

### I. Background

Both ISA and AISA participated in the NSA rulemaking by filing comments, and both objected to the Commission's determination not to allow NVOCCs, in their capacity as shippers, to enter into NSAs. They disagreed with the Commission's decision to define "NSA shipper" as excluding "NVOCCs or shippers' associations whose membership includes NVOCCs." 46 CFR 531.3(o). ISA and AISA now contend that in the rulemaking process, the Commission failed to consider their arguments; acted beyond its statutory authority in enacting the new rule; failed to adequately analyze the rule's potential effects on competition between large NVOCCs and smaller NVOCCs; and improperly regulated the membership of shippers' associations.

Two joint replies in opposition to the petitions were filed by the National Industrial Transportation League, United Parcel Service, BAX Global, FedEx Trade Networks Transport & Brokerage, the Transportation Intermediaries Association, C.H. Robinson Worldwide, and BDP International. The first joint reply addresses the two petitions' request for a stay of the rule's effective date, arguing that a stay is not warranted. The second joint reply contends that the substantive arguments advanced by the two petitioners are erroneous. In particular, the second joint reply argues that the Commission did make adequate findings concerning the new rule's potential effects on competition, and that the new rule is within the agency's statutory authority under section 16 of the Shipping Act, 46 U.S.C. app. 1715.

### II. Discussion

Both petitions were filed pursuant to the Commission's Rule 261. That rule provides:

(a) Within thirty (30) days after issuance of a final decision or order by the Commission, any party may file a petition for reconsideration \* \* \*. A petition will be subject to summary rejection unless it:

(1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;

(2) Identifies a substantive error in material fact contained in the decision or order; or

(3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. A petition shall be verified if verification of the original pleading is

required and shall not operate as a stay of any rule or order of the Commission.

46 CFR 502.261(a).

We conclude that the two petitions have failed to meet any one of these standards. First, neither petition alleges that there has been a "change in material fact or in applicable law" subsequent to the issuance of the Commission's new rule. Neither petition cites an intervening judicial decision published subsequent to the issuance of the Commission's rule, nor to any alleged changes in material fact.

Second, neither petition seeks to identify "a substantive error in material fact" within the Commission's new rule. On the contrary, both petitions contend that the Commission reached an erroneous *legal* conclusion. As the text of Rule 261 makes clear, however, this is not an acceptable ground for seeking reconsideration.

Finally, neither ISA nor AISA contends that it did not have the opportunity to comment on any provision of the rule. Indeed, AISA even incorporates by reference its previously filed comments, in lieu of reiterating them. *See* AISA Petition at 2.

Pursuant to the standards of Rule 261, both petitions will be summarily rejected. *See* 46 CFR 502.261 (petitions failing to meet threshold standard for reconsideration "will be" summarily rejected). Both petitioners also request, if their petitions are deemed subject to summary rejection, that the Commission instead grant a waiver of Rule 261's requirements, pursuant to Rule 10. That rule provides:

Except to the extent that such waiver would be inconsistent with any statute, any of the rules in this part, except §§ 502.11 and 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires.

46 CFR 502.10.

Neither petition sets forth an argument why summary rejection would constitute "undue hardship" or "manifest injustice," and neither contends that the "expeditious conduct of business" requires a waiver. Accordingly, the Commission concludes that "undue hardship" or "manifest injustice" will not arise from the summary rejection of the two petitions for reconsideration. The requests for a waiver are denied.

Finally, both petitions ask the Commission to stay the effective date of the new rule. As mentioned, the rule went into effect on January 19. The requests for stay are denied as moot.

### III. Conclusion

We summarily reject the two petitions for reconsideration, decline to authorize a waiver under Rule 10, and deny the requests for stay as moot.

*Therefore, it is ordered,* That the petitions are denied.

By the Commission.

**Karen V. Gregory,**

*Assistant Secretary.*

[FR Doc. 05-2796 Filed 2-11-05; 8:45 am]

BILLING CODE 6730-01-P

---

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System

**SUMMARY:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

### Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's

functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before April 15, 2005.

**ADDRESSES:** You may submit comments, identified by FR 2226, FR 2225, FR Y-3, FR Y-3N, FR Y-4, or FR K-1, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at [www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf

(TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:**

*Report title:* Report of Net Debit Cap Agency form number: FR 2226  
*OMB control number:* 7100-0217  
*Frequency:* Annual

*Reporters:* Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks  
*Annual reporting hours:* 1,780 hours  
*Estimated average hours per response:*

1.0 hour

*Number of respondents:* 1,785  
*General description of report:* This information collection is mandatory (12 U.S.C. 248(i), 248-l, and 464) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

*Abstract:* Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Board's Payments System Risk policy. The Report of Net Debit Cap comprises three resolutions, which are filed by an institution's board of directors depending on the institution's needs. The first resolution is used to establish a de minimis net debit cap, and the second resolution is used to establish a self-assessed net debit cap. Institutions use these two resolutions to establish a capacity for daylight overdrafts that is greater than the capacity that is typically assigned by a Reserve Bank. Institutions use part one of the third resolution, a two-part resolution, to establish additional collateralized capacity. Institutions use part two of the third resolution if they have been approved to receive additional collateralized capacity and pledge securities in transit to support the additional capacity. Copies of the current model resolutions are located in Appendix B of the Guide to the Federal Reserve's Payments System Risk policy.

**Proposal to approve under OMB delegated authority the extension for three years, with revision of the following reports:**

*1. Report title:* Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks  
*Agency form number:* FR 2225  
*OMB control number:* 7100-0216

*Frequency:* Annual  
*Reporters:* Foreign banks with U.S. branches or agencies

*Annual reporting hours:* 42 hours  
*Estimated average hours per response:* 1.0 hour

*Number of respondents:* 42

*General description of report:* This information collection is voluntary (12 U.S.C. 248(i), 248-l, and 464) and is not given confidential treatment.

*Abstract:* This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve Board's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Federal Reserve account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap. Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in the net debit cap calculation, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225 may use an alternative capital measure based on its nonrelated liabilities.

*Current Actions:* The Federal Reserve proposes minor revisions to the FR 2225 reporting form and instructions to make the reporting of foreign currency translations consistent with the reporting requirements detailed in other Federal Reserve information collections, resulting in the deletion of an item from the form.

*2. Report titles:* Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities

*Agency form numbers:* FR Y-3, FR Y-3N, and FR Y-4

*OMB control number:* 7100-0121

*Frequency:* Event-generated

*Reporters:* Corporations seeking to become bank holding companies (BHCs), or BHCs and state chartered banks that are members of the Federal Reserve System

*Annual reporting hours:* 19,100 hours  
*Estimated average hours per response:* FR Y-3, Section 3(a)(1): 49 hours;

FR Y-3, Section 3(a)(3) and 3(a)(5): 59.5 hours;  
FR Y-3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours;

FR Y-4, complete notification: 12 hours;

FR Y-4, expedited notification: 5 hours; and

FR Y-4, post-consummation: 0.5 hours.

*Number of respondents:* 556

*General description of reports:* This information collection is mandatory (12 U.S.C. 1842(a), 1844(b), and 1843(j)(1)(b)) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

*Abstract:* The Federal Reserve requires the application and the notifications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956. The forms collect information concerning proposed BHC formations, acquisitions, and mergers, and proposed nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to permissibility, competitive effects, adequacy of financial and managerial resources, net public benefits, and impact on the convenience and needs of affected communities.

*Current Actions:* The proposed modifications are technical in nature, as no material change in the relevant statutes and regulation has occurred since 2001. The proposed changes improve consistency within the three reporting forms, clarify certain language, and provide additional practical guidance to filers to reduce or avoid processing delays in the applications process. The reporting forms also have been modified to reflect substantial applications guidance and related reference material that was added to the Federal Reserve Board's public website in May 2004. Each proposed change is intended to facilitate and clarify the overall filing process for a BHC.

*3. Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K

*Agency form number:* FR K-1

*OMB control number:* 7100-0107

*Frequency:* Event-generated

*Reporters:* State member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations

*Annual reporting hours:* 772 hours

*Estimated average hours per response:* Attachments A and B, 11.5 hours;

Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours

*Number of respondents:* 43

*General description of report:* This information collection is mandatory (12 U.S.C. 601-604(a), 611-631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

*Abstract:* The FR K-1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. This set of applications and notifications is in the form of eleven attachments (labeled attachment A through K) and they collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

*Current Actions:* The Federal Reserve proposes minor revisions to the applications and notifications in order to improve clarity, more accurately reflect what information U.S. banking organizations should provide, and request information that is considered necessary in evaluating proposals. Attachment A, Item 11, and Attachment B, Item 5, would be slightly modified by removing the parenthetical statement regarding operations of the branch and adding the words "assets and liabilities." Attachment C, Item 7.a would be modified to remove the existing parenthetical about Edge corporation capitalization, which is considered no longer necessary. Attachment C, Item 9, would be modified to remove the word "banking" from the first line to reflect the fact that the item should be submitted by all foreign institutions, not just foreign banking institutions. Attachments H and I would be revised by adding a new question related to the Federal Reserve's access to information. This new question requests the same information for foreign investments that is currently requested for foreign branches and is considered necessary in evaluating proposals. Attachments H and I would also be modified to add a footnote to clarify that the form should not be used for investments made by a bank holding company using financial holding

company authority. The Regulation K section citations on Attachment H would be corrected to accurately reflect when the form should be used.

Board of Governors of the Federal Reserve System, February 8, 2005.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 05-2740 Filed 2-11-05; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2005.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. The Brian C. Barescheer 2004 Revocable Trust - A*, Minneapolis, Minnesota; Charles F. Diessner, trustee, Maple Grove, Minnesota; James P. Barescheer, trustee, Bloomington, Minnesota; and John M. MacKany, trustee, Eden Prairie, Minnesota; to retain voting shares of American Bancorporation, St. Paul, Minnesota, and thereby indirectly retain voting shares of Olivia Bancorporation, Inc., St. Paul, Minnesota; American Bank of St. Paul, St. Paul, Minnesota, and American State Bank of Olivia, Olivia, Minnesota.

*2. The Brian C. Barescheer 2004 Revocable Trust - B*, Minneapolis, Minnesota; Charles F. Diessner, trustee, Maple Grove, Minnesota; James P. Barescheer, trustee, Bloomington, Minnesota; and John M. MacKany, trustee, Eden Prairie, Minnesota; to retain voting shares of Citizens Bancshares of Woodville, Inc., Woodville, Wisconsin, and thereby indirectly to retain voting shares of