

Unsafe Condition

(d) This AD results from an error by GE that incorrectly cited a cyclic life of 12,600 CSN in the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) for the HPTR, P/N 9367M45G06. We are issuing this AD to prevent the HPTR stage 1 disk from exceeding its part life which could cause fatigue cracks to start and grow. These cracks could result in a possible uncontained disk failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

New Reduced Life Limit for HPTR Stage 1 Disks, P/N 9367M45G06

(f) After the effective date of this AD, remove HPTR stage 1 disks, P/N 9367M45G06, from service before exceeding the new, reduced life limit of 2,075 cycles-since-new.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(h) Under 14 CFR part 39.23, we are prohibiting any special flight permits.

Related Information

(i) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: robert.green@faa.gov; telephone (781) 238-7754; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on November 7, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8-27080 Filed 11-13-08; 8:45 am]

BILLING CODE 4910-13-P

contract market block trading rules and exchanges of futures for commodities or derivatives positions. Comments on the proposal originally were due on November 17, 2008. The Commission is extending the comment period in order to give interested persons additional time to comment on the proposed amendments.

DATES: Comments must be received by January 5, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Mail/Hand Delivery:* David Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *E-mail:* secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT:

Gabrielle A. Sudik, Special Counsel, Division of Market Oversight; Telephone 202-418-5171; e-mail: gsudik@cftc.gov; Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On September 18, 2008, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend its rules, guidance and acceptable practices concerning trading off the centralized market, including the addition of guidance on contract market block trading rules and exchanges of futures for commodities or derivatives positions.

The comment period closes on November 17, 2008. By letter dated November 4, 2008, CME Group, Inc., requested an extension of the comment period until January 5, 2009. In order to encourage the submission of meaningful comments and to assure that all views are considered in its final determination, the Commission has determined to grant the request and to give full consideration to any comment received during the extension period. While the Commission has received some comment letters on the proposal, none yet have been from any designated contract markets, which have the responsibility of complying with Regulation 1.38 and Core Principle 9. Accordingly, the comment period for the Commission's proposed amendments to Regulation 1.38 and Part 38 is hereby extended to January 5, 2009.

Issued in Washington, DC, on November 10, 2008, by the Commission.

Sauntia S. Warfield,
Staff Assistant.

[FR Doc. E8-27121 Filed 11-13-08; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF JUSTICE**28 CFR Part 58**

[Docket No: EOUST 104]

RIN 1105-AB31

Application Procedures and Criteria for Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees

AGENCY: Executive Office for United States Trustees ("EOUST"), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking ("rule") sets forth proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain an approved provider of a personal financial management instructional course satisfy all prerequisites of the United States Code, as implemented under this rule. Under the current law, individual debtors must participate in an instructional course concerning personal financial management before receiving a discharge of debts. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved providers of a personal financial management instructional course must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available provider lists in one or more federal judicial districts if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such an approval, a provider shall be authorized to provide an instructional course in a federal judicial district during the time the provider remains approved.

DATES: Submit comments on or before January 13, 2009.

ADDRESSES: Comments on the rule may be submitted via <http://www.regulations.gov>, by telefax to (202) 305-8536, or by postal mail to Executive Office for United States Trustees ("EOUST"), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference "Docket No. EOUST 104" on all written and electronic correspondence.

COMMODITY FUTURES TRADING COMMISSION
17 CFR Parts 1 and 38

Execution of Transactions: Regulation 1.38 and Guidance on Core Principle 9

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On September 18, 2008, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend its rules, guidance and acceptable practices concerning trading off the centralized market, including the addition of guidance on

FOR FURTHER INFORMATION CONTACT:

Doreen Solomon, Assistant Director for Review and Oversight at (202) 307-2829 (not a toll-free number), or Larry Wahlquist, Office of General Counsel at (202) 307-1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Posting of Public Comments**

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

This rule implements those sections of Public Law 109-8, 119 Stat. 23, 37, 38 (April 20, 2005) codified at 11 U.S.C. 111. Effective October 17, 2005, individual debtors under chapters 7, 13, and in some instances chapter 11, must receive from an approved provider an instructional course concerning personal financial management before they may receive a discharge of their

debts. 11 U.S.C. 111, 727(a)(11), 1141(d)(3)(C), 1328(g)(1).

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of providers of a personal financial management instructional course for inclusion under 11 U.S.C. 111(a)(1) on publicly available provider lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become a provider of an instructional course only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) instructional course. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. 111(b)(1).

After completing that thorough review, a United States Trustee may approve a provider of an instructional course only if the provider establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide trained personnel with adequate experience in providing effective instruction and services, (b) provide learning materials and teaching methodologies designed to assist debtors in understanding personal financial management, (c) if applicable, provide adequate facilities for providing an instructional course, (d) prepare and retain reasonable records to permit evaluation of the effectiveness of an instructional course, and (e) if a fee is charged, charge a reasonable fee, and provide services without regard to ability to pay the fee. 11 U.S.C. 111(d)(1).

This proposed rule will implement those statutory requirements. By accomplishing that, the rule will help debtors obtain effective instruction from competent providers. It also will provide an appropriate mechanism by which applicants can apply for approval under section 111 of title 11 to become providers of a personal financial management instructional course, and will enable such applicants to attempt to meet their burden of establishing they should be approved by United States Trustees under 11 U.S.C. 111.

This rule, once final, will supersede the provisions that address providers of a personal financial management instructional course in EOUST's Interim Final Rule published on July 5, 2006 (71 FR 38076) entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management*

Instructional Course by United States Trustees ("Interim Final Rule"). The instructional course provisions are currently codified at 28 CFR 58.25, 58.26, and 58.27. Due to the necessity of quickly establishing a regulation to govern the application process for providers of an instructional course following the passage of BAPCPA, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking. Based upon experience administering the Interim Final Rule, and upon consideration of comments received regarding the Interim Final Rule, EOUST promulgates this rule as a notice of proposed rulemaking rather than a final rule in an effort to maximize public input. EOUST will respond to the comments to the Interim Final Rule and this rule when it publishes the final rule. EOUST has already published a notice of proposed rulemaking that addressed credit counseling agencies with a RIN number of 1105-AB17. This rule parallels that credit counseling rule in many aspects. For instance, the application procedures are similar, as well as the procedures for denying or removing a provider from the approved list. Other similarities include the fee amount presumed to be reasonable, the debtor identification requirements, the requirement that providers use the United States Trustee's Certificate Generating System, the prohibition against limiting a debtor's ability to seek redress from the provider for any malfeasance, and many of the mandatory disclosures before providing services.

In an effort to make information more accessible and understandable, several changes to the Interim Final Rule are proposed in this rule, along with other changes to enhance consumer protections. Some of the more significant changes include the following: (1) Adding identification procedures for debtors when accessing Internet or telephone instructional courses; (2) establishing a limit for instructional course fees to be presumed reasonable; (3) providing guidance on providers' responsibilities to individuals with limited English proficiency; and (4) requiring appropriate disclosures be made before providing services to debtors, such as a provider's fee policy and the prohibition from receiving referral fees.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. The Department has determined that this rule is a

“significant regulatory action” and, accordingly, this rule has been reviewed by the Office of Management and Budget (“OMB”).

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the instructional course industry, and informal communications with providers, it is anticipated that this cost should equal approximately \$500 per application for providers. This cost is not new; it is the same cost that providers incurred when applying under the Interim Final Rule. Public comments regarding the cost to applicants in completing the application are requested.

Although providers may charge a fee for providing the financial management instructional course, providers must provide the instructional course without regard to a client's ability to pay the fee in accordance with 11 U.S.C. 111(d)(1)(E). Based upon the available information, current practice of many providers, experience with the instructional course industry, and informal communications with providers, \$50 is presumed to be a reasonable fee for an instructional course. Public comments as to the reasonableness of \$50 for an instructional course are requested. This rule does not prevent providers from charging more than \$50; it requires providers to notify EOUST of any additional charge prior to implementing the additional fee and to justify the additional cost.

The amount presumed to be reasonable for instructional course fees will be reviewed periodically, but not less than every four years, and the amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on EOUST's Web site. In addition, all providers must waive the fee if the debtor demonstrates a lack of ability to pay the fee, which

shall be presumed if the debtor's household current income is less than 150% of the income of the official poverty line as identified by the United States Department of Health and Human Services applicable to a household of the same size.

The number of applicants that will ultimately apply is unknown; EOUST currently has approved approximately 300 providers. The annual hour burden on providers is estimated to be 10 hours. This estimate is based on consultations with individuals in the instructional course industry, and experience with providers who completed the initial applications. Public comments regarding the annual hour burden on providers of an instructional course in completing the application are requested.

The EOUST consulted with the Federal Trade Commission (“FTC”) and with the Internal Revenue Service (“IRS”) in drafting this rule and the EOUST does not believe the rule has an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase consumer protections, such as a limit on the presumption of reasonable fees, and the requirement that providers give adequate disclosures concerning providers' policies. These disclosures include notifying clients that they may qualify for reduced or free services in order to further the BAPCPA's requirement that services be provided without regard to ability to pay the fee. This rule also provides for greater supervision by the United States Trustee to ensure providers deliver effective instruction to debtors concerning personal financial management. Additionally, this rule assists in reducing fraud by requiring providers to identify debtors before providing an instructional course and corresponding certificate of completion. Another benefit of this rule is clarifying providers' responsibility to use their best efforts in assisting individuals with limited English proficiency by providing services in the client's language or referring them to providers who can provide services in the client's language. These benefits justify the rule's costs in complying with Congress' mandate that a list of approved providers be established. Public Law No. 109–8, section 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 to 3520, and assigned OMB control number 1105–0085 for form EOUST–DE1, the “*Application for Approval as a Provider of a Personal Financial Management Instructional Course*.” The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the application and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that applicants should incur minimal costs in completing the application as discussed above in the Executive Order 12866 certification.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and

innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve providers of a personal financial management instructional course. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59818, 59827 (Oct. 11, 2006), JUSTICE/UST-005, Credit Counseling and Debtor Education Files and Associated Records. Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for Part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3); 1202; 1302; 1328(g), 28 U.S.C. 509, 510, 586, 589b.

2. Sections 58.25 through 58.27 are revised to read as follows:

§ 58.25 Definitions

(a) The following definitions apply to sections 58.25 through and including 58.36 of this Part, as well as the applications and other materials providers submit in an effort to establish they meet the requirements necessary to become an approved provider of a personal financial management instructional course.

(b) These terms shall have these meanings:

(1) The term “accreditation” means the accreditation that an accrediting

organization bestows upon a provider because the accrediting organization has determined the provider meets or exceeds all the accrediting organization’s standards;

(2) The term “accrediting organization” means either an entity that provides accreditation to providers or provides certification to instructors, provided, however, that an accrediting organization shall:

(i) Not be a provider or affiliate of any provider; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term “affiliate” means:

(i) Every entity that is an affiliate of the provider, as the term “affiliate” is defined in 11 U.S.C. 101(2), except that the word “provider” shall be substituted for the word “debtor” in 11 U.S.C. 101(2);

(ii) Each of a provider’s officers and each of a provider’s directors; and

(iii) Every relative of a provider’s officers and every relative of a provider’s directors;

(4) The term “application” means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST-DE1, *Application for Approval as a Provider of a Personal Financial Management Instructional Course*, as it shall be amended from time to time;

(5) The term “approved list” means the list of providers currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program’s Internet site on the United States Department of Justice’s Internet site;

(6) The term “approved provider” means a provider currently approved by a United States Trustee under 11 U.S.C. 111 as an approved provider of a personal financial management instructional course eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(7) The term “certificate” means the document an approved provider shall provide to a debtor after the debtor completes an instructional course;

(8) The term “debtor” shall have the meaning given that term in 11 U.S.C. 101(13);

(9) The term “Director” means the person designated or acting as the Director of the Executive Office for United States Trustees;

(10) The term “effective instruction” means the actual receipt of an instructional course by a debtor from an approved provider, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 111; and

(ii) This rule;

(11) The term “entity” shall have the meaning given that term in 11 U.S.C. 101(15);

(12) The terms “fee” and “fee policy” each mean the aggregate of all fees an approved provider charges debtors for providing an instructional course; “fee policy” shall also mean the objective criteria the provider uses in determining whether to waive or reduce any fee;

(13) The term “final decision” means the determination issued by the Director based upon the review of the United States Trustee’s decision either to deny a provider’s application or to remove an approved provider from the approved list;

(14) The term “financial benefit” means any interest equated with money or its equivalent, including, but not limited to, stock, bonds, other investments, income, goods, services, or receivables;

(15) The term “governmental unit” shall have the meaning given that term in 11 U.S.C. 101(27);

(16) The term “independent contractor” means a person or entity who provides any goods or services to an approved provider other than as an employee and as to whom the approved provider does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(17) The term “instructional course” means a course in personal financial management that is approved by the United States Trustee under 11 U.S.C. 111 and this rule, including the learning materials and methodologies in 28 CFR 58.33(f), which is to be taken and completed by the debtor after the filing of a bankruptcy petition and before receiving a discharge under 11 U.S.C. 727(a)(11), 1141(d)(3)(C) or 1328(g)(1);

(18) The term “instructor” means an individual who teaches, presents or explains substantive instructional course materials to debtors, whether provided in person, by telephone, or through the Internet;

(19) The term “languages offered” means every language other than English in which an approved provider offers an instructional course;

(20) The term “legal advice” shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(21) The term “limited English proficiency” means, alternatively:

(i) An inability to speak, read, write, or understand the English language; or

(ii) The use primarily of a language other than English in a person's daily affairs;

(22) The term "locator" means any entity that assists a prospective debtor in finding an approved provider for the purpose of receiving an instructional course, unless such entity is the approved provider proposing to provide an instructional course to the debtor;

(23) The term "material change" means, alternatively, any change:

(i) In the name, structure, principal contact, management, staffing, physical location, instructional course, fee policy, or method of delivery of an approved provider; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement a provider previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(24) The term "method of delivery" means one or more of the 3 methods by which an approved provider can provide some component of an instructional course to debtors, including:

(i) "In person" delivery, which applies when a debtor primarily receives an instructional course at a physical location with an instructor physically present in that location, and with the instructor providing oral and/or written communication to the debtor at the facility;

(ii) "Telephone" delivery, which applies when a debtor primarily receives an instructional course by telephone; and

(iii) "Internet" delivery, which applies when a debtor primarily receives an instructional course through an Internet Web site;

(25) The term "notice" in 28 CFR 58.36 means the written communication from the United States Trustee to a provider that its application to become an approved provider has been denied or to an approved provider that it is being removed from the approved list;

(26) The term "provider" shall mean any entity that is applying under this rule for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved provider;

(27) The term "referral fees" means money or any other valuable consideration paid or transferred between an approved provider and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way

encouraging any debtor to receive an instructional course from the approved provider; provided, however, that "referral fees" shall not include fees paid to any locator;

(28) The term "relative" shall have the meaning given that term in 11 U.S.C. 101(45);

(29) The term "request for review" means the written communication from a provider to the Director seeking review of the United States Trustee's decision either to deny the provider's application or to remove the provider from the approved list;

(30) The term "state" means state, commonwealth, district, or territory of the United States;

(31) The term "United States Trustee" means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

§ 58.26 Procedures all providers shall follow when applying to become approved providers.

(a) A provider applying to become an approved provider shall obtain an application, including appendices, from the United States Trustee.

(b) The provider shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The provider shall submit the original of the completed application, including completed appendices and the required supporting documents, and one additional copy of those, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by a representative of the provider who is authorized under applicable law to sign on behalf of the applying provider.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the provider, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain

any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application that:

(1) Is incomplete;

(2) Fails to include the completed appendices or all of the required supporting documents; or

(3) Is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of a provider, and it shall be returned via United States postal mail, if:

(1) It is submitted by any entity other than the provider; or

(2) Either the application or the accompanying certification is executed by any entity other than a representative of the provider who is authorized under applicable law to sign on behalf of the provider.

(h) By the act of submitting an application, a provider consents to the release and disclosure of its name and contact information on the approved list should its application be approved.

§ 58.27 Automatic expiration of providers' status as approved providers.

(a) Except as provided in 28 CFR 58.28(c), if an approved provider was not an approved provider immediately prior to the date it last obtained approval to be an approved provider, such an approved provider shall cease to be an approved provider 6 months from the date on which it was approved unless the United States Trustee approves an additional 1-year period.

(b) Except as provided in 28 CFR 58.28(c), if an approved provider was an approved provider immediately prior to the date it last obtained approval to be an approved provider, such a provider shall cease to be an approved provider 1 year from the date on which it was last approved to be an approved provider unless the United States Trustee approves an additional 1-year period.

3. Sections 58.28 through 58.36 are added and read as follows:

§ 58.28 Procedures all approved providers shall follow when applying for approval to act as an approved provider for an additional 1-year period.

(a) To be considered for approval to act as an approved provider for an additional 1-year term, an approved provider shall reapply by complying with all the requirements specified for providers under 11 U.S.C. 111, and under this rule.

(b) Such a provider shall apply no later than 45 days prior to the expiration of its 6-month probationary period or annual period in order to be considered

for approval for an additional 1-year period, unless a written extension is granted by the United States Trustee.

(c) An approved provider that has complied with all prerequisites for applying to act as an approved provider for an additional 1-year period may continue to operate as an approved provider while its application is under review by the United States Trustee, so long as either the application for an additional 1-year period was timely submitted, or a provider receives a written extension from the United States Trustee.

§ 58.29 Renewal for an additional 1-year period.

If an approved provider's application for an additional 1-year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.30 Mandatory duty of approved providers to notify United States Trustees of material changes.

(a) An approved provider shall immediately notify the United States Trustee in writing of any material change.

(b) An approved provider shall immediately notify the United States Trustee in writing of any failure by the approved provider to comply with any standard or requirement specified in 11 U.S.C. 111, this rule, or the terms under which the United States Trustee approved it to act as an approved provider.

(c) An approved provider shall immediately notify the United States Trustee in writing of any of the following events:

(1) Cessation of business by the approved provider or by any office of the provider, or withdrawal from any federal judicial district(s) where the approved provider is approved;

(2) Any investigation of, or any administrative or judicial action brought against, the approved provider by any governmental unit;

(3) Any action by a governmental unit or a court to suspend or revoke the approved provider's articles of incorporation, or any license held by the approved provider, or any authorization necessary to engage in business; or

(4) A suspension, or action to suspend, any accreditation held by the approved provider, or any withdrawal by the approved provider of any application for accreditation, or any denial of any application of the approved provider for accreditation.

(d) A provider shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved provider is pending before the United States Trustee.

(e) An approved provider whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

§ 58.31 Mandatory duty of approved providers to obtain prior permission from the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved provider, a provider agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) The engagement of an independent contractor to provide an instructional course;

(2) Any increase in the fees received from debtors for an instructional course or a change in the provider's fee policy;

(3) Expansion into additional federal judicial districts;

(4) Any changes to the method of delivery the approved provider employs to provide an instructional course; or

(5) Any changes in the approved provider's instructional course.

(b) A provider applying to become an approved provider shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The provider's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in 28 CFR 58.26(e).

(c) An approved provider shall not transfer or assign its United States Trustee approval to act as an approved provider.

§ 58.32 Criteria providers shall satisfy to become and remain approved providers.

(a) To become an approved provider, a provider must affirmatively establish, to the satisfaction of the United States Trustee, that the provider at the time of approval:

(1) Satisfies every requirement of this rule; and

(2) Provides effective instruction to its debtors.

(b) To remain an approved provider, an approved provider shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved provider:

(1) Has satisfied every requirement of this rule;

(2) Has provided effective instruction to its debtors; and

(3) Will continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.33 Minimum qualifications providers shall meet to become and remain approved providers.

To meet the minimum qualifications set forth in 28 CFR 58.32, and in addition to the other requirements set forth in this rule, providers and approved providers shall comply with paragraphs (a) through (n) of this section on a continuing basis:

(a) *Compliance with all laws.* A provider shall comply with all applicable laws and regulations of the United States and each state in which the provider provides an instructional course including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* A provider shall not provide legal advice.

(c) *Ethical standards.* A provider shall:

(1) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 11 U.S.C. 586(a)(1) or (b) for any federal judicial district where the provider is providing or is applying to provide an instructional course, a federal judge in any federal judicial district where the provider is providing or is applying to provide an instructional course, or a federal court employee in any federal judicial district where the provider is providing or is applying to provide an instructional course;

(2) Not enter into any referral agreement or receive any financial benefit that involves the provider paying to or receiving from any entity or person referral fees for the referral of debtors to or by the provider, except payments to any locator; and

(3) Not enter into agreements involving an instructional course that create a conflict of interest.

(d) *Instructor training, certification and experience.* A provider shall:

(1) Use only instructors who possess adequate experience providing an instructional course, which shall mean that each instructor either:

(i) Holds one of the certifications listed below and who has complied with all continuing education requirements necessary to maintain that certification:

(A) Certified as a Certified Financial Planner;

(B) Certified as a credit counselor by an accrediting organization;

(C) Registered as a Registered Financial Consultant; or

(D) Certified as a Certified Public Accountant; or

(ii) Has successfully completed a course of study or worked a minimum of 6 months in a related area such as personal finance, budgeting, or credit or debt management. A course of study must include training in personal finance, budgeting, or credit or debt management. An instructor shall also receive annual continuing education in the areas of personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing an instructional course, which shall mean that, at a minimum, the provider shall either:

(i) Have experience in providing an instructional course for the 2 years immediately preceding the relevant application date; or

(ii) For each office providing an instructional course, employ at least one supervisor who has met the qualifications in paragraph (d)(2)(i) of this section for no less than 2 of the 5 years preceding the relevant application date; and

(3) If offering any component of an instructional course by a telephone or Internet method of delivery, use only instructors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such an instructional course by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the instructional course is the debtor, and to determine whether the debtor has completely received an instructional course.

(e) *Use of the telephone and the Internet to deliver a component of an instructional course.* A provider shall:

(1) Not provide any debtor a diminished instructional course because the debtor receives any portion of the instructional course by telephone or Internet;

(2) Confirm the identity of the debtor before commencing an instructional course by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the debtor and assigning an individual access code, user ID, or password at the time of enrollment;

(ii) Requiring the debtor to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the instructional course; and

(iii) Employing adequate means to measure the time spent by the debtor to complete the instructional course.

(f) *Learning materials and methodologies.* A provider shall provide learning materials to assist debtors in understanding personal financial management and that are consistent with 11 U.S.C. 111, and this rule, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income; and

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance; and

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) Identifying the types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Discussing appropriate use of credit and alternatives to credit use; and

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Identifying public and non-profit resources for consumer assistance; and

(ii) Identifying applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud; and

(5) Coping with unexpected financial crisis, which consists of the following:

(i) Identifying alternatives to additional borrowing in times of unanticipated events; and

(ii) Seeking advice from public and private service agencies for assistance.

(g) *Course procedures.*

(1) Generally, a provider shall:

(i) Ensure the instructional course contains sufficient learning materials and teaching methodologies so that the debtor receives a minimum of two hours of instruction, regardless of the method of delivery of the course;

(ii) Use its best efforts to collect from each debtor a completed course

evaluation at the end of the instructional course. At a minimum, the course evaluation shall include the information contained in Appendix F of the application to evaluate the effectiveness of the instructional course;

(2) For an instructional course delivered in person, the provider shall:

(i) Ensure that an instructor is present to instruct and interact with debtors; and

(ii) Limit class size to ensure an effective presentation of the instructional course materials;

(3) For instructional courses delivered by the telephone, the provider shall:

(i) Ensure an instructor is telephonically present to instruct and interact with debtors;

(ii) Provide learning materials to debtors before the telephone instructional course session;

(iii) Incorporate tests into the curriculum that support the learning materials, ensure completion of the course, and measure comprehension;

(iv) Ensure review of tests prior to the completion of the instructional course; and

(v) Ensure direct oral communication from an instructor by telephone or in person with all debtors who fail to complete the test in a satisfactory manner or who receive less than a 70% score;

(5) For instructional courses delivered through the Internet, the provider shall:

(i) Comply with sections

58.33(g)(3)(iii), (iv), and (v); and

(ii) Respond to a debtor's questions or comments within one business day.

(h) *Services to hearing and hearing-impaired debtors.* A provider shall furnish toll-free telephone numbers for both hearing and hearing-impaired debtors whenever telephone communication is required. The provider shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired debtors.

(i) *Language services to debtors.* A provider shall communicate, in writing and orally, with debtors in the languages of the major population groups served by the provider. The provider shall provide or arrange for bilingual personnel, interpreters, or the use of communication technology, as needed, in such languages. The provider shall inform any debtor with limited English proficiency of the languages offered in providing an instructional course. Whenever a provider cannot provide an instructional course to a debtor due to the debtor's limited English proficiency, the provider should employ its best efforts to expeditiously direct such person to one or more

approved providers that can provide an instructional course in the language of the debtor's choice.

(j) *Services to debtors with special needs.* A provider that provides any portion of its instructional course in person shall comply with all federal, state and local laws governing facility accessibility. A provider shall also provide or arrange for communication assistance for debtors with special needs who have difficulty making their service needs known.

(k) *Mandatory disclosures to debtors.* Prior to providing any information to or obtaining any information from a debtor, and prior to delivering an instructional course, a provider shall disclose:

- (1) The provider's fee policy;
 - (2) The provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay;
 - (3) The instructors' qualifications;
 - (4) The provider's policy prohibiting it from paying or receiving referral fees for the referral of debtors, except to any locator;
 - (5) The provider's obligation to provide a certificate to the debtor promptly upon the completion of an instructional course;
 - (6) The fact that the provider might disclose debtor information to the United States Trustee in connection with the United States Trustee's oversight of the provider, or during the investigation of complaints, during on-site visits, or during quality of service reviews;
 - (7) The fact that the United States Trustee has reviewed only the provider's instructional course, and the fact that the United States Trustee has neither reviewed nor approved any other services the provider provides to debtors; and
 - (8) The fact that a debtor will only receive a certificate if the debtor completes an instructional course.
- (l) *Complaint procedures.* A provider shall employ complaint procedures that adequately respond to debtors' concerns.

(m) *Provider records.* A provider shall prepare and retain records that enable the United States Trustee to evaluate whether the provider is providing effective instruction and acting in compliance with all applicable laws and this rule. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the provider shall prepare and retain for a minimum of two years, and permit

review of by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the provider remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Records concerning the delivery of services to debtors with limited English proficiency and special needs, and to hearing-impaired debtors, including records:

- (i) Of the number of such debtors;
- (ii) Of which languages are offered;
- (iii) Detailing the provider's best efforts to provide services to such debtors; and
- (iv) Supporting any justification if the provider did not provide services to such debtors;

(4) Records concerning the delivery of an instructional course to debtors for free or at reduced rates based upon the debtor's lack of ability to pay, including records of the number of such debtors and the extent to which the provider voluntarily waived all or part of its fees under 28 CFR 58.34(c);

(5) Records of complaints and the provider's responses thereto;

(6) Records that enable the provider to verify the authenticity of certificates their debtors file in bankruptcy cases; and

(7) Records that enable the provider to issue replacement certificates.

(n) *Additional minimum requirements.* A provider shall:

- (1) Provide records to the United States Trustee upon request;
- (2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the provider's qualifications to be an approved provider;
- (3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;
- (4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the instructional course or bankruptcy process;
- (5) Take no action that would limit, inhibit, or prevent a debtor from

bringing an action or claim for damages against a provider under any applicable law, including but not limited to 11 U.S.C. 111(g)(2);

(6) Refer debtors seeking an instructional course only to providers that have been approved by a United States Trustee to provide such services;

(7) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in appendix A to the application;

(8) Not disclose or provide to a credit reporting agency any information concerning whether a debtor has received or sought instruction concerning personal financial management from a provider;

(9) Not expose the debtor to commercial advertising as part of or during the debtor's receipt of an instructional course, and never market or sell financial products or services during the instructional course; provided, however, this provision does not prohibit a provider from generally discussing all available financial products and services; and

(10) Not sell information about any debtor to any third party without the debtor's prior written permission.

§ 58.34 Additional minimum requirements to become and remain approved providers relating to fees.

(a) If a fee for an instructional course is charged by a provider, such fee must be reasonable:

(1) A fee of \$50 or less for an instructional course is presumed to be reasonable and a provider need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding \$50 for an instructional course is not presumed to be reasonable and a provider must obtain prior approval from the United States Trustee to charge such a fee. The provider bears the burden of establishing that its proposed fee is reasonable. At a minimum, the provider must demonstrate that its cost for delivering the instructional course justifies the fee; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section periodically, but not less than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto

shall be published in the **Federal Register**.

(b) A provider shall waive the fee whenever a debtor demonstrates a lack of ability to pay the fee. A debtor shall be deemed to have demonstrated a lack of ability to pay the fee if the debtor's household current income is less than 150% of the income of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) as identified in the Poverty Guidelines updated periodically in the **Federal Register** by the United States Department of Health and Human Services applicable to a family or household of the size involved in the fee decision.

(c) Notwithstanding the requirements of paragraph (b) of this section, a provider may also waive fees based upon other considerations, including, but not limited to:

- (1) The debtor's net worth;
- (2) The percentage of the debtor's income from government assistance programs;
- (3) Whether the debtor is receiving pro bono legal services in connection with a bankruptcy case; or
- (4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the debtor and his or her spouse, when multiplied times 12, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) A provider shall not link a debtor's purchase of an instructional course to the purchase of any other service offered by the provider.

(e) A provider who is also a chapter 13 standing trustee may only provide the instructional course to debtors in cases in which the trustee is appointed to serve and may not charge any fee to those debtors for the instructional course. A standing chapter 13 trustee may not require debtors in cases administered by the trustee to obtain the instructional course from the trustee. Employees and affiliates of the standing trustee are also bound by the restrictions in this subsection.

§ 58.35 Additional minimum requirements to become and remain approved providers relating to certificates.

(a) An approved provider shall deliver a certificate only to the debtor who took and completed the instructional course, except that an approved provider shall instead deliver a certificate to the attorney of a debtor who took and completed an instructional course if the debtor specifically requests that in writing.

(b) An approved provider shall deliver a certificate to a debtor no later than three business days after the debtor completed an instructional course and after completion of a debtor course evaluation form that evaluates the effectiveness of the instructional course; however, the approved provider shall not withhold the issuance of a certificate because of a debtor's failure to submit an evaluation form, though the provider should make reasonable effort to ensure that debtors complete and submit course evaluation forms.

(c) An approved provider shall not withhold the issuance of a certificate because of a debtor's failure to obtain a passing grade on a quiz, examination, or test. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the approved provider cannot deny a certificate to a debtor if the debtor has completed the course as designed.

(d) An approved provider shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee.

(e) An approved provider shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(f) An approved provider shall not charge a separate fee for the issuance of a certificate or replacement certificate, unless:

(1) The approved provider has disclosed such fee in writing before an instructional course is provided and before any payment is made by the debtor;

(2) The approved provider obtains the written consent of the debtor before the debtor commences receiving an instructional course; and

(3) Such fee is reasonable and otherwise complies with the waiver requirements of 28 CFR 58.34.

(g) An approved provider shall issue a certificate to each debtor who completes an instructional course. Spouses receiving an instructional course jointly shall each receive a certificate.

(h) An approved provider shall issue a replacement certificate to a debtor who requests one.

(i) An approved provider shall not file certificates with the court.

(j) Only an authorized officer, supervisor or employee of an approved provider shall issue a certificate, and an approved provider shall not transfer or delegate authority to issue certificates to any other entity.

(k) An approved provider shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(l) An approved provider shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (j) of this section, which signature shall be either:

- (1) An original signature; or
- (2) An electronic signature (in the form /s/ name of instructor); however, whenever a certificate is prepared for filing electronically with the court, a certificate with the instructor's original signature shall also be provided to the debtor.

(m) An approved provider shall affix to the certificate the exact name under which the approved provider is incorporated or organized.

(n) An approved provider shall identify on the certificate:

- (1) The specific federal judicial district requested by the debtor;
- (2) Whether an instructional course was provided in person, by telephone or via the Internet;
- (3) The date on which an instructional course was completed by the debtor; and

(4) The name of the instructor that provided the instructional course.

(o) An approved provider shall affix the debtor's full, accurate name to the certificate. If the instructional course is obtained by a debtor through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

§ 58.36 Procedures for obtaining final agency action on United States Trustees' decisions to deny providers' applications and to remove approved providers from the approved list.

(a) The United States Trustee shall remove an approved provider from the approved list whenever an approved provider requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved provider from the approved list, and thereby terminate the approved provider's authorization to provide an instructional course, at any time.

(c) The United States Trustee may issue a decision to deny a provider's application or remove a provider from the approved list whenever the United States Trustee determines that the provider has failed to comply with the standards or requirements specified in 11 U.S.C. 111, this rule, or the terms under which the United States Trustee designated it to act as an approved

provider, including, but not limited to, finding any of the following:

(1) If any entity has suspended or revoked the provider's license to do business in any jurisdiction; or

(2) Any United States district court has removed the provider under 11 U.S.C. 111(e).

(d) The United States Trustee shall provide to the provider in writing a notice of any decision either to:

(1) Deny the provider's application; or

(2) Remove the provider from the approved list.

(e) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the provider copies of any such documents that were not supplied to the United States Trustee by the provider. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(f) Except as provided in paragraph (h) of this section, the notice shall advise the provider that the denial or removal decision shall become final agency action, and unreviewable, unless the provider submits in writing a request for review by the Director no later than 20 calendar days from the date of the notice to the provider.

(g) Except as provided in paragraph (h) of this section, the decision to deny a provider's application or to remove a provider from the approved list shall take effect upon:

(1) The expiration of the provider's time to seek review from the Director, if the provider fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final written decision, if the provider timely seeks such review.

(h) The United States Trustee may provide that a decision to remove a provider from the approved list is effective immediately and deny the provider the right to provide an instructional course whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) or (2) of this section.

(i) A provider's request for review shall be in writing and shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the provider wants the Director to consider in reviewing the denial or removal decision. The provider shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the

next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 20 calendar days from the date of the notice to the provider.

(j) The United States Trustee shall have 30 calendar days from the date of the provider's request for review to submit to the Director a written response regarding the matters raised in the provider's request for review. The United States Trustee shall provide a copy of this response to the provider by overnight courier, for delivery the next business day.

(k) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(l) In reviewing the decision to deny a provider's application or to remove a provider from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(m) Except as provided in paragraph (n) of this section, the Director shall issue a written final decision no later than 60 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the provider's request for review shall constitute final agency action.

(n) Whenever the United States Trustee provides under paragraph (h) of this section that a decision to remove a provider from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time, which decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the provider should be removed from the approved list; after issuing the decision, the Director shall issue a written final decision in accordance with the requirements of paragraph (m) of this section.

(o) In reaching a decision under paragraphs (m) or (n) of this section, the Director may specify a person to act as

a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(p) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

(q) When a decision to remove a provider from the approved list takes effect, the provider shall:

(1) Immediately cease providing an instructional course to debtors and shall not agree to provide an instructional course to debtors;

(2) No later than 3 business days after the date of removal, issue all certificates to all debtors who completed an instructional course prior to the provider's removal from the approved list; and

(3) No later than 3 business days after the date of removal, return all fees to debtors who had paid for an instructional course, but had not completely received them.

(r) A provider must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: October 30, 2008.

Clifford J. White, III,

Director, Executive Office for United States Trustees.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0189]

RIN 1625-AA00

Safety Zones; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action is a supplemental notice of proposed rulemaking (SNPRM) to Coast Guard's April 15, 2008, notice of proposed rulemaking (NPRM) which proposed the revision of the list of permanent safety zones established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District (73 FR 20223). In the April 2008 NPRM, the