

ITEX CORP
Form SC TO-T
December 27, 2007

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE TO
(RULE 14d-100)
Tender Offer Statement Under Section 14(d)(1) or 13(e)(1) of
the Securities Exchange Act of 1934**

**ITEX CORPORATION
(Name of Subject Company)**

**WESTERN SIZZLIN CORPORATION
(Name of Filing Person—Offeror)**

**COMMON STOCK, PAR VALUE \$0.01 PER SHARE
(Title of Class of Securities)**

**465647204
(CUSIP Number of Class of Securities)**

**Robyn B. Mabe
Vice President and Chief Financial Officer
Western Sizzlin Corporation
416 South Jefferson Street, Suite 600
Roanoke, Virginia 24011
(540) 345-3195**
**(Name, Address and Telephone Number of Person Authorized to Receive Notices
and Communications on Behalf of Filing Person)**

Copies to:
**Steven Wolosky, Esq.
Olshan Grundman Frome Rosenzweig & Wolosky LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2300**

Transaction Valuation*
\$15,953,624

Amount of Filing Fee**
\$490

*

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Pursuant to Rules 0-11(d) and 0-11(a)(4) under the Securities Exchange Act of 1934, as amended, and solely for the purpose of calculating the registration fee, the market value of the securities to be received by Western Sizzlin Corporation was calculated as the product of (i) 17,726,248 shares of ITEX Corporation common stock outstanding as of October 31, 2007 (as reported in ITEX's Quarterly Report on Form 10-QSB for the quarterly period ended October 31, 2007) and (ii) the average of the high and low sales prices of ITEX Corporation common stock as quoted on the OTC Bulletin Board on December 20, 2007 (\$0.90). As reported in ITEX's Quarterly Report on Form 10-QSB for the quarterly period ended October 31, 2007, there were no ITEX Corporation common stock options outstanding as of October 31, 2007.

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- ** The amount of the filing fee equals \$30.70 per million dollars of transaction value. The entire amount of the filing fee has been offset by the amount of the filing fee previously paid by Western Sizzlin Corporation as described below.
- x Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

| | | |
|---------------------------|-------------------------|-------------------------------|
| Amount Previously Paid: | \$490 | Western Sizzlin |
| Form or Registration No.: | Form S-4, 333-148349 | Filing Party: Corporation |
| | | Date Filed: December 27, 2007 |

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer.

Items 1 through 9, and Item 11.

This Tender Offer Statement on Schedule TO (this “Schedule TO”) is filed by Western Sizzlin Corporation, a Delaware corporation (“Western”). This Schedule TO relates to the offer by Western to exchange each issued and outstanding share of common stock, par value \$0.01 per share (“ITEX Common Stock”), of ITEX Corporation, a Nevada corporation (“ITEX”), for .06623 shares of common stock, par value \$0.01 per share (“Western Common Stock”), of Western, upon the terms and subject to the conditions described in the Prospectus (as defined below) and the related Letter of Transmittal, which are exhibits (a)(4) and (a)(1)(i) hereto, respectively (which together, as amended, supplemented or otherwise modified from time to time, constitute the “Offer”).

Western has filed a registration statement with the Securities and Exchange Commission on Form S-4 relating to the Western Common Stock to be issued to holders of ITEX Common Stock pursuant to the Offer (the “Registration Statement”). The terms and conditions of the Offer are set forth in the prospectus, which is a part of the Registration Statement (the “Prospectus”), and the related Letter of Transmittal, which are exhibits (a)(4) and (a)(1)(i) hereto, respectively.

All of the information in the Prospectus and the related Letter of Transmittal, and any prospectus supplement or other amendment or supplement thereto related to the Offer hereafter filed with the Securities and Exchange Commission by Western, is hereby incorporated herein by reference with respect to Items 1 through 9 and 11 of this Schedule TO.

Item 10. Financial Statements.

The information set forth in the Prospectus under the sections titled “Comparative Historical and Pro Forma Per Share Data,” “Selected Historical Consolidated Financial Data of Western,” “Selected Historical Consolidated Financial Data of ITEX,” “Selected Unaudited Pro Forma Combined Financial Data,” “Unaudited Pro Forma Condensed Combined Financial Statements” and the consolidated financial statements of each of Western and ITEX beginning on page F-1 of the Prospectus are incorporated herein by reference.

Item 12. Exhibits.

- | | |
|-------------|--|
| (a)(1)(i) | Form of Letter of Transmittal* |
| (a)(1)(ii) | Form of Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9* |
| (a)(1)(iii) | Form of Notice of Guaranteed Delivery* |
| (a)(1)(iv) | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees* |
| (a)(1)(v) | Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees* |
| (a)(2) | Not applicable. |

- (a)(3) Not applicable.
- (a)(4) Prospectus relating to Western Common Stock to be issued in the Offer*
- (a)(5)(i) Text of press release issued by Western, dated December 12, 2007**
- (a)(5)(ii) Text of press release issued by Western, dated December 27, 2007**
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.
- (e) Not applicable.
- (f) Not applicable.
- (g) Not applicable.
- (h) Not applicable.

* Incorporated by reference from Western's Registration Statement on Form S-4 filed on December 27, 2007.

** Filed herewith.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: December 27, 2007

WESTERN SIZZLIN CORPORATION

By: /s/ Robyn B. Mabe
Name: Robyn B. Mabe
Title: Vice President and Chief Financial Officer

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