)(iii) of this section apply in lieu of

the solicitation requirements of § 301.6724-1(e) and (f) of this chapter for the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (e)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724-1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN.* An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W-9S, "Request for Student's or Borrower's Social Security Number and Certification," satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W-9S electronically as described in applicable forms and instructions. An institution or insurer may also develop a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) *Failure to furnish TIN.* The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective date.* The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 4.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 5.** Section 301.6011-2 is amended by:

1. In paragraph (b)(1), first sentence, add the language "1098-T," immediately after the language "1098-E,".

2. Revising paragraph (g)(3).  
The revision reads as follows:

### § 301.6011-2 Required use of magnetic media.

\* \* \* \* \*

(g) \* \* \*  
(3) This section applies to returns on Forms 1098-E and 1098-T filed after December 31, 2003.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02-9932 Filed 4-26-02; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1-93]

### Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Reporting of Net Long Position and Application of the 35 Percent Limit

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Department of the Treasury ("Treasury," "We," or "Us") is issuing this Advance Notice of Proposed Rulemaking to solicit comments on potential modifications to the timing of the calculation and reporting of the net long position ("NLP") in marketable Treasury securities auctions. In addition, we are asking for comments on the application of the 35 percent award limit and on a potential change in the NLP reporting threshold. The purpose of any such modifications would be to more effectively meet the objectives of these two areas of the auction rules while ensuring that participation in Treasury securities auctions remains both strong and broad, with minimal compliance costs for participants. Realization of these goals will help us attain the lowest possible borrowing costs over time. We are specifically interested in comments on alternatives that change the time as of which the NLP is calculated (the "NLP as-of time") and the NLP reporting deadline, as well as alternatives that would permit us to replace or eliminate the NLP reporting requirement.

**DATES:** Submit comments on or before June 28, 2002.

**ADDRESSES:** You may send hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street NW., Room 315, Washington, DC 20239. You may also

send us comments by e-mail at [govsecreg@bpd.treas.gov](mailto:govsecreg@bpd.treas.gov). When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. You may download this advance notice, and review the comments we receive, from the Bureau of the Public Debt's website at [www.publicdebt.treas.gov](http://www.publicdebt.treas.gov). The advance notice and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena (Executive Director), Chuck Andreatta (Senior Financial Advisor), or Lee Grandy (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691-3632.

**SUPPLEMENTARY INFORMATION:** The Uniform Offering Circular,<sup>1</sup> in conjunction with the offering announcement for each auction, provides the terms and conditions for the sale and issuance of marketable Treasury bills, notes and bonds to the public. One of these terms (rules) is the requirement that a bidder in an auction report its net long position ("NLP") if its NLP in the security being auctioned plus its bids in the auction meet or exceed a certain dollar-amount threshold stated in the auction offering announcement. The reporting dollar-amount threshold currently is \$1 billion for Treasury bills and \$2 billion for Treasury notes and bonds. Currently, a bidder must determine its NLP as of one-half hour prior to the deadline for receipt of competitive bids; if it meets or exceeds the reporting threshold as of that time, the bidder must report its NLP by the competitive bidding deadline.

A bidder's reported NLP is a component of our auction award limit, which is 35 percent of the offering amount less the bidder's reported NLP. For example, assume a bidder has an NLP of \$2 billion, and the 35 percent award limit for a particular auction is \$4 billion. If the bidder is successful in the auction and as a result of its bids alone would receive \$4 billion, its award will be cut back to \$2 billion.

In this notice, we first describe these rules and their rationale, and why we are considering a change. Then we describe various alternatives on which we are seeking comment.

### I. The 35 Percent Limit and Net Long Position Reporting

The 35 percent rule limits auction awards for any one competitive bidder to 35 percent of the total amount offered to the public in a particular auction, less the bidder's reported NLP.<sup>2</sup> This rule ensures that awards in our auctions are distributed to a number of auction participants. This goal of broad distribution is intended to encourage participation by a significant number of competitive bidders in each auction. Broad participation keeps our borrowing costs to a minimum, helps ensure that Treasury auctions are fair and competitive, and makes it less likely that ownership of Treasury securities will become overly concentrated.

A key component of the 35 percent award limit is the NLP calculation.<sup>3</sup> If a bidder has a reportable NLP, we subtract it from the 35 percent award limit in determining the bidder's maximum award amount for the auction.

The NLP is generally the amount of the security being auctioned that a bidder has obtained, or has arranged to obtain, outside of the auction in the secondary market. The term "net long" refers to the extent to which an investor has bought (or has agreed to buy) more of a security than it has sold (or has agreed to sell). For example, if an investor has bought \$900 million of a security in the when-issued market, and it has sold \$300 million of the same security in the when-issued market, it has a net long position of \$600 million in that security, assuming it has no other positions. The components of the NLP are intended to capture the various ways that a bidder can acquire a Treasury security.<sup>4</sup>

A competitive bidder is required to report its NLP if the sum of its bids plus its NLP equals or exceeds the NLP reporting threshold, currently \$2 billion for Treasury notes and bonds and \$1 billion for Treasury bills<sup>5</sup> (unless otherwise stated in the offering announcement). In addition, if the sum of its bids equals or exceeds the NLP reporting threshold, but it has no position or has a net short position, it must report a zero.

A bidder must determine its NLP as of one-half hour (*e.g.*, 12:30 p.m.) prior to the competitive bidding deadline

(*e.g.*, 1 p.m.).<sup>6</sup> This is a "snapshot" or point-in-time measurement. If a bidder's position changes during the final half-hour period before the auction, this does not affect the amount to be reported under our rules. Currently, we give bidders 30 minutes to calculate and report their NLPs primarily because of the operational complexities involved in aggregating this information when a bidder has numerous affiliates.

The NLP reporting requirement is not fully effective in encouraging broad distribution of Treasury securities, however, because of this half-hour time lag between the NLP as-of time and the competitive bidding deadline. Because a bidder's NLP can change significantly during this time period, the reported NLP may not provide an accurate, or even approximate, measure of a bidder's position at the time that a bidder actually submits its bids. As a result, a bidder's award may be cut back to the 35 percent limit based on NLP information that no longer reflects the bidder's actual NLP. Conversely, a bidder's award may not be cut back if it builds a large position in the security being auctioned between the NLP as-of time and the competitive bidding deadline.

Moreover, our experience with the NLP rule in general is that participants occasionally have operational difficulties in compiling and reporting NLPs. There may be other ways to achieve the goals of the rule while reducing these difficulties. For this reason, we are also more fundamentally reconsidering the rule.

We asked the Treasury Borrowing Advisory Committee of The Bond Market Association<sup>7</sup> to consider an alternative to address this issue in January 2002. The alternative was to separate NLP reporting from auction bidding by having bidders determine their NLPs as of the competitive bidding deadline, usually 1 p.m., and report them after the close of the auction. Under this scenario, Treasury would base its auction awards solely on the amounts bid, and bidders would be responsible for ensuring that their bids, combined with their NLPs, did not result in their exceeding the 35 percent award limit.

The Committee responded that this alternative, "while somewhat more burdensome to the bidder," was "manageable practically," but was concerned about shifting the burden of

<sup>2</sup> 31 CFR 356.22(b).

<sup>3</sup> 31 CFR 356.13.

<sup>4</sup> See 31 CFR 356.13(b) for details on the components of the net long position. See also 66 FR 56759 (November 13, 2001), which provided an optional exclusion amount in the NLP calculation for reopenings.

<sup>5</sup> 31 CFR 356.13(a).

<sup>6</sup> 31 CFR 356.13(b).

<sup>7</sup> The Committee, which is comprised of securities industry representatives, provides periodic advice to Treasury on debt management issues. See, Pub. L. 103-202, Sec. 202, 107 Stat. 2356, 31 U.S.C. 3121 note.

<sup>1</sup> The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR part 356.

enforcing the 35 percent award limit from the Treasury to bidders. Under this "self policing" scenario, the Committee contended, bidders would be likely to reduce the amount of their auction bids leading to smaller bid/cover ratios and possibly weaker auction results.<sup>8</sup>

We also invited suggestions from the public during the February 2002 quarterly refunding announcement on ways to improve the NLP rule.<sup>9</sup> In addition to separating the NLP reporting from auction bidding, we stated that we were also considering moving the NLP as-of time closer to the competitive bidding deadline.

We received one response on this topic, from The Bond Market Association.<sup>10</sup> The Association recommended, among other things, that Treasury refrain from making any major modifications to the current NLP reporting requirements. Nevertheless, the Association suggested that we consider three relatively "minor" rule changes: "(i) increasing the current NLP reporting threshold to 35 percent of the issuance amount; (ii) requiring bidders to calculate their NLP as of 12:40 p.m. rather than 12:30 p.m.; and (iii) instructing bidders not to report any NLP when they are above the applicable reporting threshold but their NLP is either zero or a negative number." We also received other responses, but not on this topic.

## II. Alternatives

We are considering, and inviting public comments on, four alternatives to reach our goal of maintaining strong and broad participation in fair and competitive Treasury auctions while minimizing the costs of compliance with the auction rules. Realization of this goal will help us attain the lowest possible borrowing costs over time. In addition, we are inviting comments on potential changes to the NLP reporting threshold amount.

*Substantive rule changes (timing or fundamental).* The first two alternatives maintain the requirement to report the NLP, but modify the time that it must

be determined or reported, or both, to make the reporting process more effective. The third alternative would eliminate the NLP reporting requirement, and the last would keep it as it is.

*Alternative 1.* Reduce the half-hour interval between the NLP as-of time and the competitive bidding deadline. For example, would the NLP reporting rule be more effective if the as-of time were moved closer to the competitive bidding deadline (e.g., 1:00), such as 12:40 or 12:45? Would this modification be feasible operationally? We specifically invite comments on the optimal NLP determination time.

*Alternative 2.* Make the NLP as-of time the same as the competitive bidding deadline, with the NLP reporting time to follow (for example, one-half hour later). Bidders would be responsible for ensuring that their bids plus their positions, if they are net long, do not exceed the 35 percent award limit. For example, the NLP as-of time and the competitive bidding deadline could both be set at 1:00, with NLPs to be reported by 1:30. Violations of the rule could be handled as follows. First, to encourage aggressive bidding and to alleviate bidder concerns about accidental breaches of the NLP rule, in the case of most minor or technical errors there would be minimal or no sanction. Second, we would promulgate a new rule to handle more serious rule violations, namely those with a potential impact on the liquidity of the Treasury securities market (e.g., significantly exceeding the 35 percent limit). The NLP rule is premised on the conviction that one bidder's taking the bulk of an auction may discourage other bidders from bidding aggressively in future auctions, or even from bidding at all. In either case, the liquidity of Treasury securities would diminish, and Treasury's long-term borrowing costs would rise. This new rule would allow us to impose liquidated damages based on Treasury's increased borrowing costs. Third, in the case of the most serious violations, Treasury would employ existing enforcement mechanisms prohibiting the bidder from participating in future auctions for its own account, for the account of others, or both,<sup>11</sup> as well as pursuing criminal and civil remedies under the Federal securities and other laws.

*Alternative 3.* Eliminate the NLP reporting requirement, and either maintain or reduce the 35 percent limit. Treasury would rely on its Large Position Reporting rules,<sup>12</sup> and other

mechanisms to monitor the market and address concentrations of ownership. This would reduce the operational difficulties and burdens bidders face in reporting their NLPs near the same time that they also are determining the amounts and yields at which they are bidding. The downside for the Treasury market (and thus ultimately for the taxpayer) would be a more limited ability for Treasury to control ownership concentration in the Treasury market through the auction process.

*Alternative 4.* Retain both the 35 percent limit and the NLP as-of and reporting timeframes as they exist now.

*Potential change to NLP reporting threshold amount.* Currently a bidder must report its NLP if its bids plus its NLP equals or exceeds \$1 billion for bills, or \$2 billion for notes and bonds (unless otherwise stated in the auction offering announcement).<sup>13</sup> As noted above, if a bidder either has no position or has a net short position but the total of all of its bids equals or exceeds the NLP threshold amount for a particular auction, the bidder must report a zero as its NLP.

We are considering changing the NLP reporting threshold to equal the actual 35 percent award limit for each auction, which we would provide on the offering announcement. Bidders whose bids plus NLPs equal or exceed the limit would be required to report their positions. For example, if the 35 percent award limit for a particular auction is \$3 billion, and the total of a bidder's bids is \$2.5 billion and its NLP is \$1 billion, the bidder would have to report its \$1 billion NLP. Bidders whose bids plus NLPs did not equal or exceed the limit would not be required to report any positions. Bidders whose total bids equal or exceed the limit but either have no position or a net short position would not have to report a zero as their NLP. We are requesting comment on this alternative because we are considering making this change regardless of whether or not we implement any modifications to the NLP as-of or reporting timeframes.

In addition to inviting comments on all of the above alternatives, we also invite comments on any other alternatives.

It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866.

### List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

<sup>8</sup> Report to the Secretary of the Treasury from the Treasury Borrowing Advisory Committee of The Bond Market Association (dated January 30, 2002). The report is available at [www.treas.gov](http://www.treas.gov). See also Minutes of the Meeting of the Treasury Borrowing Advisory Committee of The Bond Market Association (January 29, 2002).

<sup>9</sup> February 2002 Quarterly Refunding Statement (January 30, 2002).

<sup>10</sup> Letter from Eric L. Foster, Vice President and Assistant General Counsel, The Bond Market Association, to Brian C. Roseboro, Assistant Secretary for Financial Markets, dated March 13, 2002. The letter comments on some of the alternatives in this notice. It is available on The Bond Market Association website at [www.bondmarkets.com](http://www.bondmarkets.com).

<sup>11</sup> 31 CFR 356.34(a).

<sup>12</sup> 17 CFR 420.

<sup>13</sup> 31 CFR 356.13(a).

Dated: April 24, 2002.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 02-10547 Filed 4-25-02; 10:29 am]

BILLING CODE 4810-39-P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-02-016]

RIN 2115-AA97

#### **Safety and Security Zones; Boston, Massachusetts Captain of the Port Zone, Boston and Salem Harbors, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing safety and security zones around vessels when they are moored at the Black Falcon Terminal, Boston, MA and the P G & E Power Plant Terminal, Salem, MA. We are also proposing continuous safety and security zones around the Coast Guard Integrated Support Command (ISC) Boston, MA. These safety and security zones would prohibit entry into or movement within portions of Boston and Salem Harbors and are needed to ensure public safety and prevent sabotage or terrorist acts against facilities and vessels with the potential for catastrophic damage and casualties if successful.

**DATES:** Comments and related materials to reach the Coast Guard on or before May 29, 2002.

**ADDRESSES:** You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223-3030.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting

comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD1-02-016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

##### **Background and Purpose**

The terrorist attacks on New York, New York and Washington, DC on September 11, 2001, inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Following the September 11 attacks, we published a temporary rule in the **Federal Register** September 27, 2001 (66 FR 49280), establishing temporary anchorage grounds, regulated navigation areas, and safety and security zones in the Boston, Massachusetts Marine Inspection Zone and Captain of the Port Zone. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts.

We published a notice of proposed rulemaking (NPRM) on February 27, 2002 (67 FR 8915), proposing to make permanent three of the safety and security zones established by the September 27 temporary rule, and to make the safety and security zones around the DISTRIGAS Liquefied Natural Gas Facility effective for an additional period. That NPRM provided for a short comment period, which would have allowed the zones to be effective on March 16, 2002. This short comment period was intended to prevent any lapse in protective measures provided by the temporary rule. The comment period for that proposed rule did not allow adequate time for public comment.

In order to provide additional time for public comment, the Coast Guard extended the effective period of four of the safety and security zones established in September 2001—namely those zones around Coast Guard Integrated Support Command, Boston, the PG & E Power Plant in Salem, MA, in the Reserved Channel, Boston, MA, and the DISTRIGAS Liquefied Natural Gas Facility in Everett, Massachusetts—until June 30, 2002. That extension was published March 15, 2002 (67 FR 11577). The regulated navigation areas and anchorage ground established in September 2001 expired as scheduled on March 15, 2002. In response to comments already received, the Coast Guard is amending the parameters of the proposed safety and security zones, as discussed in the *Discussion of Comments* section below. The safety and security zones proposed at the DISTRIGAS Facility are being incorporated into a separate rulemaking, and are therefore no longer proposed in this supplemental notice of proposed rulemaking (SNPRM).

The Coast Guard proposes to establish permanent safety and security zones in Boston and Salem Harbors as part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, permanent safety and security zones in Boston and Salem Harbor are prudent to provide for the safety of the port, the facilities, and the public. This proposed rule would establish three pairs of safety and security zones having identical boundaries, around Coast Guard Integrated Support Command, Boston, the PG & E Power Plant in Salem, MA, and in the Reserved Channel, Boston, MA.

These zones would restrict entry into or movement within portions of Boston and Salem Harbor. These zones are deemed necessary due to the vulnerable nature of these locations as possible targets of terrorist attack. Entry into or movement within these safety and security zones is prohibited unless authorized by the Captain of the Port, Boston. Mariners may request entry into these safety and security zones from the Coast Guard representative on scene.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the impact would be minimal, and the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

No person or vessel would be allowed to remain in the proposed safety and security zones at any time without the