

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-01 and should be submitted on or before February 8, 2008.

IV. Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange⁶ and, in particular, the requirements of section 6 of the Act.⁷ Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 6(b)(4) of the Act,⁹ which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission believes that the proposed rule change to amend NYSE Rule 129 to incorporate the reduced gross FOCUS fees is appropriate and consistent with the Act.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the proposal was published for comment in the **Federal Register**. This approval allows the NYSE to immediately update its rule to accurately reflect the revised gross FOCUS fees. The proposal to reduce the gross FOCUS fees was already published for comment,¹⁰ the Commission received no comments on the earlier proposal, and interested persons were provided the opportunity to submit comments on an essentially identical proposal. For these reasons, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to grant accelerated approval to the proposal.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-01) is hereby approved on an accelerated basis.¹¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Deputy Secretary.

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⁶ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See Release No. 34-56181, *supra* note 3.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of a temporary, emergency amendment to sentencing guidelines and commentary.

SUMMARY: Pursuant to section 5(c) of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Public Law 110-179, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines and commentary. This notice sets forth the temporary, emergency amendment and the reason for amendment.

DATES: The Commission has specified an effective date of February 6, 2008, for the emergency amendment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The Commission must promulgate a temporary, emergency amendment to implement the directive in section 5(c) of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Public Law 110-179, by February 6, 2008. The statutory deadline for the promulgation of the temporary, emergency amendment, in conjunction with the Commission's public meeting schedule (the promulgation of such amendments must occur in a public meeting), made it impracticable to publish a proposed temporary, emergency amendment in the **Federal Register** in order to provide an opportunity for public comment, and to publish the promulgated amendment not less than 30 days before the effective date. The Commission therefore had good cause not to publish a proposed amendment before promulgation of the amendment and not to publish the promulgated amendment 30 days or more before the specified effective date of the amendment. See 5 U.S.C. 553(b), (d)(3).

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 5(c) of Pub. L. 110-179.

Ricardo H. Hinojosa,
Chair.

1. *Amendment:* Section 2B1.1(b) is amended by adding at the end the following:

“(16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by 2 levels.”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 3 by inserting after the paragraph that begins “(III) Offenses Under 18 U.S.C. 1030.—” the following:

“(IV) *Disaster Fraud Cases*.—In a case in which subsection (b)(16) applies, reasonably foreseeable pecuniary harm includes the administrative costs to any federal, state, or local government entity or any commercial or not-for-profit entity of recovering the benefit from any recipient thereof who obtained the benefit through fraud or was otherwise ineligible for the benefit that were reasonably foreseeable.”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended by redesignating Notes 15 through 19 as Notes 16 through 20, respectively; and by inserting after Note 14 the following:

“15. Application of Subsection (b)(16).—

(A) Definitions.—For purposes of this subsection:

‘Emergency’ has the meaning given that term in 42 U.S.C. 5122.”.

‘Major disaster’ has the meaning given that term in 42 U.S.C. 5122.

The Commentary to § 2B1.1 captioned “Background” is amended by adding at the end the following:

“Subsection (b)(16) implements the directive in section 5 of Public Law 110–179.”.

Appendix A (Statutory Index) is amended by inserting after the line reference to 18 U.S.C. 1039 the following:

“18 U.S.C. 1040 2B1.1”.

Reason for Amendment: This amendment implements the emergency directive in section 5 of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Public Law 110–179. The directive, which requires the Commission to promulgate an amendment under emergency amendment authority by February 6, 2008, directs that the Commission forthwith shall—promulgate sentencing guidelines or amend existing sentencing guidelines to provide for increased penalties for persons convicted of fraud or theft offenses in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191) * * *.

Section 5(b) of the Act further requires the Commission to—

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in subsection (a) and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) Assure reasonable consistency with other relevant directives and with other guidelines;

(3) Account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) Make any necessary conforming changes to the sentencing guidelines; and

(5) Assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

The amendment addresses the directive by creating a two-level enhancement that applies if the offense involved fraud or theft in connection with a declaration of a major disaster or emergency, as those terms are defined in 42 U.S.C. § 5122. In addition, the amendment modifies Application Note 3 to provide that for purposes of determining loss under subsection (b)(1), reasonably foreseeable pecuniary harm includes certain administrative costs in such cases.

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2006–0096]

Social Security Ruling (SSR) 94–4p; Rescission of SSR 94–4p, Policy Interpretation Ruling; Title II of Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977: Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can Be Denied

AGENCY: Social Security Administration.

ACTION: Notice; correction.

SUMMARY: This document contains a correction to the notice of rescission of SSR 94–4p that was published in the **Federal Register** on January 11, 2008 (73 FR 2074). The effective date shown in one place in that notice was incorrect.

FOR FURTHER INFORMATION CONTACT: Robin Strauss, Social Insurance Specialist, Social Security Administration, Office of Income

Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7944 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: The notice of rescission of SSR 94–4p that was published on January 11, 2008 (73 FR 2074) shows January 11, 2008 as the effective date in one place and February 11, 2008 in another place. However, this rescission was intended to be coordinated with the effective date of final rules that were also published on January 11, 2008 (73 FR 1970). The effective date of the final rules is February 11, 2008. Therefore, the effective date of the notice of rescission of SSR 94–4p is also February 11, 2008, and SSR 94–4p is obsolete and rescinded as of February 11, 2008.

Dated: January 14, 2008.

Paul Kryglik,

Acting Social Security Regulations Officer.

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DEPARTMENT OF STATE

[Public Notice: 6065]

60-Day Notice of Proposed Information Collection: Agency Form DS–4127, NEA/PI Online Performance Reporting System (PRS), OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* NEA/PI Online Performance Reporting System (PRS).

• *OMB Control Number:* none.
• *Type of Request:* New collection.
• *Originating Office:* NEA/PI.
• *Form Number:* DS–4127.
• *Respondents:* Recipients of NEA/PI grants.

• *Estimated Number of Respondents:* 70 respondents annually.

• *Estimated Number of Responses:* 280 per year.