

disclosure regarding the conditions under which the cross-trades may take place, including the written policies and procedures described in section 408(b)(19)(H) of the Act. This disclosure must be in a document that is separate from any other agreement or disclosure involving the asset management relationship. For purposes of section 408(b)(19)(D) of the Act, the policies and procedures furnished to the authorizing fiduciary must conform with the requirements of this regulation.

(4) The standards set forth in this section apply solely for purposes of determining whether an investment manager's written policies and procedures satisfy the content requirements of section 408(b)(19)(H) of the Act. Accordingly, such standards do not determine whether the investment manager satisfies the other requirements for relief under section 408(b)(19) of the Act.

(1)(b) *Policies and Procedures. In General.* This paragraph specifies the content of the written policies and procedures required to be adopted by an investment manager and disclosed to the plan fiduciary prior to authorizing cross-trading in order for transactions to qualify for relief under section 408(b)(19) of the Act.

(2) *Style and Format.* The content of the policies and procedures required by this paragraph must be clear and concise and written in a manner calculated to be understood by the plan fiduciary authorizing cross-trading. Although no specific format is required for the investment manager's written policies and procedures, the information contained in the policies and procedures must be sufficiently detailed to facilitate a periodic review by the compliance officer of the cross-trades and a determination by such compliance officer that the cross-trades comply with the investment manager's written cross-trading policies and procedures.

(3) *Content (i).* An investment manager's policies and procedures must be fair and equitable to all accounts participating in its cross-trading program and reasonably designed to ensure compliance with the requirements of section 408(b)(19)(H) of the Act. Such policies and procedures must include:

(A) A statement of policy which describes the criteria that will be applied by the investment manager in determining that execution of a securities transaction as a cross-trade will be beneficial to both parties to the transaction;

(B) A description of how the investment manager will determine that

cross-trades are effected at the independent "current market price" of the security (within the meaning of section 270.17a-7(b) of Title 17, Code of Federal Regulations and SEC no-action and interpretative letters thereunder) as required by section 408(b)(19)(B) of the Act, including the identity of sources used to establish such price;

(C) A description of the procedures for ensuring compliance with the \$100,000,000 minimum asset size requirement of section 408(b)(19). A plan or master trust will satisfy the minimum asset size requirement as to a transaction if it satisfies the requirement upon its initial participation in the cross-trading program and on an annual basis thereafter;

(D) A statement that any investment manager participating in a cross-trading program will have conflicting loyalties and responsibilities to the parties involved in any cross-trade transaction and a description of how the investment manager will mitigate such conflicts;

(E) A requirement that the investment manager allocate cross-trades among accounts in an objective and equitable manner and a description of the allocation method(s) available to and used by the investment manager for assuring an objective allocation among accounts participating in the cross-trading program. If more than one allocation methodology may be used by the investment manager, a description of what circumstances will dictate the use of a particular methodology;

(F) Identification of the compliance officer responsible for periodically reviewing the investment manager's compliance with section 408(b)(19)(H) of the Act and a statement of the compliance officer's qualifications for this position;

(G) A statement that the cross-trading statutory exemption under section 408(b)(19) of the Act requires satisfaction of several objective conditions in addition to the requirements that the investment manager adopt and effect cross-trades in accordance with written cross-trading policies and procedures; and

(H) A statement which specifically describes the scope of the annual review conducted by the compliance officer.

(ii) Nothing herein is intended to preclude an investment manager from including such other policies and procedures not required by this regulation as the investment manager may determine appropriate to comply with the requirements of section 408(b)(19).

(c) *Definitions.* For purposes of this section:

(1) The term "account" includes any single customer or pooled fund or account.

(2) The term "compliance officer" means an individual designated by the investment manager who is responsible for periodically reviewing the cross-trades made for the plan to ensure compliance with the investment manager's written cross-trading policies and procedures and the requirements of section 408(b)(19)(H) of the Act.

(3) The term "plan fiduciary" means a person described in section 3(21)(A) of the Act with respect to a plan (other than the investment manager engaging in the cross-trades or an affiliate) who has the authority to authorize a plan's participation in an investment manager's cross-trading program.

(4) The term "investment manager" means a person described in section 3(38) of the Act.

(5) The term "plan" means any employee benefit plan as described in section 3(3) of the Act to which Title I of the Act applies or any plan defined in section 4975(e)(1) of the Code.

(6) The term "cross-trade" means the purchase and sale of a security between a plan and any other account managed by the same investment manager.

Signed at Washington, DC, this 29th day of September, 2008.

**Bradford P. Campbell,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Parts 2550 and 2578

RIN 1210-AB16

#### **Amendments to Safe Harbor for Distributions From Terminated Individual Account Plans and Termination of Abandoned Individual Account Plans To Require Inherited Individual Retirement Plans for Missing Nonspouse Beneficiaries**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final rule amending regulations under the Employee Retirement Income Security Act of 1974 that provide guidance and a fiduciary safe harbor for the distribution of benefits on behalf of participants or beneficiaries in

terminated and abandoned individual account plans. The Department is amending these regulations to reflect changes enacted as part of the Pension Protection Act of 2006 to the Internal Revenue Code of 1986 (the Code), under which a distribution of a deceased plan participant's benefit from an eligible retirement plan may be directly transferred to an individual retirement plan established on behalf of the designated nonspouse beneficiary of such participant. Specifically, the amended regulations require as a condition of relief under the fiduciary safe harbor that benefits for a missing, designated nonspouse beneficiary be directly rolled over to an individual retirement plan that fully complies with Code requirements. This final rule will affect fiduciaries, plan service providers, and participants and beneficiaries of individual account pension plans.

**DATES:** This final rule is effective November 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends two regulations under the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act) that facilitate the termination of individual account plans, including abandoned individual account plans, and the distribution of benefits from such plans. The first regulation, codified at 29 CFR 2550.404a-3, provides plan fiduciaries of terminated plans and qualified termination administrators (QTAs) of abandoned plans with a fiduciary safe harbor for making distributions on behalf of participants or beneficiaries who fail to make an election regarding a form of benefit distribution, commonly referred to as missing participants or beneficiaries. The second regulation, codified at 29 CFR 2578.1, establishes a procedure for financial institutions holding the assets of an abandoned individual account plan to terminate the plan and distribute benefits to the plan's participants or beneficiaries, with limited liability.<sup>1</sup> Appendices to these two regulations contain model notices for notifying participants or beneficiaries of the

plan's termination and distribution options.

The safe harbor regulation provides that both a fiduciary and a QTA will be deemed to have satisfied ERISA's prudence requirements under section 404(a) of the Act if the conditions of the safe harbor are met with respect to the distribution of benefits on behalf of missing participants from terminated individual account plans.<sup>2</sup> In general, the regulation provides that a fiduciary or QTA qualifies for the safe harbor if a distribution is made to an individual retirement plan within the meaning of section 7701(a)(37) of the Code. See § 2550.404a-3(d)(1)(i). However, in April 2006, when the Department published this safe harbor regulation, a distribution of benefits from an individual account plan to a nonspouse beneficiary was not considered an eligible rollover distribution under the provisions of section 402(c) of the Code and, therefore, could not be rolled over into an individual retirement plan.<sup>3</sup> As a result, the safe harbor regulation mandated, among other requirements, the distribution of benefits on behalf of a missing nonspouse beneficiary to an account that was not an individual retirement plan. See § 2550.404a-3(d)(1)(ii). Consequently, such distributions were subject to income tax and mandatory tax withholding in the year distributed into the account.<sup>4</sup>

The Pension Protection Act of 2006, Public Law 109-280, (PPA) changed the characterization of certain distributions from tax exempt plans and trusts to permit such distributions to qualify for eligible rollover distribution treatment.<sup>5</sup> Section 829 of the PPA amended section 402(c) of the Code to permit the direct rollover of a deceased participant's benefit from an eligible retirement plan to an individual retirement plan established on behalf of a designated nonspouse beneficiary.<sup>6</sup> These rollover distributions would not trigger immediate income tax consequences and mandatory tax withholding for the nonspouse beneficiary.

In light of the PPA's changes to the Code allowing a rollover distribution on behalf of a nonspouse beneficiary into an inherited individual retirement plan with the resulting deferral of income tax

consequences, the Department, on February 15, 2007, published in the **Federal Register** an interim final rule amending its regulatory safe harbor for distributions from a terminated individual account plan, including an abandoned plan, and invited interested parties to comment.<sup>7</sup> The Department received two comments, neither of which related directly to the interim final rule; both comments pertain to the scope and impact of section 402(c) of the Code, as amended by section 829 of the PPA. Accordingly, the interim final rule amending 29 CFR 2550.404a-3 and 29 CFR 2578.1 is adopted as a final rule without change. In this regard, however, the Department notes that section 410(a) of the PPA amended section 4050 of ERISA to permit terminating plans not subject to the PBGC insurance program, such as defined contribution plans, to transfer the benefits of missing participants to the Pension Benefit Guaranty Corporation (PBGC). Section 410(c) of the PPA provides that the amendments to section 4050 would be effective for benefit distributions made after the PBGC prescribes final rules implementing such amendments. The Department will further review whether, and to what extent, changes to 29 CFR 2550.404a-3 and 29 CFR 2578.1 would be appropriate following PBGC regulations pursuant to section 4050 of ERISA.

**B. Overview of Final Rule**

The final rule amends the Department's regulatory safe harbor for distributions from terminated (including abandoned) individual account plans to require that a deceased participant's benefit be directly rolled over to an inherited individual retirement plan established to receive the distribution on behalf of a missing, designated nonspouse beneficiary. These amendments eliminate the prior safe harbor condition that required a distribution on behalf of a missing nonspouse beneficiary to be made only to an account other than an individual retirement plan. See § 2550.404a-3(d)(1)(ii). Therefore, a distribution on behalf of a missing nonspouse beneficiary would satisfy this condition of the safe harbor only if directly rolled into an individual retirement plan that satisfies the requirements of new section 402(c)(11) of the Code.<sup>8</sup> The final rule also makes conforming changes to the content requirements of the mandated participant and beneficiary termination

<sup>2</sup> 71 FR 20830 n. 21.

<sup>3</sup> See 26 CFR 1.402(c)-2, Q&A-12.

<sup>4</sup> 71 FR 20828 n.14.

<sup>5</sup> Section 829 of the Pension Protection Act.

<sup>6</sup> Section 829 of the Pension Protection Act requires that the individual retirement plan established on behalf of a nonspouse beneficiary must be treated as an inherited individual retirement plan within the meaning of Code § 408(d)(3)(C) and must be subject to the applicable mandatory distribution requirements of Code § 401(a)(9)(B).

<sup>7</sup> 72 FR 7516 (Feb. 15, 2007). The interim final rule was effective and applicable to distributions made on or after March 19, 2007.

<sup>8</sup> See also I.R.S. Notice 2007-7, 2007-5 I.R.B. 395.

<sup>1</sup> Under § 2578.1(d)(2)(vii)(B), a QTA is directed to make distributions in accordance with the safe harbor regulation.

notice (and the related model notice under the safe harbor at the Appendix to § 2550.404a-3) and to the content of the required participant and beneficiary termination notice (and the related model notice for abandoned plans at Appendix C to § 2578.1). The specific changes being made to § 2550.404a-3 and § 2578.1 are described below in Section C and Section D of this preamble, respectively. Concurrently with publication of this final rule, the Department is publishing a final amendment to PTE 2006-06,<sup>9</sup> which clarifies that the exemption provides relief to a QTA that designates itself or an affiliate as the provider of an inherited individual retirement plan for a missing, designated nonspouse beneficiary pursuant to the exemption's conditions. As noted in the preamble to the proposed amendments to PTE 2006-06, however, the Department interprets PTE 2006-06 as currently available to the QTA for its self-selection as an inherited individual retirement plan provider subject to the conditions of the exemption.

### C. Amendments Relating to the Safe Harbor for Distributions From Terminated Individual Account Plans

#### 1. Section 2550.404a-3(d)—Conditions

Paragraph (d)(1)(ii) of this section requires that the distribution of benefits on behalf of a nonspouse beneficiary of a participant be made to “an account (other than an individual retirement plan)” because historically such distribution was not eligible for rollover into an individual retirement plan. This condition is being revised to require that the distribution of benefits on behalf of a designated nonspouse beneficiary be rolled over into an inherited individual retirement plan that complies with the requirements of section 402(c)(11) of the Code, as permitted under the PPA for distributions occurring after December 31, 2006.

Paragraph (d)(1)(iii)(C) of this section permits as an alternative distribution option that certain small benefits on behalf of a nonspouse beneficiary of a participant be distributed to “an account (other than an individual retirement plan)” that a financial institution, other than the qualified termination administrator, provides to the public at the time of the distribution. This alternative option is similarly being revised to require the rollover of benefits on behalf of a designated nonspouse beneficiary to an inherited individual retirement plan.

Paragraph (d)(2)(ii)(A) of this section is being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan and eliminate reference to “other account.”

Paragraphs (d)(2)(iii), (d)(2)(iv) and (d)(3) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan, and bank or savings association accounts for certain small amounts.

#### 2. Section 2550.404a-3(e)—Notice to Participants and Beneficiaries

Paragraphs (e)(1)(iv), (e)(1)(v) and (e)(1)(vi) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan and eliminate reference to “other account.”

#### 3. Section 2550.404a-3(f)—Model Notice

The appendix to this section contains a Notice of Plan Termination for terminated individual account plans other than abandoned plans that currently includes an optional paragraph referring to distributions to nonspouse beneficiaries. This paragraph is being deleted because distributions to nonspouse beneficiaries will no longer be required to be made to accounts other than individual retirement plans. A parenthetical is being added to the fourth paragraph to clarify that individual retirement plans established on behalf of missing, designated nonspouse beneficiaries are inherited individual retirement plans.

### D. Amendments Relating to the Termination of Abandoned Individual Account Plans

#### 1. Section 2578.1(d)(2)(vi)—Notify Participants

Paragraph (d)(2)(vi)(A)(5)(ii) of this section is being revised to incorporate the appropriate cross reference to conditions for rollovers on behalf of nonspouse beneficiaries in § 2550.404a-3(d)(1)(ii).

Paragraphs (d)(2)(vi)(A)(5)(iii) and (d)(2)(vi)(A)(6) of this section are being revised to incorporate the appropriate cross references to individual retirement plan and inherited individual retirement plan in § 2550.404a-3(d)(1)(i) and (d)(1)(ii) and eliminate reference to “account.”

Paragraphs (d)(2)(vi)(A)(7) and (d)(2)(vi)(A)(8) of this section are being revised to incorporate the appropriate cross references to individual retirement

plan and inherited individual retirement plan in § 2550.404a-3(d)(1)(i) and (d)(1)(ii).

#### 2. Section 2578.1(i)—Model Notices

Appendix C to this section contains a Notice of Plan Termination for abandoned plans that currently includes an optional paragraph (“Option 2”) referring to distributions to nonspouse beneficiaries. This optional paragraph is being deleted because distributions to nonspouse beneficiaries will no longer be required to be made to accounts other than individual retirement plans. To conform to this change, the instructions for “Option 1” are being revised to delete reference to “participant’s spouse.” “Option 3” is renumbered as “Option 2” and the instructions are revised to eliminate reference to “(or special account for non-spousal beneficiaries if you are a beneficiary other than the participant’s spouse)” and “(or special non-spousal account).” A parenthetical is being added to Option 1 and Option 2 to clarify that individual retirement plans established on behalf of missing, designated nonspouse beneficiaries are inherited individual retirement plans. “Option 4” is renumbered as “Option 3.”

### E. Regulatory Impact Analysis

#### Summary

By conforming regulations pertaining to distributions from certain terminated plans with recent changes to the Code, this interim final rule preserves for certain nonspouse beneficiaries of deceased participants the opportunity to take advantage of preferential tax treatment newly permitted by the Pension Protection Act for distributions after December 31, 2006. Nonspouse beneficiaries will benefit from the preservation, on their behalf, of tax-favored savings set aside for retirement. This final rule also will affect plan fiduciaries, including QTAs, by altering the procedures applicable to certain termination distributions. The Department anticipates that, rather than increasing costs, these amendments will reduce compliance costs modestly for plan fiduciaries and QTAs. Because the rule’s new distribution procedures for terminated plans apply only to the narrow group of nonspouse beneficiaries who have not returned a distribution election, the Department believes that the rule’s economic impact will be small, overall, but positive.<sup>10</sup>

<sup>10</sup> As described earlier, the Department is publishing, concurrently with publication of this rule, amendments to PTE 2006-06, which will establish under the conditions of the exemption

<sup>9</sup> 71 FR 20856 (April 21, 2006).

*Executive Order 12866 Statement*

Under Executive Order 12866, the Department must determine whether a regulatory action is “significant” and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a “significant regulatory action” is an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not “significant” within the meaning of section 3(f) of the Executive Order, and, therefore, is not subject to review by OMB.

*Paperwork Reduction Act*

The information collections included in this final rule, together with information collections included in the amendments to PTE 2006–06, are currently approved by the Office of Management and Budget (OMB) under OMB control number 1210–0127. This approval is currently scheduled to expire on June 30, 2009. The final rule makes minor changes to the content requirements of the participant and beneficiary termination notices, as described earlier in the preamble. These conforming changes, which involve the deletion or substitution of a small number of words in each notice, do not increase the burden of the information collections and do not constitute a substantive or material modification of the existing information collection

that a QTA may designate itself or an affiliate as the provider of an inherited individual retirement plan for a nonspouse beneficiary who has not returned a distribution election. In assessing the economic costs and benefits of this final rule, the Department has taken into account the amendments to PTE 2006–06, which will make explicit the availability of the conditional relief to parties that follow the amended rules with respect to nonspouse distributions, a result that the Department believes will assist in the achievement of the purposes underlying the regulations.

request approved under OMB control number 1210–0127. Accordingly, the Department has not made a submission for OMB approval of a revision in the burden estimates in connection with this final rule or the amendments to PTE 2006–06, published simultaneously with this final rule.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. Because the rule initially was issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Furthermore, because the final rule imposes no additional costs on employers or plans, the Department believes that it would not have a significant impact on a substantial number of small entities. Accordingly, the Department believes that no regulatory flexibility analysis would be required in any case under the RFA.

*Congressional Review Act Statement*

The final rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a “major rule” as that term is defined in 5 U.S.C. 804, because it does not result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual

burden exceeding \$100 million on the private sector, adjusted for inflation.

*Federalism Statement*

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires Federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the final rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

**List of Subjects***29 CFR Part 2550*

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

*29 CFR Part 2578*

Employee benefit plans, Pensions, Retirement.

■ For the reasons set forth in the preamble, the Department of Labor amends 29 CFR chapter XXV as follows:

**Title 29—Labor****Subchapter F—Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974****PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY**

■ 1. The authority citation for part 2550 continues to read as follows:

**Authority:** 29 U.S.C. 1135 and Secretary of Labor's Order No. 1-2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401c-1 also issued under 29 U.S.C. 1101. Sec. 2550.404a-1 also issued under sec. 657, Pub. L. 107-16, 115 Stat. 38. Sections 2550.404c-1 and 2550.404c-5 also issued under 29 U.S.C.1104. Sec. 2550.408b-1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b-19 also issued under sec. 611, Pub. L. 109-280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412-1 also issued under 29 U.S.C.1112.

■ 2. Amend § 2550.404a-3 by revising paragraphs (d)(1)(ii), (d)(1)(iii)(C), (d)(2)(ii)(A), (d)(2)(iii), (d)(2)(iv), (d)(3), (e)(1)(iv), (e)(1)(v), (e)(1)(vi) and the appendix to read as follows:

**§ 2550.404a-3 Safe Harbor for Distributions from Terminated Individual Account Plans.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) In the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, to an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary; or

(iii) \* \* \*

\* \* \* \* \*

(C) An individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) offered by a financial institution other than the

qualified termination administrator to the public at the time of the distribution.

(2) \* \* \*

(ii) \* \* \*

(A) Seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), and

\* \* \* \* \*

(iii) All fees and expenses attendant to the transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), including investments of such plan, (e.g., establishment charges, maintenance fees, investment expenses, termination costs and surrender charges), shall not exceed the fees and expenses charged by the provider of the plan or account for comparable plans or accounts established for reasons other than the receipt of a distribution under this section; and

(iv) The participant or beneficiary on whose behalf the fiduciary makes a distribution shall have the right to enforce the terms of the contractual agreement establishing the plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), with regard to his or her transferred account balance, against the plan or account provider.

(3) Both the fiduciary's selection of a transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or

account (described in paragraph (d)(1)(iii)(A) of this section) and the investment of funds would not result in a prohibited transaction under section 406 of the Act, unless such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(e) \* \* \*

(1) \* \* \*

(iv) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the plan will distribute the account balance of the participant or beneficiary to an individual retirement plan (i.e., individual retirement account or annuity described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(v) A statement explaining what fees, if any, will be paid from the participant or beneficiary's individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), if such information is known at the time of the furnishing of this notice;

(vi) The name, address and phone number of the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) provider, if such information is known at the time of the furnishing of this notice; and

\* \* \* \* \*

BILLING CODE 4510-29-P

## APPENDIX TO § 2550.404a-3

## NOTICE OF PLAN TERMINATION

[Date of notice]

[Name and last known address of plan participant or beneficiary]

Re: [Name of plan]

Dear [Name of plan participant or beneficiary]:

This notice is to inform you that [name of the plan] (the Plan) has been terminated and we are in the process of winding it up.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance in the Plan on [date] is/was [account balance]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. {If applicable, insert the following sentence: The actual amount of your distribution may be more or less than the amount stated in this notice depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.}

Your distribution options under the Plan are {add a description of the Plan's distribution options}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {enter a description of the Plan's election process}.

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). {If the name of the provider of the individual retirement plan is known, include the following sentence: The name of the provider of the individual retirement plan is [name, address and phone number of the individual retirement plan provider].} Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {If fee information is known, include the following sentence: Should your money be transferred into an individual retirement plan, [name of the financial institution] charges the following fees for its services: {add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan}.}

For more information about the termination, your account balance, or distribution options, please contact [name, address, and telephone number of the plan administrator or other appropriate contact person].

Sincerely,

[Name of plan administrator or appropriate designee]

**SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974**

**PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS**

■ 3. The authority citation for part 2578.1 continues to read as follows:

**Authority:** 29 U.S.C. 1135; 1104(a); 1103(d)(1).

■ 4. Amend § 2578.1 by revising paragraphs (d)(2)(vi)(A)(5)(ii), (d)(2)(vi)(A)(5)(iii), (d)(2)(vi)(A)(6), (d)(2)(vi)(A)(7), (d)(2)(vi)(A)(8) and Appendix C to read as follows:

**§ 2578.1 Termination of Abandoned Individual Account Plans**

\* \* \* \* \*

- (d) \* \* \*
- (2) \* \* \*
- (vi) \* \* \*

- (A) \* \* \*
- (5) \* \* \*

(ii) To an inherited individual retirement plan described in § 2550.404a-3(d)(1)(ii) of this chapter (in the case of a distribution on behalf of a distributee other than a participant or spouse),

(iii) In any case where the amount to be distributed meets the conditions in § 2550.404a-3 (d)(1)(iii), to an interest-bearing federally insured bank account, the unclaimed property fund of the State of the last known address of the participant or beneficiary, or an individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter) or

\* \* \* \* \*

(6) In the case of a distribution to an individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter) a statement explaining that the account balance will be invested in an

investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(7) A statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter) or other account (described in § 2550.404a-3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice;

(8) The name, address and phone number of the provider of the individual retirement plan (described in § 2550.404a-3(d)(1)(i) or (d)(1)(ii) of this chapter), qualified survivor annuity, or other account (described in § 2550.404a-3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice; and

\* \* \* \* \*

## APPENDIX C TO § 2578.1

## NOTICE OF PLAN TERMINATION

[Date of notice]

[Name and last known address of plan participant or beneficiary]

Re: [Name of plan]

Dear [Name of plan participant or beneficiary]:

We are writing to inform you that the [name of plan] (Plan) has been terminated pursuant to regulations issued by the U.S. Department of Labor. The Plan was terminated because it was abandoned by [name of the plan sponsor].

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance on [date] is/was [account balance]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating the Plan and distributing your benefits.

Your distribution options under the Plan are {add a description of the Plan's distribution options}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {enter a description of the election process established by the qualified termination administrator}.

{Select the next paragraph from options 1 through 3, as appropriate.}

{Option 1: If this notice is for a participant or beneficiary, complete and include the following paragraph provided the account balance does not meet the conditions of §2550.404a-3(d)(1)(iii).}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary) maintained by {insert the name, address, and phone number of the provider if known, other wise insert the following language [a bank or insurance company or other similar financial institution]}. Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {If fee information is known, include the following sentence: Should your money be transferred into an individual retirement plan, [name of the financial institution] charges the following fees for its services: {add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan}.}

*{Option 2: If this notice is for a participant or beneficiary whose account balance meets the conditions of §2550.404a-3(d)(1)(iii), complete and include the following paragraph.}*

If you do not make an election within 30 days from your receipt of this notice, and your account balance is \$1,000 or less, federal law permits us to transfer your balance to an interest-bearing federally insured bank account, to the unclaimed property fund of the State of your last known address, or to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). Pursuant to federal law, your money, if transferred to an individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. *{If known, include the name, address, and telephone number of the financial institution or State fund into which the individual's account balance will be transferred or deposited. If the individual's account balance is to be transferred to a financial institution and fee information is known, include the following sentence: Should your money be transferred into a plan or account, [name of the financial institution] charges the following fees for its services: {add a statement of fees, if any, that will be paid from the individual's account}.}*

*{Option 3: If this notice is for a participant or participant's spouse whose distribution is subject to the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA), complete and include the following paragraph.}*

If you do not make an election within 30 days from your receipt of this notice, your account balance will be distributed in the form of a qualified joint and survivor annuity or qualified preretirement annuity as required by the Internal Revenue Code. *{If the name of the annuity provider is known, include the following sentence: The name of the annuity provider is [name, address and phone number of the provider].}*

For more information about the termination, your account balance, or distribution options, please contact *[name, address, and telephone number of the qualified termination administrator and, if different, the name, address, and telephone number of the appropriate contact person]*.

Sincerely,  
*[Name of qualified termination administrator or appropriate designee]*

Signed at Washington, DC, this 29th day of September 2008.

**Bradford P. Campbell,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. E8-23424 Filed 10-6-08; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Parts 203 and 260**

[Docket ID: MMS-2007-OMM-0074]

RIN 1010-AD29

**Royalty Relief for Deepwater Outer Continental Shelf Oil and Gas Leases—Conforming Regulations to Court Decision**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends 30 CFR parts 203 and 260 to conform the regulations to the decision of the United States Court of Appeals for the Fifth Circuit in *Santa Fe Snyder Corp., et al. v. Norton*. That decision found that certain provisions of the MMS regulations interpreting section 304 of the Deep Water Royalty Relief Act are contrary to the requirements of the statute. MMS will determine lessees' royalty under leases subject to Deep Water Royalty Relief Act section 304, for both past and future periods, in a manner consistent with the Fifth Circuit's decision in the *Santa Fe Snyder* case and this rule.