

### V. How Does This Rule Comply With the Paperwork Reduction Act of 1995?

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required. Elsewhere in this issue of the **Federal Register**, FDA is issuing a notice announcing the guidance for the final rule. This guidance, "Class II Special Controls Guidance Document: Remote Medication Management System," references previously approved collections of information found in FDA regulations.

### VI. What References Are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from INRange Systems, Inc., dated September 25, 2006.

### List of Subjects in 21 CFR Part 880

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

#### PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

■ 1. The authority citation for 21 CFR part 880 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 880.6315 is added to subpart G to read as follows:

#### § 880.6315 Remote Medication Management System.

(a) *Identification.* A remote medication management system is a device composed of clinical and communications software, a medication delivery unit, and medication packaging. The system is intended to store the patient's prescribed medications in a delivery unit, to permit a health care professional to remotely schedule the patient's prescribed medications, to notify the patient when the prescribed medications are due to be taken, to release the prescribed medications to a tray of the delivery unit accessible to the patient on the patient's command, and to record a history of the event for the health care professional. The system is intended for use as an aid to health care professionals in managing therapeutic

regimens for patients in the home or clinic.

(b) *Classification.* Class II (special controls). The special control is: The FDA guidance document entitled "Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Remote Medication Management System." See § 880.1(e) for availability of this guidance document.

Dated: October 3, 2007.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

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**BILLING CODE 4160-01-S**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

#### 31 CFR Part 203

**RIN 1510-AB01**

#### Payment of Federal Taxes and the Treasury Tax and Loan Program

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** As part of an ongoing effort to review and streamline its regulations, the Financial Management Service (FMS) has revised its regulation governing the Treasury Tax and Loan (TT&L) program. The changes update the rule to reflect the reorganization and enhancement of the TT&L program, including changes in terminology, and simplify the rule by deleting procedures and provisions that appear in other regulations or in the Treasury Financial Manual. FMS also has rewritten this regulation in plain language, thus making it clearer and easier to understand.

**DATES:** This interim final rule is effective October 19, 2007. Comments must be received by December 18, 2007.

**ADDRESSES:** The Financial Management Service began participating in the U.S. government's eRulemaking Initiative by publishing rulemaking information on [www.regulations.gov](http://www.regulations.gov). Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL-FMS-2007-0007, should only be submitted using the following methods:

• *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the

instructions on the Web site for submitting comments.

• *Mail:* Thompson Sawyer, Director, Investment Management Division, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been retired.

*Instructions:* All submissions received must include the agency name ("Financial Management Service") and docket number FISCAL-FMS-2007-0007 for this rulemaking. In general, comments will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Thompson Sawyer, Director, Investment Management Division, at (202) 874-7150 or [thompson.sawyer@fms.treas.gov](mailto:thompson.sawyer@fms.treas.gov) or Ellen M. Neubauer, Senior Attorney, at (202) 874-6680 or [ellen.neubauer@fms.treas.gov](mailto:ellen.neubauer@fms.treas.gov).

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

The Treasury Tax and Loan (TT&L) program encompasses two separate components: A depository component through which we collect Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which we invest short-term operating balances not needed for immediate cash outlays. Examples of the investment component are retention of tax deposits, direct investments, term investments or other investment programs. Approximately 950 TT&L depositories borrow excess short-term Treasury operating funds by participating in the investment component of the TT&L program. Through agreements executed pursuant to Part 203, participating depositories borrow Treasury funds in the form of a note secured with collateral pledged to

Treasury and pay interest to Treasury on these balances.

We have revised Part 203 to reflect recent operational changes and changes in terminology to the TT&L program, and to streamline and simplify the regulation. Because the predominant intent of this rulemaking is to improve the clarity of the regulation, we have removed some procedural and technical requirements and provisions, such as references to specific Forms and filing instructions, from the existing regulation. All of the technical requirements that we have removed and that still apply are contained in Volume IV of the Treasury Financial Manual (see <http://www.fms.treas.gov/tfm/vol4/index.html>). Those technical requirements that don't still apply have been deleted. For example, current § 203.10 sets forth procedures for financial institutions to enroll taxpayers in the Electronic Federal Tax Payment System (EFTPS) that no longer accurately reflect the actual process. Accordingly, we have deleted the substance of current § 203.10 from the regulation. The current procedures for enrolling taxpayers in EFTPS are found in Volume IV of the Treasury Financial Manual, Part 1, Chapter 2200.

In addition, we have removed some of the existing provisions of the regulation because they duplicate provisions of 31 CFR part 210, which sets forth the rules governing the Federal government's participation in the Automated Clearing House (ACH) system. For example, the substance of current § 203.15 has been deleted from the interim final regulation because everything in current § 203.15 is covered in 31 CFR part 210 (see § 210.8(b)(1)). For the same reason, the substantive provisions of current § 203.12, which address ACH credit and debit transactions, have been deleted.

Although a number of new terms have been added to describe components of the TT&L program, most aspects of the operation of the program are not changing. For example, the new term "Treasury Investment Program (TIP)" is the automated system within the TT&L program that receives tax collection data, invests funds, and monitors collateral pledged to secure invested funds and public money. The new term "Paper Tax System (PATAX)" is the automated system within TIP that collects, adjusts, and reports paper Federal tax deposits (FTDs).

The revisions to this rule reflect changes that have been made to the TT&L program over recent years. One of the most significant changes requires depositories to have collateral in place before any funds are credited to their TIP main account balance or Special

Direct Investment (SDI) account balance. Previously, a depository had until the end of the day to have collateral in place after the funds were credited to its account. This change helps ensure that Treasury investments are adequately secured at all times. Another change, reflected in § 203.20, is that with the implementation of the Treasury Investment Program, transactions now post to financial institutions' reserve accounts throughout the day.

Another change to the TT&L program occurred in 2001, when the Department of the Treasury announced that after December 31, 2000, Federal Reserve Banks (FRBs) would no longer accept FTD paper coupons. The change affected only a small percentage (less than one-half of one percent) of FTD deposits. It was no longer cost-effective for the FRBs to process the small number of FTD paper coupons they received annually. We have deleted § 203.18(b) of the current regulation to reflect this change. Financial institutions that are TT&L depositories will still accept paper coupons. For those taxpayers who do not have an account with a TT&L depository or who do not wish to pay taxes electronically through EFTPS, FMS has a mail-in option.

Other changes to the TT&L program and Part 203 are discussed in the section-by-section analysis below.

## II. Section-by-Section Analysis

### Section 203.1 Scope

Amended § 203.1 is substantively unchanged from current § 203.1, except that language has been added to clarify that there are various ways that a financial institution may participate in the TT&L program. A financial institution may choose to participate in the TT&L program by becoming an investor depository, a retainer depository, and/or a collector depository, or by processing tax payments through EFTPS. Amended § 203.1 clarifies that a financial institution does not become a TT&L depository, as defined, by processing tax payments through EFTPS.

### Section 203.2 Definitions

We have made a number of changes to the definitions set forth at § 203.2. Several definitions have been deleted because they are not used in the interim final regulation. These include: "Direct Access transaction," "Electronic Tax Application," "Electronic Tax Application reference number," "Input Message Accountability Data," and "Transaction trace number." Other

terms defined in the current regulation are replaced by new terminology in the interim final regulation, including "Federal Reserve account" (replaced by "Reserve account"), "Federal Reserve Bank of the district" (replaced by "Federal Reserve Bank (FRB)"), "Federal Tax Deposit system" (replaced by "Paper Tax System (PATAX)"), "Note option" (replaced by "Retainer depository" and "Investor depository"), and "Remittance option" (replaced by "Collector depository"). Several new terms have been added to reflect enhancements to the TT&L program, including "Capacity," "Dynamic investment," "Investment program," "Special Direct Investment (SDI) account balance," "Term Investment Option (TIO) account balance," "Treasury Investment Program (TIP)," "Treasury Support Center (TSC)," and "TIP main account balance." A number of definitions have been reworded to make them easier to understand, but are substantively unchanged. Significant changes to specific definitions are discussed below.

#### Balance Limit

The new term "balance limit" is defined and replaces the term "maximum balance" in current Part 203. Although the term "maximum balance" is used in current Part 203, it is not defined.

#### Capacity

The new term "capacity" is being added to refer to the additional amount of a direct investment or special direct investment that a designated depository is willing to receive or the additional amount of tax deposits that a designated depository is willing to retain. The TIP main account balance or SDI account balance, current collateral value, pending withdrawals, and pending investments are considered when determining capacity.

#### Collector Depository

The new term "collector depository" is used to describe a depository that uses the "remittance option" under current Part 203 to better reflect the activity performed by the depository.

#### Dynamic Investment

The new term "dynamic investment" is used to describe investments placed throughout the day.

#### Federal Reserve Bank (FRB)

The new term "Federal Reserve Bank" replaces "Federal Reserve Bank of the district" in current Part 203.

**Investment Program**

The new term “investment program” is used to provide an all-inclusive name for the programs through which Treasury invests excess operating cash. Examples of the investment component are retention of tax deposits, direct investments, and term investments. Depositories do not have to accept paper-based Federal Tax Deposit coupons (PATAX) to participate in the investment program.

**Investor Depository**

The new term “investor depository” is used to describe one of the two kinds of depositories that are referred to as “note option” depositories in the current regulation. An investor depository is a depository authorized to participate in the investment program. In the interim final regulation, the terms “investor depository” and “retainer depository” are specific terms that replace the less specific term “note option” in the current regulation.

**Paper Tax System (PATAX)**

The new term “PATAX” replaces the term “Federal Tax Deposit System” in current Part 203, to better reflect the activity performed by the system.

**Reserve Account**

The new term “Reserve account” replaces “Federal Reserve account” in current Part 203. The definition incorporates the concept that a financial institution’s reserve account may in some cases be the reserve account of the financial institution’s correspondent bank.

**Retainer Depository**

The new term “retainer depository” is used to describe a certain kind of depository known as a “note option” depository in the current regulation. A retainer depository is a depository that retains a portion of the Federal tax deposits it accepts. In the interim final regulation, the terms “investor depository” and “retainer depository” replace the less specific term “note option” in the current regulation. Retainer depositories do not have to accept paper-based Federal Tax Deposit coupons (PATAX).

**Same-Day Payment**

The reference to direct access transactions in the current definition of “same-day payment” has been deleted in the amended definition because these transactions are no longer available. These transactions have been replaced by Fedwire® non-value transactions.

**Special Direct Investment (SDI)**

This definition has been changed to delete the reference to note account and to add a reference to Borrower-In-Custody (BIC) arrangements.

**SDI Account Balance**

The new term “SDI account balance” is being added because there is now a separate account for SDI funds. In the current regulation, SDI funds are allowed to be commingled with direct investment funds and retained tax deposits.

**Term Investment Option (TIO) Account Balance**

The new term “TIO account balance” is being added to replace “Term note balance.”

**Treasury Investment Program (TIP)**

The new term “TIP” is being added to describe the automated system within the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure invested funds.

**TIP Main Account Balance**

The new term “TIP main account balance” is being added to distinguish retained tax deposits and direct investments funds from SDI funds.

**Treasury Support Center (TSC)**

The new term “TSC” is being added to refer to the centralized office located at an FRB that is responsible for monitoring collateral pledged and managing the TT&L program participation for designated depositories.

**Treasury Tax & Loan (TT&L) Depository**

The definition of “TT&L depository” has been changed to reflect new terminology.

**TT&L Program**

The definition of “TT&L program” has been revised to add references to PATAX, TIP, and EFTPS.

**Section 203.3 TT&L Depositories**

We have added a new § 203.3 to clarify the different kinds of TT&L depositories and the circumstances in which a financial institution must be a TT&L depository. A financial institution must be a TT&L depository in order to participate in either PATAX or the investment program, but not in order to participate in EFTPS alone. There are three kinds of TT&L depositories:

- Collector depositories—depositories that accept paper tax payments and may accept electronic tax payments, but that do not retain any such deposits in a TIP

main account or accept direct or special direct investments. A collector depository may accept term investments.

- Retainer depositories—depositories that accept electronic and/or paper tax payments and retain a portion of the tax deposits in a TIP main account balance but do not accept direct or special direct investments. A retainer depository may accept term investments.

- Investor depositories—depositories that participate in the investment program by accepting direct investments, special direct investments, and dynamic investments. Investor depositories may accept electronic and/or paper tax payments and may retain a portion of those tax deposits. An investor depository may also accept term investments.

**Section 203.4 Financial Institution Eligibility for Designation as a TT&L Depository**

Amended § 203.4 sets forth the criteria a financial institution must meet to be eligible for designation as a TT&L depository. The criteria in the amended rule are unchanged from those in the current § 203.3.

**Section 203.5 Designation of Financial Institutions as TT&L Depositories**

Amended § 203.5 sets forth the substance of current § 203.4 with certain changes. Subsection (a) is unchanged except that language contained in current § 203.6 which provides that Treasury will not compensate depositories for servicing and maintaining a TT&L account, or for processing tax payments through EFTPS or PATAX, has been relocated to § 203.5(a).

Amended § 203.5(b) simplifies the current regulation by deleting references to specific forms, which are set forth in procedural instructions.

**Section 203.6 Obligations of TT&L Depositories**

We have not made any substantive change to the obligations of TT&L depositories described in current § 203.5.

**Section 203.7 Termination of Agreement or Change of Election or Option**

We have not revised § 203.7 except for minor wording changes.

**Section 203.8 Application of Part and Procedural Instructions**

Amended § 203.8 is unchanged from current § 203.8 except that terminology has been updated.

*Section 203.9 Scope of the Subpart*

We have not made any substantive changes to § 203.9.

*Section 203.10 Electronic Payment Methods*

Amended § 203.10 sets forth the substance of current § 203.11. The second sentence of current § 203.11(a) is deleted because it restates the point made in amended § 203.9 that a financial institution need not be a TT&L depository in order to process payments through EFTPS.

*Section 203.11 Same-Day Reporting and Payment Mechanisms*

Details regarding some of the requirements of Fedwire® value transactions which are set forth in current § 203.13(b) have been eliminated as unnecessary. References to direct access transactions set forth in current § 203.713(d) have been deleted because these transactions are no longer available.

*Section 203.12 EFTPS Interest Assessments*

We have not made any substantive changes to the application or calculation of EFTPS interest assessments.

*Section 203.13 Appeal and Dispute Resolution*

We have not made any substantive changes to the appeal and dispute resolution procedures.

*Section 203.14 Scope of the Subpart*

We have not changed the scope of subpart C.

*Section 203.15 Tax Deposits Using FTD Coupons*

Amended § 203.15 sets forth the provisions of current § 203.18, with a number of changes. We have deleted entirely the substance of § 203.18(b), which provides that FRBs must accept FTDs directly from taxpayers and sets forth procedures governing 13 these transactions. FRBs no longer accept FTDs directly from the taxpayer. We also have deleted from this section many procedural steps that are adequately addressed in procedural instructions.

*Section 203.16 Retainer and Investor Depositories*

Amended § 203.16 sets forth the substance of current § 203.19. The order of subsections (a) and (b) has been reversed.

*Section 203.17 Collector Depositories*

Amended § 203.17 sets forth the substance of current § 203.20, except

that the order of subsections (a) and (b) has been reversed.

*Section 203.18 Scope of the Subpart*

We have not revised the scope of subpart D.

*Section 203.19 Sources of Balances*

Amended § 203.19 sets forth the substance of current § 203.22 with the addition of dynamic investments and term investments.

*Section 203.20 Investment Account Requirements*

We have not changed the provisions governing TIP main account balances, SDI account balances, and no account balances. The section title was changed to reflect the inclusion of the no account balances.

*Section 203.21 Collateral Security Requirements*

The classes of securities or instruments that are acceptable collateral to secure deposits and investments, and their respective valuations, as described in 31 CFR part 380, can be viewed at Treasury's Bureau of the Public Debt's Web site at 14 [http://www.treasurydirect.gov/instit/statreg/collateral/collateral\\_fiscalprograms.htm#ttl](http://www.treasurydirect.gov/instit/statreg/collateral/collateral_fiscalprograms.htm#ttl)

Amended § 203.21(c)(2) has been updated to reflect changes in the Uniform Commercial Code (which provides a private sector analogue for Treasury's BIC arrangements), relative to perfecting security interests in BIC collateral. Section 203.21(e) has also been changed. Under current § 203.21(f), when a TT&L depository pledges acceptable securities that are not negotiable without its endorsement or assignment, it may, in lieu of placing its unqualified endorsement on each security, provide an irrevocable power of attorney authorizing the FRB to assign the securities. Amended § 203.21(e) states that by pledging acceptable securities which are not negotiable without the depository's endorsement or assignment, a TT&L depository, in lieu of placing its unqualified endorsement on each security, automatically grants the FRB an irrevocable power of attorney to endorse, assign or transfer the securities. The purpose of this change is to relieve both TT&L depositories and the FRB from the administrative burden associated with providing a power-of-attorney each time such securities are pledged.

DERIVATION CHART FOR REVISED PART 203

Old section	New section
203.1 .....	203.1
203.2 .....	203.2
— .....	203.3
203.3 .....	203.4
203.4 .....	203.5
203.5 .....	203.6
203.6 .....	203.5
203.7 .....	203.7
203.8 .....	203.8
203.9 .....	203.9
203.10 .....	Removed
203.11 .....	203.10
203.12 .....	Removed
203.13 .....	203.11
203.14 .....	203.12
203.15 .....	Removed
203.16 .....	203.13
203.17 .....	203.14
203.18 .....	203.15
203.19 .....	203.16
203.20 .....	203.17
203.21 .....	203.18
203.22 .....	203.19
203.23 .....	203.20
203.24 .....	203.21

III. Regulatory Analyses

*Administrative Procedures Act*

The public is invited to submit comments on the interim rule which will be taken into account before this interim rule is confirmed as final.

This interim final rule does not substantively change the TT&L program but rather describes operational changes that have already taken place, updates terminology, and removes duplicative or unnecessary provisions. The updates in this rule will avoid confusion about the operation of the program. Under 5 U.S.C. 553(b), this rule is exempt from prior notice and comment rulemaking requirements on the grounds that the amendments are non-substantive and further delay in making these amendments is unnecessary and contrary to the public interest. For the same reasons, good cause exists to make the rule effective upon publication.

*Request for Comment on Plain Language*

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make this final rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of this final rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

### Regulatory Planning and Review

The final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

### Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### Paperwork Reduction Act

This rule contains no new collections of information. Therefore, the Paperwork Reduction Act does not apply.

### List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic funds transfers, Taxes.

### Words of Issuance

■ For the reasons set out in the preamble, the Financial Management Service amends 31 CFR chapter II by revising part 203 to read as follows:

## PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

### Subpart A—General Information

Sec.

- 203.1 Scope.
- 203.2 Definitions.
- 203.3 TT&L depositories.
- 203.4 Financial institution eligibility for designation as a TT&L depository.
- 203.5 Designation of financial institutions as TT&L depositories.
- 203.6 Obligations of TT&L depositories.
- 203.7 Termination of agreement or change of election or option.
- 203.8 Application of part and procedural instructions.

### Subpart B—Electronic Federal Tax Payments

- 203.9 Scope of the subpart.
- 203.10 Electronic payment methods.
- 203.11 Same-day reporting and payment mechanisms.
- 203.12 EFTPS interest assessments.
- 203.13 Appeal and dispute resolution.

### Subpart C—PATA

- 203.14 Scope of the subpart.
- 203.15 Tax deposits using FTD coupons.
- 203.16 Retainer and investor depositories.
- 203.17 Collector depositories.

### Subpart D—Investment Program and Collateral Security Requirements for TT&L Depositories

- 203.18 Scope of the subpart.
- 203.19 Sources of balances.
- 203.20 Investment account requirements.
- 203.21 Collateral security requirements.

**Authority:** 12 U.S.C. 90,265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122,

and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323, and 3301–3304.

### Subpart A—General Information

#### § 203.1 Scope.

The regulations in this part govern the processing by financial institutions of electronic and paper-based deposits and payments of Federal taxes; the operation of the Treasury Tax and Loan (TT&L) program; the designation of TT&L depositories; and the operation of the investment program. A financial institution may participate in the TT&L program by participating in the investment program or by accepting Federal tax payments, or both. A financial institution that accepts Federal tax payments may do so through the paper tax system (PATA), or Electronic Federal Tax Payment System (EFTPS), or both. However, a financial institution is not designated as a TT&L depository if it only processes EFTPS payments.

#### § 203.2 Definitions.

*Advice of credit (AOC)* means the paper or electronic form depositories use to summarize and report Federal Tax Deposit (FTD) coupon deposits to the Internal Revenue Service (IRS) and the Federal Reserve Bank (FRB).

*Automated Clearing House (ACH) credit entry* means a credit transaction originated by a financial institution, at the direction of the taxpayer, in accordance with applicable ACH formats and applicable laws, regulations, and procedural instructions.

*ACH debit entry* means a debit transaction originated by the Treasury Financial Agent (TFA), at the direction of the taxpayer, in accordance with applicable ACH formats and applicable laws, regulations, and instructions.

*Balance limit* means the highest amount a depository has stated it will accept in its Treasury Investment Program (TIP) main account.

*Borrower-In-Custody (BIC) collateral* means an arrangement by which a financial institution pledging collateral to secure special direct investments and certain term investments is permitted to retain possession of that collateral, subject to terms and conditions agreed upon between the FRB and the financial institution.

*Business day* means any day on which a financial institution's FRB is open.

*Capacity* means a TT&L depository's ability to accept additional investments in its TIP main account balance and/or its Special Direct Investment (SDI) account balance. With respect to a TT&L depository's TIP main account balance,

capacity means the balance limit or current collateral value, whichever is lower, minus the total of: the depository's current TIP main account balance and any pending investments, plus any pending withdrawals. With respect to an SDI account balance, capacity means the dollar amount of collateral that the depository has pledged for SDIs under a BIC arrangement minus the total of: the depository's current SDI account balance and any pending investments, plus any pending withdrawals.

*Collector depository* means a TT&L depository that accepts paper tax payments from business customers and that may also process electronic tax payments from customers, but that does not retain any such deposits as investments or accept dynamic, direct, or special direct investments. A collector depository may accept term investments.

*Direct investment* means the Department of the Treasury's (Treasury's) placement of funds with a TT&L depository, which results in an increase to the depository's TIP main account balance and a credit to its reserve account.

*Dynamic investment* means Treasury's placement of funds with a TT&L depository throughout the day, which results in an increase to the depository's TIP main account balance and a credit to its reserve account.

*Electronic Federal Tax Payment System (EFTPS)* means the system through which taxpayers remit Federal tax payments electronically.

*Federal Reserve Bank (FRB)* means the FRB of the district where the financial institution is located, or such other FRB that may be designated in an FRB operating circular, or such other FRB that may be designated by the Treasury. A financial institution is deemed located in the same district it would be deemed located for purposes of Regulation D (12 CFR 204.3(b)(2)), even if the financial institution is not otherwise subject to Regulation D.

*Federal Tax Deposit (FTD)* means a Federal tax deposit made using an FTD coupon.

*FTD coupon* means a paper form supplied to a taxpayer by Treasury to accompany deposits of Federal taxes made through PATA.

*Federal taxes* means those Federal taxes or other payments specified by the Secretary of the Treasury as eligible for payment through the procedures described in this part.

*Fedwire@1* means the funds transfer system owned and operated by the FRBs.

*Fedwire® non-value transaction* means the same-day Federal tax payment information transmitted by a financial institution to an FRB using a Fedwire® type 1090 message to authorize a payment.

*Fedwire® value transfer* means a Federal tax payment made by a financial institution using a Fedwire® type 1000 message.

*Financial institution* means any bank, savings bank, savings association, credit union, or similar institution.

*Fiscal agent* means the FRB acting as agent for Treasury.

*Investment program* is the all-inclusive name given to the programs by which Treasury invests excess operating cash.

*Investor depositary* means a TT&L depositary that is authorized to participate in the investment program by accepting funds from Treasury via direct investments, special direct investments, dynamic investments, or term investments. In addition, an investor depositary may accept electronic or paper Federal tax payments from its business customers and retain a portion of those tax deposits, depending on the capacity of its TIP main account balance.

*Paper Tax System (PATAX)* means the paper-based system through which taxpayers remit Federal tax payments by presenting an FTD coupon and payment to a TT&L depositary.

*Procedural instructions* means the procedures contained in the Treasury Financial Manual, Volume IV (IV TFM), other Treasury instructions issued by Treasury or through Treasury's Financial Agents and FRB operating circulars, and agreements issued consistent with this part.

*Recognized insurance coverage* means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, and insurance organizations specifically qualified by the Secretary.

*Reserve account* means an account at an FRB with reserve or clearing balances held by a financial institution or its designated correspondent financial institution, if applicable.

*Retainer depositary* means a TT&L depositary that accepts electronic and/or paper Federal tax payments from its business customers and retains a portion of the Federal tax deposits in its TIP main account balance, depending on its balance limit, account balance, and collateral value. A retainer depositary may also accept term investments.

*Same-day payment* means a payment made by a Fedwire® non-value

transaction or a Fedwire® value transaction.

*Secretary* means the Secretary of the Treasury, or the Secretary's delegate.

*Special Direct Investment (SDI)* means the placement by Treasury of funds with an investor depositary secured by collateral pledged under a BIC arrangement.

*SDI account balance* means an open-ended, interest-bearing note maintained on the books of the Treasury Support Center representing the amount of SDIs held by an investor depositary and secured by collateral pledged under a BIC arrangement.

*Tax due date* means the day on which a Federal tax payment is due to Treasury, as determined by statute and IRS regulations.

*Term Investments* means Treasury's excess operating funds that have been offered for a predetermined period of time and accepted by depositaries participating in the Term Investment Option.

*Term Investment Option (TIO)* means the program available to depositaries that offers the ability to borrow excess Treasury operating funds for a predetermined period of time.

*TIO account balance* means an interest-bearing note maintained on the books of the Treasury Support Center for a predetermined period of time.

*Treasury Financial Agent (TFA)* means a financial institution designated as an agent of Treasury for processing EFTPS enrollments, consolidating EFTPS tax payment information, and originating ACH debit entries on behalf of Treasury as authorized by the taxpayer.

*Treasury General Account (TGA)* means an account maintained in the name of the United States Treasury at an FRB.

*Treasury Investment Program (TIP)* means the automated system under the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure public money.

*TIP main account balance* means an open-ended interest-bearing note maintained on the books of the Treasury Support Center (TSC) representing a retainer or investor depositary's current net amount of (i) Federal tax deposits retained by the depositary and/or (ii) Treasury investments made under the Direct investment program.

*Treasury Support Center (TSC)* means the office at the FRB that, as Treasury's Fiscal agent, monitors collateral pledged to secure Treasury funds, manages TT&L program participation for depositaries, and/or carries on its books depositaries' TIP main account

balances, SDI account balances, and/or Term Investment Option (TIO) account balances.

*Treasury Tax and Loan (TT&L) account* means a record of transactions on the books of a TT&L depositary reflecting paper tax deposits received by the depositary.

*TT&L depositary or depositary* means a financial institution designated as a depositary by Treasury or the FRB of St. Louis acting as Treasury's Fiscal agent, for the purpose of participating in the investment program and/or PATAX. There are three kinds of TT&L depositaries: investor depositaries, retainer depositaries, and collector depositaries.

*TT&L program* means the program for collecting Federal taxes and investing the Government's excess operating funds.

*TT&L rate of interest* means the interest charged on the TIP main account balance and the SDI account balance. The TT&L rate of interest is the rate prescribed by the Secretary taking into consideration prevailing market interest rates. The rate and any rate changes will be announced through a TT&L Special Notice to Depositaries and will be published in the **Federal Register** and on a Web site maintained by Treasury's Financial Management Service at <http://www.fms.treas.gov>.

### § 203.3 TT&L depositaries.

A financial institution that participates in PATAX and/or the investment program must be a TT&L depositary. There are three kinds of TT&L depositaries. A collector depositary is a TT&L depositary that accepts paper Federal tax payments and also may accept electronic Federal tax payments, but does not accept direct investments or SDIs. A retainer depositary is a TT&L depositary that accepts electronic and/or paper Federal tax payments and retains a portion of the tax deposits in its TIP main account balance. An investor depositary is a TT&L depositary that accepts direct investments, SDIs, or dynamic investments and may accept electronic and/or paper Federal tax payments and retain a portion of those tax deposits. Collector, retainer, and investor depositaries may accept term investments. Retainer and investor depositaries do not have to participate in PATAX.

### § 203.4 Financial institution eligibility for designation as a TT&L depositary.

(a) To be designated as a TT&L depositary, a financial institution must be insured as a national banking

association, state bank, savings bank, savings association, building and loan, homestead association, Federal home loan bank, credit union, trust company, or a U.S. branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(b) A financial institution must possess the authority to pledge collateral to secure TT&L account balances, a TIP main account balance, an SDI account balance, or a no account balance as applicable.

(c) In order to be designated as a TT&L depository for the purposes of processing Federal tax deposits through PATAX, a financial institution must possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, investor depositaries and retainer depositaries must possess either general or specific authority permitting the maintenance of a TIP main account 27 balance or an SDI account balance. Investor, retainer, and collector depositaries that accept term investments must possess either general or specific authority permitting the maintenance of a TIO account balance. In the case of investor and retainer depositaries maintaining a TIP main account balance or an SDI account balance, the authority must perm it the maintenance of a TIP main account balance or an SDI account balance which is payable on demand without previous notice of intended withdrawal.

#### **§ 203.5 Designation of financial institutions as TT&L depositories.**

(a) *Parties to the agreement.* To be designated as a TT&L depository, a financial institution must enter into a depository agreement with Treasury or Treasury's Fiscal agent. By entering into this agreement, the financial institution agrees to be bound by this part, and procedural instructions issued pursuant to this part. Treasury will not compensate depositaries for servicing and maintaining a TT&L account, or for processing tax payments through EFTPS or PATAX, unless otherwise provided for in procedural instructions.

(b) *Application procedures.* (1) An eligible financial institution seeking designation as a TT&L depository must file the forms specified in the procedural instructions with the TSC. A TT&L depository must elect to be one or more of the following:

- (i) A collector depository;
- (ii) a retainer depository;
- (iii) an investor depository.

(2) A financial institution is not authorized to maintain a TT&L account, TIP main account balance, SDI account balance, or TIO account balance until the TSC designates it as a TT&L depository.

#### **§ 203.6 Obligations of TT&L depositories.**

A TT&L depository must:

(a) Administer a TIP main account balance, SDI account balance, or TIO account balance, as applicable, if participating in the investment program.

(b) Administer a TT&L account, if participating in PATAX.

(c) Comply with the requirements of Section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (3 CFR, 1964–1965 Comp., p. 339) as amended by Executive Orders 11375 and 12086 (3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1978 Comp., p. 230), and the regulations issued thereunder at 41 CFR chapter 60.

(d) Comply with the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60–741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) Comply with the requirements of Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701 (3 CFR 1971–1975 Comp., p. 752), and the regulations issued thereunder at 41 CFR parts 60–250 and 61–250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and Vietnam-era veterans.

#### **§ 203.7 Termination of agreement or change of election or option.**

(a) *Termination by Treasury.* The Secretary may terminate the agreement of a TT&L depository at any time upon notice to that effect to that depository, effective on the date set forth in the notice.

(b) *Termination or change of election or option by the depository.* A TT&L depository may terminate its depository agreement, or change its option or election, consistent with this part and the procedural instructions, by prior written notice to the TSC.

#### **§ 203.8 Application of part and procedural instructions.**

The terms of this part and the procedural instructions issued pursuant to this part will be binding on financial institutions that process Federal tax payments or maintain a TT&L account, TIP main account balance, SDI account

balance, or a TIO account balance under this part. By accepting or originating Federal tax payments, the financial institution agrees to be bound by this part and by procedural instructions issued pursuant to this part.

#### **Subpart B—Electronic Federal Tax Payments**

##### **§ 203.9 Scope of the subpart.**

This subpart prescribes the rules that financial institutions must follow when they process electronic Federal tax payment transactions. A financial institution is not required to be designated as a TT&L depository in order to process electronic Federal tax payments. In addition, a financial institution does not become a TT&L depository by processing electronic Federal tax payments under this subpart and may not represent itself as a TT&L depository because it does so.

##### **§ 203.10 Electronic payment methods.**

(a) *General.* Electronic payment methods for Federal tax payments available under this subpart include ACH debit entries, ACH credit entries, and same-day payments.

(b) *Conditions to making an electronic payment.* This part does not affect the authority of financial institutions to enter into contracts with their customers regarding the terms and conditions for processing payments, as long as the terms and conditions of those contracts are not inconsistent with this part and with any laws that apply to the particular transactions.

(c) *Payment of interest for time value of funds held.* Treasury will not pay interest on any payment that a financial institution erroneously originates and that subsequently is refunded.

##### **§ 203.11 Same-day reporting and payment mechanisms.**

(a) *General.* A financial institution or its authorized correspondent may initiate same-day reporting and payment transactions on behalf of taxpayers. A same-day payment must be received by the FRB by the deadline established by Treasury in the procedural instructions.

(b) *Fedwire® non-value transaction.* By initiating a Fedwire® non-value transaction, a financial institution authorizes the TSC to debit its reserve account for the amount of the Federal tax payment specified in the transaction.

(1) For an investor or retainer depository using a Fedwire® non-value transaction, the TSC will credit the Federal tax payment amount, up to the depository's available TIP main account balance capacity, to the depository's TIP main account balance on the day of the

transaction. Throughout the course of the day, the TSC will debit from the depository's reserve account, and credit to the TGA, any portion of a tax payment amount that would exceed the institution's available TIP main account balance capacity.

(2) For a collector depository or a non-TT&L depository financial institution using a Fedwire® non-value transaction, the TSC will debit the financial institution's reserve account for the Federal tax payment amount and credit that amount to the TGA on the day of the transaction.

(c) *Cancellations and reversals.* In addition to cancellations due to insufficient funds in the financial institution's reserve account, the FRB may reverse a same-day transaction:

(1) If the transaction:

(i) Is originated by a financial institution after the deadline established by Treasury in the procedural instructions;

(ii) Has an unenrolled taxpayer identification number; or

(iii) Does not meet the edit and format requirements set forth in the procedural instructions; or

(2) At the direction of the IRS, for the following reasons:

(i) Incorrect taxpayer name;

(ii) Overpayment; or

(iii) Unidentified payment; or

(3) At the request of the financial institution that sent the same-day transaction, if the request is made prior to the payment day deadline established by Treasury in the procedural instructions.

(d) Other than as stated in paragraph (c) of this section, Treasury is not obligated to reverse all or any part of a payment.

#### § 203.12 EFTPS interest assessments.

(a) *Circumstances subject to interest assessments.* Treasury may assess interest on a financial institution in instances where a taxpayer that failed to meet a tax due date proves to the IRS that the delivery of Federal tax payment instructions to the financial institution was timely and that the taxpayer satisfied the conditions imposed by the financial institution pursuant to § 203.10(b). Treasury also may assess interest where a financial institution fails to respond to an ACH prenotification entry on an ACH debit as required under part 210 of this title, or fails to originate an ACH prenotification or zero dollar entry on an ACH credit at a taxpayer's request, which then results in a late payment.

(b) *Calculation of interest assessment.* Any interest assessed under this section will be at the TT&L rate of interest.

Treasury will assess the interest from the day the taxpayer specified that its payment should settle to the Treasury until the day Treasury receives the payment, subject to the following limitations: for ACH debit transactions, interest will be limited to no more than seven calendar days; For ACH credit and same-day transactions, interest will be limited to no more than 45 calendar days. The limitation of liability in this paragraph does not apply to any interest assessment in which there is an indication of fraud, the presentation of a false claim, or misrepresentation or embezzlement on the part of the financial institution or any employee or agent of the financial institution.

(c) *Authorization to assess interest.* A financial institution that processes Federal tax payments made electronically under this subpart is deemed to authorize the TSC to debit its reserve account for any interest assessed under this section. Upon the direction of Treasury, the TSC will debit the financial institution's reserve account for the amount of the assessed interest.

(d) *Circumstances not resulting in the assessment of interest.*

(1) Treasury will not assess interest on a taxpayer's financial institution if a taxpayer fails to meet a tax due date because the taxpayer has not satisfied conditions imposed by the financial institution pursuant to § 203.10(b) and the financial institution has not contributed to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.13, that the taxpayer has not satisfied the conditions and that the financial institution has not caused or contributed to the delay.

(2) Treasury will not assess interest on a financial institution if a taxpayer fails to meet a tax due date because the FRB or the TFA caused a delay and the financial institution did not contribute to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.13, that it did not cause or contribute to the delay.

#### 203.13 Appeal and dispute resolution.

(a) *Contest.* A financial institution may contest any interest assessed under § 203.12 or any late fees assessed under § 203.17. To do so, the financial institution must submit information supporting its position and the relief sought. The information must be received, in writing, by the Treasury officer or Fiscal agent identified in the procedural instructions, no later than 90 calendar days after the date the TSC debits the Federal reserve account of the financial institution under § 203.12 or

§ 203.17. The Treasury officer or Fiscal agent will make a decision to: Uphold, reverse, or modify the assessment, or mandate other action.

(b) *Appeal.* The financial institution may appeal the decision referenced in subsection (a) to Treasury as set forth in the procedural instructions. No further administrative review of Treasury's decision is available under this part.

(c) *Recoveries.* In the event of an over or under recovery of interest, principal, or late fees, Treasury will instruct the TSC to credit or debit the financial institution's reserve account.

### Subpart C—PATAX

#### § 203.14 Scope of the subpart.

This subpart applies to all TT&L depositories that accept FTD coupons and governs the acceptance and processing of those coupons.

#### § 203.15 Tax deposits using FTD coupons.

A TT&L depository processing FTD coupons may choose to be designated as a retainer depository, an investor depository, or a collector depository. A TT&L depository that accepts FTD coupons through any of its offices that accept demand and/or savings deposits must:

(a) Accept from a taxpayer that presents an FTD coupon: cash, a postal money order drawn to the order of the depository, or a check or draft drawn on and to the order of the depository, covering an amount to be deposited as Federal taxes. A TT&L depository may accept, at its discretion, a check drawn on another financial institution, but it does so at its option and absorbs for its own account any float and other costs involved.

(b) Place a stamp impression on the face of each FTD coupon in the space provided. The stamp must reflect the date on which the TT&L depository received the tax deposit and the name and location of the depository. The IRS will determine whether the tax payment is on time by referring to the date stamped on the FTD coupon.

(c) Forward, each day, to the IRS Service Center serving the geographical area in which the TT&L depository is located, the FTD coupons for all FTD deposits received that day and a copy of the AOC reflecting the total amount of all FTD coupons.

(d) Establish an adequate record of all FTD deposits prior to transmitting them to 36 the IRS Service Center so that the TT&L depository will be able to identify deposits in the event the FTD coupons are lost in shipment. To be adequate, the record must show, at a minimum for each deposit, the date of the deposit, the



taxpayer identification number, the amount of the deposit, the tax period ending date, the type of tax deposited, and the employer name. Alternatively, the TT&L depository may retain a copy of each FTD coupon forwarded to the IRS Service Center.

(e) On the business day following receipt of an FTD coupon, submit the AOC information electronically to the TSC.

(f) Not accept compensation from taxpayers for accepting FTDs and handling them as required by this section.

#### **§ 203.16 Retainer and investor depositaries.**

(a) *Credit to TIP main account balance.* On the business day that the TSC receives an AOC from a retainer or investor depository, the TSC will credit the depository's TIP main account balance for the amount reported on the AOC unless there isn't sufficient capacity. In that case, any amount in excess of the capacity will be debited to the reserve account and credited to the TGA.

(b) *Late delivery of AOC.* If an AOC does not arrive at the TSC before the designated cutoff time for receipt, the TSC will credit the amount of funds to the depository's TIP main account balance as of the date of receipt of the AOC. However, the date on which funds will begin to earn interest for Treasury is the next business day after the AOC date.

#### **§ 203.17 Collector depositaries.**

(a) *Debit to reserve account.* On the business day that the TSC receives an AOC from a collector depository, the TSC will debit the depository's reserve account for the amount reported on the AOC and credit that amount to Treasury's account.

(b) *Late delivery of AOC.* If an AOC does not arrive at the TSC before the designated cutoff time on the first business day after the AOC date, an FTD late fee in the form of interest at the TT&L rate of interest will be assessed for each day's delay in receipt of the AOC. Upon the direction of Treasury, the TSC will debit the depository's reserve account for the amount of the late fee.

#### **Subpart D—Investment Program and Collateral Security Requirements for TT&L Depositories**

##### **§ 203.18 Scope of the subpart.**

This subpart governs the operation of the investment program, including the rules that TT&L depositories must follow in crediting and debiting TIP main account balances, SDI account

balances, and TIO account balances, and pledging collateral security.

##### **§ 203.19 Sources of balances.**

A financial institution must be a collector depository that accepts term investments, an investor depository, or a retainer depository to participate in the investment program. Depositories electing to participate in the investment program can receive Treasury's investments in obligations of the depository from the following sources:

(a) FTDs that have been credited to the depository's TIP main account balance pursuant to subpart C of this part;

(b) EFTPS ACH credit and debit transactions, Fedwire® non-value transactions, and Fedwire® value transfers pursuant to subpart B of this part;

(c) Direct investments, SDIs, dynamic investments, and term investments pursuant to subpart D of this part; and

(d) Other excess Treasury operating funds.

##### **§ 203.20 Investment account requirements.**

(a) *Additions.* Treasury will invest funds in obligations of collector depositories that accept term investments, investor depositories, or retainer depositories. Such obligations will be in the form of open-ended interest-bearing notes, or in the case of term investments, interest-bearing notes maintained for a predetermined period of time, and additions and reductions will be reflected on the books of the TSC.

(1) *PATAX.* The TSC will credit the TIP main account balance as stated in § 203.16(a) for an investor or retainer depository processing tax deposits through PATAX.

(2) *EFTPS.*

(i) *ACH debit and ACH credit.* The TSC will credit a depository's TIP main account balance, and credit the depository's reserve account if capacity exists, for the amount of EFTPS ACH debit and credit entries on the day such entries settle.

(ii) *Fedwire<sup>reg</sup>: value and non-value transactions.* The TSC will credit a depository's TIP main account balance if capacity exists, throughout the day on the day of settlement, for the amount of Fedwire<sup>reg</sup>: value and non-value transactions. In the case of Fedwire® value transactions, the depository's reserve account will also be credited.

(b) *Additional offerings.* Other funds from Treasury may be offered from time to time to depositories participating in the investment program through direct investments, SDIs, term investments, or other investment programs.

(c) *Withdrawals.* The amount of a TIP main account balance or SDI account balance is payable on demand without prior notice. The TSC will make calls for payment at the direction of the Secretary. On behalf of Treasury, the TSC will debit the depository's reserve account on the day specified in the call for payment.

(d) *Interest.* The TIP main account balance and the SDI account balance bear interest at the TT&L rate of interest. Such interest is payable by a charge to the depository's reserve account in the manner prescribed in the procedural instructions.

(e) *Balance limits.*

(1) *Retainer and investor depositories.* A retainer or investor depository must establish an initial balance limit for its TIP main account balance by providing notice to that effect in writing to the TSC. The balance limit is the amount of funds for which a retainer or investor depository is willing to provide collateral in accordance with § 203.21(c)(1). The depository must follow the procedural instructions before reducing the established balance limit unless the reduction results from a collateral revaluation as determined by the FRB. That portion of any PATAX or EFTPS tax payment which, when posted at the FRB, would cause the TIP main account balance to exceed the balance limit specified by the depository, will be withdrawn by the FRB that day.

(2) *Direct investments.* An investor depository that participates in direct investments must set a balance limit for direct investment purposes which is higher than the peak balance normally generated by the depository's PATAX and EFTPS tax payment inflow. The depository must follow the procedural instructions before reducing the established balance limit.

(3) *SDIs.* SDIs are credited to the SDI account balance and are not considered in setting the amount of the TIP main account balance limit or in determining the amounts to be withdrawn where a depository exceeds its TIP main account balance limit.

(f) *TIO.* Treasury may, from time to time, invest excess operating funds in obligations of depositories awarded funds under TIO. Such obligations will be in the form of interest-bearing notes payable upon a predetermined period of time not to exceed 90 days. Such notes will bear interest at a rate prescribed by the Secretary by auction or otherwise taking into consideration prevailing market interest rates.

**§ 203.21 Collateral security requirements.**

Financial institutions that process EFTPS tax payments, but that are not TT&L depositaries, have no collateral requirements under this part. Financial institutions that are TT&L depositaries have collateral security requirements, as follows:

*(a) Investor and retainer depositaries.**(1) PATAX and EFTPS tax payments.*

Investor and retainer depositaries must pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount that is sufficient to cover the TIP main account balance and the balance in the TT&L account that exceeds the recognized insurance coverage.

*(2) Direct investments.* An investor depositary is required to pledge collateral in accordance with the requirements of paragraphs (c), (d), and (e) of this section no later than the day before a direct investment is placed. However, each investor depositary participating in same-day direct investments must pledge, prior to the announcement, collateral up to its balance limit to obtain the depositary's maximum portion of the same-day direct investment.

*(3) SDIs.* The day before SDIs are credited to an investor depositary's SDI account balance, the depositary must pledge collateral security, in accordance with the requirements of paragraphs (c)(2), (d), and (e) of this section, to cover the total of the SDIs to be received.

*(4) TIO.* Each depositary participating in the term investment program must pledge, prior to the time the term investment is placed, collateral in accordance with paragraphs (c)(1), (c)(2) for certain term investments as determined by Treasury, (d), and (e) of this section sufficient to cover the total TIO account balance.

*(b) Collector depositaries.* Prior to crediting FTD deposits to the TT&L account, a collector depositary must pledge collateral security, in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section, in an amount which is sufficient to cover the balance in the TT&L account that exceeds the recognized insurance coverage.

*(c) Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), (4) (except as provided in subparagraph (2) below), and (b) of this section must be deposited with the depositary's FRB, or with a custodian or custodians within the United States designated by the TSC or FRB, under terms and conditions prescribed by the TSC or FRB.

(2) A depositary pledging collateral security as required under paragraph (a)(3) or paragraph (a)(4) (when permitted) of this section must pledge the collateral under a written security agreement on a form provided by the FRB. The collateral security pledged to satisfy the requirements of paragraphs (a)(3) and (a)(4) (when permitted) of this section may remain in the pledging depositary's possession provided that the pledging is evidenced by advices of custody incorporated by reference in the written security agreement. The depositary must provide the written security agreement and all advices of custody covering collateral security pledged under that agreement to the FRB. Collateral security pledged under the agreement may not be substituted for or released without the advance approval of the FRB, and any collateral security subject to the security agreement will remain so subject until an approved substitution is made. No substitution or release will be approved until an advice of custody containing the description required by the written security agreement is received by the FRB.

(3) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraphs (c)(2) of this section to secure SDIs and certain term investments is perfected without Treasury taking possession of the collateral security by filing or, absent filing, for a period not to exceed 20 calendar days from the day of the depositary's receipt of the special direct or term investment.

*(d) Acceptable collateral.* The types of securities that may be used as collateral, and how those securities are valued, are set forth in 31 CFR part 380.

*(e) Assignment of securities.* By pledging acceptable securities which are not negotiable without the depositary's endorsement or assignment, a TT&L depositary, in lieu of placing its unqualified endorsement on each security, appoints the FRB or its assigns as the depositary's attorney-in-fact with full irrevocable power and authority to endorse, assign or transfer the securities, and represents and warrants that an appropriate resolution authorizing the granting of such irrevocable power of attorney has been executed and adopted. The powers of attorney so granted are coupled with an interest and are irrevocable, and full power of substitution is granted to the assignee or holder.

*(f) Effecting payments of principal and interest on securities or instruments pledged as collateral.* (1) *General.* Treasury, without notice or demand,

may sell or otherwise collect the proceeds of all or part of the collateral, including additions, substitutions, interest, and distribution of principal, and apply the proceeds to satisfy any claims of the United States against the depositary, if any of the following events occur:

(i) The depositary fails to pay, when due, the whole or any part of the funds received by it for credit to the TT&L account and, if applicable, its TIP main account balance, SDI account balance, or TIO account balance;

(ii) The depositary fails to pay when due amounts owed to the United States or the United States Treasury;

(iii) The depositary otherwise violates or fails to perform any of the terms of this part or any of the procedural instructions entered into hereunder; or

(iv) The depositary is closed for business by regulatory action or by proper corporate action, or a receiver, conservator, liquidator, or any other officer is appointed for the depositary. All principal and interest payments on any security pledged to protect the TIP main account balance, the SDI account balance, the TIO account balance or the TT&L account, as applicable, due as of the date of the insolvency or closure or thereafter becoming due, will be held separate and apart from any other assets and will constitute a part of the pledged security available to satisfy any claim of the United States.

*(2) Payment procedures.* (i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) will, as soon as possible, remit to the FRB, as Fiscal agent, each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section. The remittance will be made no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section, upon notification that Treasury is entitled to any payment associated with that pledged security, must make each payment of principal and/or interest due with respect to such security directly to the FRB, as Fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2)(i) and (ii) of this section are hereby waived for only so long as a pledging depositary avoids both termination from the program under § 203.7 and also those circumstances identified in paragraph (f)(1) which may lead to the collection of the proceeds of collateral

or the waiver is otherwise terminated by Treasury.

Dated: October 11, 2007.

**Kenneth R. Papaj,**

*Commissioner.*

[FR Doc. 07-5135 Filed 10-18-07; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 223

RIN 0596-AB70

#### Sale and Disposal of National Forest System Timber; Modification of Timber Sale Contracts in Extraordinary Conditions; Noncompetitive Sale of Timber

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises regulations at Title 36, Code of Federal Regulations, part 223, on noncompetitive disposal of timber and other forest products based on the Secretary of Agriculture's determination that extraordinary conditions exist. A notice with request for comment on an interim final rule was published in the **Federal Register** on June 16, 2006. The Forest Service made appropriate changes to the rule in response to the public comments.

**DATE:** This rule is effective November 19, 2007.

**ADDRESSES:** The public may inspect comments received at Office of the Director, Forest Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250. Visitors are encouraged to call ahead to (202) 205-1496 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Forest Management Staff personnel, Lathrop Smith (202) 205-0858, or Richard Fitzgerald (202) 205-1753.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Forest Management Act (NFMA), codified in part at Title 16 U.S.C. 472a(d), requires the Secretary of Agriculture to advertise all sales of forest products unless the appraised value of the sale is less than \$10,000, or

the Secretary determines that extraordinary conditions exist, as defined by regulation. The requirement to advertise sales unless extraordinary conditions exist applies to the substitution of timber outside a sale contract area.

Prior to NFMA, the Government Accountability Office (formerly the General Accounting Office) held that substitution of timber outside the contract area for timber in the contract area violated the Agency's authority to sell timber.<sup>1</sup> Since the passage of NFMA, but in the absence of a regulation defining "extraordinary conditions," the Agriculture Board of Contract Appeals has decided similarly in several cases.<sup>2</sup>

Before authorizing activities on National Forest System lands, the Forest Service must ensure compliance with applicable laws and regulations and with conditions on the ground at the time of the authorization. Even so, after entering into timber sale contracts, environmental changes may occur such as the listing of a new species on the endangered species list, or a catastrophic event may occur, such as a large wildfire, resulting in the need to modify the contracts. Also, court orders and decisions resulting from environmental litigation may require making changes to existing contracts even when those contracts are not specifically named in the litigation if they are similar to contracts that were named. When this occurs, it is essential for Forest Service officials to have flexibility to adjust management activities and contractual arrangements without incurring enormous financial liability associated with unilateral modifications or contract cancellations.

At the time a sale is sold, there is no way to predict what future litigation or environmental changes may occur that will result in the sale contract needing to be changed. Each occurrence is a unique situation that constitutes an extraordinary condition. The Forest Service needs the ability to provide replacement timber or forest products for contracts that must be modified to prevent environmental degradation or resource damage, or as a result of administrative appeals, litigation, court orders, or catastrophic events that occur after contract award. Thus, the Forest Service promulgated an interim final

<sup>1</sup> Letter to Mr. Secretary, 1973 WL 7905 (Comp. Gen.), B-177602 (1973).

<sup>2</sup> See Appeal of Summit Contractors, 1986 WL 19566 (AGBCA), Nos. 81-252-1, No. 83-312-1 (Jan. 8, 1986), and Appeal of Jay Rucker, 1980 WL 2345 (AGBCA) Nos. 79-211A, 79-211B (June 11, 1980). See also, *Croman Corporation v. United States*, 31 Fed. Cl. 741, 746-47 (August 16, 1994).

rule, published June 16, 2006 (71 FR 34823), on noncompetitive sale of timber and other forest products based on the Secretary of Agriculture's determination that extraordinary conditions exist whenever a timber or forest products contract needs to be modified or canceled to address such unexpected changes. This benefits the Government by providing contracting officers with an opportunity to avert costly claims by providing replacement timber or forest products from outside the contract area when replacement timber is not available within the contract area. Replacement timber also helps maintain the industry infrastructure, which in turn will maintain forest management options.

#### Response to Comments

A 60-day comment period on the interim final rule was initiated on June 16, 2006, (71 FR 34823). Only two respondents replied. One respondent is an individual and the other respondent is a timber industry association.

*Comment 1:* The constraints that the value of replacement material may not exceed the value of the material it is replacing by more than 10% or \$10,000, whichever is less, are too restrictive and will hamper implementation and use of this valuable tool. On small amounts of replacement timber, 10% may represent a very small amount of money, and on large volumes the \$10,000 may represent a small percentage of value. If one or both of these numbers has some basis in law and cannot be removed, the only fair way to deal with this situation is to have these be upper and lower limits.

*Response 1:* The limitations were intended to reduce potential impacts to other purchasers while making the purchaser of a sale that must be modified or terminated whole. Replacement timber from outside the sale area will most likely come from some other sale that would otherwise be offered competitively on the open market. Offering substantially more replacement timber than the amount or value being deleted by a unilateral termination goes beyond making a purchaser whole, circumvents fair and open competition and could have detrimental consequences to other purchasers, the public, and Forest Service program objectives. For the following reasons the Forest Service agrees that the 10% limit is unnecessary but disagrees that the \$10,000 limit is overly restrictive.

The National Forest Management Act (NFMA) requires advertising sales greater than \$10,000 in appraised value unless the Secretary determines, as