

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to remove Class E airspace at the Metlakatla Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### **§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

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**AAL AK E5 Metlakatla, AK [Revoked]**

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Issued in Anchorage, AK, on October 6, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–24689 Filed 10–16–08; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Parts 230 and 240**

**[Release Nos. 33–8976, 34–58769; File No. S7–14–08]**

**RIN 3235–AK16**

### **Indexed Annuities and Certain Other Insurance Contracts**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Securities and Exchange Commission is reopening the period for public comment on new rules that it originally proposed in Securities Act Release No. 8933 (June 25, 2008) [73 FR 37752 (July 1, 2008)]. The Commission proposed a rule that would, if adopted, define the terms “annuity contract” and “optional annuity contract” under the Securities Act of 1933. The proposed rule is intended to clarify the status under the federal securities laws of indexed annuities. The Commission also proposed to exempt insurance companies from filing reports under the Securities Exchange Act of 1934 with respect to indexed annuities and other securities that are registered under the Securities Act, provided that the securities are regulated under state insurance law, the issuing insurance company and its financial condition are subject to supervision and examination by a state insurance regulator, and the securities are not publicly traded.

**DATES:** Comments should be received on or before November 17, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. S7–14–08 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### *Paper Comments*

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–14–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### **FOR FURTHER INFORMATION CONTACT:**

Keith E. Carpenter, Senior Special Counsel, Office of Disclosure and Insurance Product Regulation, Division of Investment Management, at (202) 551–6795, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5720.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (“Commission”) is reopening the period for public comment on a proposed rule that would define the terms “annuity contract” and “optional annuity contract” under the Securities Act of 1933. The proposed rule is intended to clarify the status under the federal securities laws of indexed annuities, under which payments to the purchaser are dependent on the performance of a securities index. The Commission is also reopening the period for public comment on a proposed rule that would, if adopted, exempt insurance companies from filing reports under the Securities Exchange Act of 1934 with respect to indexed annuities and other securities that are registered under the Securities Act, provided that the securities are regulated under state insurance law, the issuing insurance company and its financial condition are subject to supervision and examination by a state insurance regulator, and the securities are not publicly traded. The rules were proposed on June 25, 2008,<sup>1</sup>

<sup>1</sup> Indexed Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8933 (June 25, 2008) [73 FR 37752 (July 1, 2008)].

and the comment period initially closed on September 10, 2008.

The Commission has received numerous letters, including from state insurance commissioners, members of Congress, and others, requesting that the comment period be extended.<sup>2</sup> In general, these commenters indicated that an extension would help them analyze the proposal and prepare meaningful comments. In order to provide additional time for the public to thoroughly consider the proposal, and in view of the significant continuing public interest in the proposal, the Commission believes that it is appropriate to reopen the comment period. Accordingly, we will reopen the comment period for an additional 30 days.

By the Commission.

Dated: October 10, 2008.

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-24625 Filed 10-16-08; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 30

[Docket No. FR-5081-P-01]

RIN 2501-AD23

### Civil Money Penalties: Certain Prohibited Conduct

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would revise HUD's regulations that govern the imposition of civil money penalties. Specifically, the rule would revise the definition of "material or materially" and add a definition of "ability to pay," which is one factor used in determining the appropriateness of the amount of any civil money penalty. Additionally, the proposed rule would require respondents, in their responses to the prepenalty notice, to specifically address the factors used in determining the appropriateness and amount of civil money penalty. This rule would also allow Government Counsel to file complaints on behalf of the Mortgagee Review Board and departmental officials. Finally, this rule would make other minor clarifying changes.

**DATES:** *Comment Due Date:* December 16, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Dane Narode, Acting Associate General Counsel for Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue, SW., Suite 200, Washington, DC 20024-0500; telephone number 202-708-2350 (this is not a toll-free number), or e-mail address [Dane.M.Narode@hud.gov](mailto:Dane.M.Narode@hud.gov). Hearing- or speech-impaired individuals may access the telephone number listed above by calling the toll-free Federal Information Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Proposed Rule

HUD's civil money penalties regulations are located in 24 CFR part 30. In general, 24 CFR part 30 outlines the procedures and requirements that concern violations, prepenalty notices, and complaints. This proposed rule would make several revisions in 24 CFR part 30.

First, "ability to pay" is one of the factors used in determining the appropriateness of civil money penalties under § 30.80(c). To provide more clarity with respect to this factor, HUD proposes to define "ability to pay" in § 30.10. As defined, "ability to pay" would be determined based on the respondent's resources available

presently and prospectively, from which the Department could ultimately recover the total award. The definition would also allow for the consideration of respondent's resources to be based on historical evidence. This would include an analysis of the resources available to the respondent from which the respondent could pay the judgment in one lump sum, over time, or at some point in the future. This analysis would also examine the resources from which the Department could obtain enforced collection or administrative offset. A second modification would revise the definition of "Material" or "Materially" to mean anything having the natural tendency or potential to influence, or, considering the totality of the circumstances, in some significant respect or to some significant degree. To rise to the level of material, acts or conduct would not be required to actually influence a decision or course of action by the Department, but merely to have the potential to do so. Therefore, this revised definition would not require "but for" or actual causation for an act or conduct to be material. Moreover, after revision, the definition of material would no longer require consideration of any factor listed in § 30.80, which are generally to be used only to determine the amount of the civil money penalty imposed, if any, but would permit the Department to introduce evidence of the relevant factors to establish the significance of a violation in light of the totality of the circumstances.

Additionally, this proposed rule would revise § 30.35, the section that lists the actions authorized against a mortgagee or lender. Currently, § 30.35(a)(14) includes failure to comply with "the terms of a settlement agreement with HUD" among the list of actions for which the Mortgagee Review Board may initiate a civil money penalty action. The proposed revision would delete this provision as a basis upon which HUD may initiate a civil money penalty action against a mortgagee or lender.

HUD is seeking to clarify some apparent ambiguity in §§ 30.45 and 30.68. First, this proposed rule would revise § 30.45(d) to clarify that the violation of programmatic procedures and standards are indicators of unsatisfactory management. In addition, this proposed rule would modify § 30.68(b) to clarify that any violation of a housing assistance payments contract may result in the imposition of a civil money penalty. HUD has learned that some confusion exists about whether the violations in § 30.68(b)(1) and (b)(2) are exhaustive. The proposed rule

<sup>2</sup> Comments on the proposal are available at <http://www.sec.gov/comments/s7-14-08/s71408.shtml>.