

(3) *Acid-cut*. A bleached or faded color which sometimes varies throughout the cheese and appears most often around mechanical openings.

(4) *Bleached surface*. A faded color beginning at the surface and progressing inward.

(5) *Dull or faded*. A color condition lacking in luster or translucency.

(6) *Mottled*. Irregular shaped spots or blotches in which portions are not uniform in color. Also an unevenness of color due to combining the curd from two different vats, sometimes referred to as "mixed curd."

(7) *Natural*. White to light cream in color.

(8) *Salt spots*. Large light-colored spots or areas.

(9) *Unnatural*. Any color which is not white to light cream.

(10) *Wavy*. An unevenness of color which appears as layers or waves.

(e) *With respect to finish and appearance:*

(1) *Very slight*. Detected only upon very critical examination and present to a minute degree.

(2) *Slight*. Barely identifiable and present to a small degree.

(3) *Definite*. Readily identifiable and present to a substantial degree.

(4) *Adequately and securely enveloped*. The wrapper or covering is properly sealed and entirely encloses the cheese with sufficient adherence to the surface of the cheese to protect it from contamination or dehydration.

(5) *Bandage*. Cheese cloth used to wrap cheese prior to dipping in paraffin.

(6) *Bandage evenly placed*. Placement of the bandage so that it completely envelops the cheese and overlaps evenly about one inch.

(7) *Bright surface*. Clean, glossy surface.

(8) *Burst or torn bandage*. A severance of the bandage usually occurring at the side seam; or when the bandage is otherwise snagged or broken.

(9) *Checked rind*. Numerous small cracks or breaks in the rind which sometimes follows the outline of curd particles.

(10) *Defective coating*. A brittle coating of paraffin that breaks and peels off in the form of scales or flakes; flat or raised blisters or bubbles under the surface of the paraffin; checked paraffin, including cracks, breaks or hairline checks in the paraffin or coating of the cheese.

(11) *Firm sound rind*. A rind possessing a firmness and thickness (not easily dented or damaged) consistent with the size of the cheese and which is dry, smooth, and closely knit, sufficient to protect the interior quality from external defects; free from checks, cracks, breaks, or soft spots.

(12) *High edge*. A rim or ridge on the side of the cheese.

(13) *Huffed*. A block of cheese which is swollen because of gas fermentation. The cheese becomes rounded or oval in shape instead of having flat surfaces.

(14) *Irregular press cloth*. Press cloth improperly placed in the hoop resulting in too much press cloth on one end and insufficient on the other causing overlapping; wrinkled and loose fitting.

(15) *Lopsided*. One side of the cheese is higher than the other side.

(16) *Mold under bandage and paraffin*. Mold spots or areas under the paraffin.

(17) *Mold under wrapper or covering*. Mold spots or areas under the wrapper or covering.

(18) *Rind rot*. Soft spots on the rind that have become discolored and are decayed or decomposed.

(19) *Rough Surface*. Lacks smoothness.

(20) *Smooth surface*. Not rough or uneven.

(21) *Soft spots*. Areas soft to the touch and which are usually faded and moist.

(22) *Soiled surface*. Milkstone, rust spots, or other discoloration on the surface of the cheese.

(23) *Sour rind*. A fermented rind condition, usually confined to the faces of the cheese.

(24) *Surface mold*. Mold on the exterior of the paraffin or wrapper.

(25) *Wax or paraffin that adheres firmly to the surface of the cheese*. A coating with no cracks, breaks, or loose areas.

(26) *Weak rind*. A thin rind which possesses little or no resistance to pressure.

Dated: February 24, 1995.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 95-5292 Filed 3-2-95; 8:45 am]

BILLING CODE 3410-02-P

appear in part 7 of title 12. This proposal, another component of the OCC's Regulation Review Program, updates and streamlines OCC regulations and seeks to eliminate regulatory requirements that impose ineffective, inefficient and costly regulatory burdens on national banks. This proposal clarifies, revises, and reorganizes existing interpretive rulings, eliminates rulings that are obsolete, adds interpretive rulings to address new issues, and transfers some interpretive rulings to other parts of title 12.

DATES: Comments must be received by May 2, 1995.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95-04. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT:
Stuart E. Feldstein, Senior Attorney, Jacqueline L. Lussier, Senior Attorney, or Laurie P. Sears, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to revise and reorganize 12 CFR part 7 in connection with its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and regulations to eliminate regulatory requirements that impose ineffective, inefficient and costly regulatory burdens on national banks, which do not contribute significantly to maintaining safety and soundness, and to revise rules that do not effectively advance the OCC's other goals and statutory responsibilities. The proposal is also intended to clarify and supplement the interpretive rulings where necessary.

Part 7

Part 7 is a collection of interpretive rulings, some of which date back several decades. Prior to 1971 these interpretive rulings were not codified in the Code of Federal Regulations. When part 7 was originally introduced in the Federal Register, the OCC characterized the new part 7 simply as a collection of interpretive rulings that merited publication in order to be available to the general population.¹

¹ The preamble to the original publication, 36 FR 17000, Aug. 26, 1971, introduced part 7 as follows:

These rulings, which interpret and apply the laws and regulations relating to national banks and general principles of prudent banking, have become of increasing importance not only to national banks but to persons dealing with national banks and to

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 31

[Docket No. 95-04]

RIN 1557-AB38

Interpretive Rulings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise the interpretive rulings that

At the time of their initial publication, many of the rulings formed the basis of regulatory authority for new bank activities. Many of those activities are recognized as usual and customary today. However, most of these interpretive rulings are unchanged since their initial publication, while the banking statutes and interpretive positions of the OCC have continued to evolve. As a result, many of the interpretive rulings in part 7 need revision, and some are so outdated that they no longer serve any useful purpose. In addition, new rulings are needed to address changing industry practices, developing issues, and recent statutory amendments. In conjunction with these revisions, the OCC also is proposing to transfer some interpretive rulings presently located in part 7 of title 12 to part 31 of title 12, since they relate to the subject matter of that part.

Proposal

This proposal also substantially reorganizes part 7. To aid users of the part, the subparts are renumbered and divided among four topic sections: Subpart A—Bank Powers, Subpart B—Corporate Practices, Subpart C—Bank Operations, and Subpart D—Preemption. The proposal removes a number of rulings that are obsolete or superfluous because they merely restate statutory authority, and proposes changes to the remaining rulings to clarify or update longstanding interpretive positions. In addition, new interpretive rulings are proposed to address developing issues and changing industry practices as well as recent statutory developments.

Wherever possible, this proposal consolidates related interpretive rulings into one section in order to address related issues together. For instance, proposed § 7.2011 on bank compensation plans combines current §§ 7.5000, 7.5010, and 7.5015, regarding bonus and profit sharing plans, pension plans, and employee stock option and stock purchase plans. The OCC condensed related sections, to present relevant information in one comprehensive section for greater clarity.

The proposal's revisions, additions, and consolidation of current sections are described in the section-by-section summary that follows. After the section-by-section summary, the preamble explains the OCC's reasons for proposing to remove a number of

the public generally. The Comptroller has accordingly concluded that the public interest requires the publication of these rulings in the Code of Federal Regulations.

interpretive rulings contained in current part 7. The preamble concludes by listing those sections for which no change, except for necessary renumbering, is proposed, and briefly explains the reasons for preserving the sections as they are. A distribution table and derivation table comparing current part 7 sections to the proposed sections follows the “proposal” segment of this preamble.

Section-by-Section Descriptions of Proposed Changes

Bank Ownership of Property (§ 7.1000)

Proposed § 7.1000 simplifies and consolidates current §§ 7.3005, 7.3010, 7.3100, 7.3300, and 7.5230 regarding permissible ownership of real property by national banks, primarily bank premises. Proposed § 7.1000 provides an updated, non-exclusive list of real estate the OCC considers as bank premises for purposes of 12 U.S.C. 29, and removes provisions that merely repeat statutory language. For greater simplicity and clarity, proposed § 7.1000 uses the phrase “necessary for the transaction of its business” rather than “necessary for its accommodation in the transaction of its business” used in 12 U.S.C. 29.

Proposed § 7.1000(b) clarifies that a national bank, as well as a bank premises corporation, may own necessary fixed assets as part of bank premises, and adds that a national bank may own real property “fixtures.” In recognition of modern corporate law developments, proposed § 7.1000(c) provides that a bank premises subsidiary may be organized as a partnership or similar entity (e.g., a limited liability company) as well as a corporation. A statement in current § 7.3100(b)(2) that a bank premises corporation is not a bank service corporation has been removed as unnecessary, but the OCC intends no substantive change.

Proposed § 7.1000(d) shortens the discussion of investment limitations on bank ownership of property or corporations owning bank premises by referring to 12 U.S.C. 371d, where they are fully set forth, and refers to part 5 of this chapter for the relevant approval requirements. See § 5.37 of this chapter, 59 FR 61034, Nov. 29, 1994. Proposed § 7.1000 removes references to prior approval, because revisions to part 5, recently proposed by the OCC, would not always require prior approval for these investments. See 59 FR 61034, Nov. 29, 1994.

Proposed § 7.1000(e) covers two other types of real estate ownership that the OCC has found to be permissible in narrowly defined circumstances,

although not as bank premises. In a line of precedent originating in the early sixties, the OCC has permitted the lease financing of public facilities under certain conditions, on the basis that such transactions are essentially secured real estate loans. This rationale is analogous to the basis for leasing personal property pursuant to 12 U.S.C. 24(Seventh), and could have broader applicability.

The OCC invites comment on the extent to which real estate lease financing should be similarly permitted for other types of borrowers and other types of properties.

Proposed § 7.1000(e) also incorporates the present § 7.5230, concerning bank purchases of the homes of relocating employees who would otherwise suffer a loss on the sale of their homes. Such purchases are justified because they facilitate the efficient utilization of bank personnel, but the bank must divest itself of the house as soon as reasonably possible.

National Bank Acting as Finder (§ 7.1002)

Proposed § 7.1002 revises current § 7.7200 to reflect more recent OCC interpretations. The proposal clarifies that a national bank may act as a finder of certain goods and services other than insurance. In addition, proposed § 7.1002(b) contains a non-exclusive list of the types of activities that a national bank may engage in while acting as finder.

Proposed § 7.1002(c) also adds the phrase—“Unless otherwise prohibited”—to recognize that some state laws prohibit insurance brokers from splitting commissions with nonbrokers and certain national bank finder activities could violate the Real Estate Settlement Procedures Act (RESPA) and its implementing regulations. See 12 U.S.C. 2601 through 2617, and 24 CFR 3500.14(b). Proposed § 7.1002 also revises current § 7.7200 to reflect that since 1986 the OCC has not objected to a national bank advertising its finder services.

Loans made at banking offices or at other than banking offices (§ 7.1003); Loans originating at other than banking offices (§ 7.1004); Credit decisions at other than banking offices (§ 7.1005)

The proposal retains and redesignates current § 7.7380 as § 7.1004 without substantive change, (the section is slightly reworded to be more readable) and adds new sections that address when a loan is made, loan approval and loan disbursal. The new sections, §§ 7.1003 and 7.1005, are intended to

codify recent OCC interpretations relating to loan production offices (LPOs) and the use of back offices. These sections, taken together, provide guidance on what types of facilities constitute a branch in the lending context, and the circumstances under which a bank may conduct lending-related activities at nonbranch locations.

Proposed § 7.1003 incorporates case law relating to where a loan is "made" for purposes of branching. Under § 7.1003, a loan is made where the customer, in person, receives loan funds from the bank. Thus, if funds are received by a customer from a bank employee or at bank premises, branching limitations apply and OCC approval is required. If, however, funds are received by the customer from an independent third party, including a messenger service described in current § 7.7490 (proposed § 7.1012), at the customer's home, office, or at another nonbank facility, branching limitations do not apply and OCC approval is not needed. Proposed § 7.1003 also codifies OCC interpretations that branching requirements do not encompass industry practices with respect to loan disbursal such as when an attorney or escrow agent disburses funds at a real estate closing.

Proposed § 7.1004 clarifies the language in current § 7.7380. It addresses what does and does not constitute a branch in the lending context but makes no substantive change to current § 7.7380.

Proposed § 7.1005 codifies OCC interpretations that offices at which loan approvals occur are not branches if the public has no in-person access to such offices. This clarifies that loans may be approved at locations other than the bank's main office or branches, and that loans originated at LPOs may be approved at such back offices.

Messenger Service (§ 7.1012)

Proposed § 7.1012 modifies current § 7.7490. Proposed § 7.1012 clarifies factors regarding: (1) the responsibility of the messenger for items during transit; (2) the relationship between the messenger and the bank customer; and (3) the permissibility of transporting items by the messenger between a bank customer and a back office facility that processes deposits and withdrawals. Proposed § 7.1012 retains the safe harbor in current § 7.7490 and also allows OCC to evaluate, on a case-by-case basis, whether messenger services that do not precisely fit the terms of the safe harbor need to be considered as bank branches.

Debt Cancellation Contracts (§ 7.1013)

Proposed § 7.1013 revises current § 7.7495 to provide that a national bank may enter into a contract to provide for the cancellation of a loan upon disability or unemployment as well as upon death of the borrower.

Sale of Money Orders at Nonbanking Outlets (§ 7.1014)

Proposed § 7.1014 modifies current § 7.7500 by removing unnecessary descriptive language. However, these changes do not represent any change in OCC policy.

Independent Undertakings To Pay Against Documents (§ 7.1016)

Proposed § 7.1016 revises current § 7.1016 to make its provisions current and relevant to modern market standards and industry usage. Last revised in 1977, current § 7.1016 has served as the basis for, an expansion of services beyond typical letters of credit. The term "letters of credit" is no longer adequate to describe the type of services that banks are offering pursuant to the conditions in the regulation. Therefore, proposed § 7.1016 uses the term "independent undertakings" to describe all such unilateral commitments under which the bank's obligation to honor its commitment is dependent solely on the proper presentation of specified documents.

The term "independent undertakings" is used by the United Nations Commission on International Trade Law (UNCITRAL) to cover a broad array of transactions including commercial letters of credit, standby letters of credit, and other undertakings that are functionally identical or equivalent to letters of credit. The common characteristic of these transactions is that a bank's obligation to pay is conditioned solely on the proper presentation of specified documents regardless of extrinsic factors (except fraud, forgery, or an overriding public policy issue).

Proposed § 7.1016(a) states that a national bank may issue and commit to issue a letter of credit or other independent undertaking within the scope of the laws or rules of practice recognized by law under which the bank's obligation to honor depends upon the presentation of specified documents. Proposed § 7.1016(a) provides a nonexclusive list of sample laws and rules of practice and explains that non-documentary conditions on the bank's undertaking are not relevant to the bank's obligation to honor its commitment. Because the obligation of the issuer of an independent

undertaking is restricted to determining matters of documentary character, the issuer can act without regard to other circumstantial matters of dispute, such as breach of an implied warranty or the terms of delivery. Such matters are settled between the parties to the underlying transactions.

Independent undertakings encompass not only letters of credit and standby letters of credit but similar types of commitments that are used widely in international trade. These include (but are not limited to): independent guarantees, authorized confirmations, commitments to purchase documents, irrevocable reimbursement undertakings, and preliminary advices. All of these independent undertakings are in common use domestically and worldwide, and national banks currently are engaged in providing these services. In fact, the variation has developed, at least in part, in reliance upon the terms and conditions required for letters of credit by current Proposed § 7.7016.

Proposed § 7.1016 recognizes that the scope of current § 7.7016 is too limited and does not reflect the scope of independent undertakings permissible for national banks. Proposed § 7.1016 also extends the same safety and soundness principles in current § 7.7016 to this broader class of activities. Although more specific and more dependent on industry terminology, the revised interpretive ruling is a clearer statement of regulatory standards directed to the segment of the banking industry that engages in these activities.

National Bank as Guarantor or Surety on Indemnity Bond (§ 7.1017)

Proposed § 7.1017 modifies § 7.7010 by removing § 7.7010(b). Paragraph (b) states the "[u]nder appropriate circumstances, foreign branches may exercise additional powers pursuant to 12 U.S.C. 604a." The OCC expects to incorporate that provision into part 28 through a later Federal Register document revision of part 28.

Use of Data Processing Equipment and Furnishing of Data Processing Services (§ 7.1019)

Proposed § 7.1019 revises current § 7.3500. Under proposed § 7.1019 a national bank that uses data processing equipment or technology to perform authorized services may market and sell any legitimate excess capacity in that equipment or technology. Current § 7.3500 states the Comptroller's opinion on the data processing services that a national bank may perform for itself and others. It sets forth a general analytical framework for deciding

questions regarding the permissibility of particular data processing services. Current § 7.3500 does not specify in detail the data processing services permissible for national banks.

In light of the rapid advances in data processing equipment and technology in the ten years since the interpretive ruling was last amended, the OCC invites comment on whether the interpretive ruling should be more specific in describing the authorized services a national bank may provide using data processing equipment or technology, and, if so, what services should be included and how should they be described.

Commenters also are asked to address whether the additional language recognizing the authority of national banks to sell legitimate excess capacity in data processing equipment or technology is needed.

Commenters are also requested to indicate whether the OCC should be more specific in describing permissible sales of excess capacity and, if so, how such sales should be described.

Corporate Governance Procedures (§ 7.2000)

Proposed § 7.2000 is a new section that provides additional guidance regarding national banks' corporate governance procedures. Under proposed § 7.2000, a bank undertaking a corporate governance procedure must comply with applicable statutes and regulations, and safe and sound banking practices. However, where the statutes and regulations are silent on a matter, proposed § 7.2000 establishes a safe harbor for a national bank that undertakes a corporate governance procedure that complies with designated sections of the Model Business Corporation Act (MBCA), sections 6.24, 6.28, 7.01, 7.02, 7.25, 7.26, 8.05, 8.07, 8.20–23, 8.25, 10.03, and 10.09 (1984) (amended 1993). For example, telephonic board meetings for directors of a national bank are not covered by Federal banking statutes or regulations. Under proposed § 7.2000, such meetings would be permissible as provided for under the relevant provision of the MBCA, § 8.20(b) (1984) (amended 1993).

A list of approved MBCA sections are contained in Appendix A to Part 7. The OCC anticipates adding additional provisions over time following a careful review of the procedures' impact on the safe and sound operation of banks.

The OCC invites comment on whether additional sections of the MBCA should be included in the safe harbor.

Proposed § 7.2000(c) also provides that in accordance with the no-objection

procedures contained in Banking Circular 205, the OCC will consider requests for staff guidance on the permissibility of engaging in certain corporate governance practices that are not addressed by applicable Federal banking statutes and regulations or by the designated sections of the MBCA.

The OCC also invites comment on whether the MBCA is the appropriate form of guidance to provide national banks with additional flexibility in structuring their corporate practices to meet new technologies and other corporate changes, or whether the Delaware General Corporation Law or other sources are preferable.

Notice of Shareholders' Meetings (§ 7.2001)

Proposed § 7.2001 clarifies the language of current § 7.4000 and removes the sentence referring to specific statutory provisions concerning conversions, consolidations and mergers of national banks. Proposed § 7.2001 clarifies that the national bank must mail the notice of shareholders' meetings ten days before the proposed meeting.

Director or Attorney as Proxy (§ 7.2002)

Proposed § 7.2002 modifies current § 7.4020 to clarify that a person who is both an officer, and either a director or attorney may not act as proxy. Proposed 7.2002 like current § 7.4020 repeats 12 U.S.C. 61 and states that directors and attorneys may act as proxy.

The OCC invites comment on whether to remove this section as unnecessary.

Annual Meeting for Election of Directors (§ 7.2003)

Proposed § 7.2003 revises current § 7.4105 by removing unnecessary language that merely explains the rationale for the statutory requirement that a director stay in office until a successor has been elected.

Ownership of Stock Necessary To Qualify as Director (§ 7.2005)

Proposed § 7.2005 consolidates and streamlines current § 7.4210 by removing repetitive information and making the provision more readable. Consistent with OCC precedent, proposed § 7.2005 provides that a director's ownership of preferred stock in a national bank may satisfy the requirements of 12 U.S.C. 72. Proposed § 7.2005 also clarifies that the funds used to purchase the required minimum equity interest may be borrowed from the bank or its affiliates. (When funds are borrowed from the bank itself, however, the bank must make

appropriate accounting adjustments to the value of the stock.)

Cumulative Voting in Election of Directors (§ 7.2006)

Proposed § 7.2006 streamlines and simplifies current § 7.4300. Proposed § 7.2006 directly states how shares may be allocated to elect directors if all directors are not elected on the first ballot. The proposal removes an example of this procedure contained in current § 7.4300.

Filling Vacancy in or Increasing Board of Directors (§ 7.2007)

Proposed § 7.2007 modifies current § 7.4305 to clarify that it is "the majority of shareholders or a majority of directors" that may increase the number of directors. Current § 7.4305 uses the more ambiguous term "national bank," creating uncertainty about what body has the ability to act on this issue. Proposed § 7.2007 also eliminates language that repeats the statute, and clarifies the procedures for filling vacancies.

Quorum of the Board of Directors; Proxies Not Permissible (§ 7.2009)

Proposed § 7.2009 clarifies current § 7.4420 to indicate that the OCC requires a national bank's articles of association or bylaws to provide that a quorum of directors is at least a majority of the entire board then in office.

Delegation of Directors' Duties (§ 7.2010)

Proposed § 7.2010 revises current § 7.4425. Proposed § 7.2010 states that while directors may delegate the day-to-day operations of the bank to management, the directors maintain the responsibility for supervising management to ensure that the bank is operated in accordance with policies and procedures established by the board as well as with applicable law, regulations, and safe and sound banking practices.

Compensation Plans (§ 7.2011)

Proposed § 7.2011 combines and condenses current §§ 7.5000, 7.5010, and 7.5015, regarding bonus and profit sharing plans, pension plans, and employee stock option and stock purchase plans, respectively, into one section on compensation plans. The OCC believes these subjects are closely related and thus belong in one section.

President as Director; Chief Executive Officer (§ 7.2012)

Proposed § 7.2012 modifies current § 7.5200 to provide that a person other than the president or a director may

serve as chief executive officer of the bank.

Indemnification of Directors, Officers, and Employees (§ 7.2014)

Proposed § 7.2014 clarifies current § 7.5217 to state that a national bank may indemnify certain individuals and advance legal fees and expenses, subject to certain limitations. Under proposed § 7.2014, a national bank may not indemnify an individual where an administrative proceeding results in a final order assessing a civil money penalty or requiring restitution, or a final removal or prohibition order under 12 U.S.C. 1818 (e) or (g). Proposed § 7.2014 adds legal fees to the list of expenses for which a national bank may not indemnify an individual under such circumstances.

The OCC invites comments on whether the general provision permitting indemnification is broad enough to permit appropriate indemnification in contexts outside of administrative enforcement action.

The OCC also invites comment on whether the term "institution-affiliated party" should be added to the list of individuals who a bank may not indemnify under § 7.2014(b).

Proposed § 7.2014(c) also adds a new paragraph that imposes certain procedural requirements for national banks that wish to advance expenses and legal fees in connection with administrative enforcement actions. Under proposed § 7.2014, a national bank may advance expenses and legal fees if the disinterested members of the board of directors determine, in good faith, that there is a reasonable basis for the individual to prevail on the merits; that the individual has the financial capacity to reimburse the bank if he or she does not prevail; and that the payment of the expenses by the bank is not unsafe or unsound. The indemnified individual must repay advances to the bank, however, if the action or proceeding results in a final order assessing a civil money penalty or requiring restitution, or a final removal or prohibition order under 12 U.S.C. 1818 (e) or (g).

The OCC invites comment on whether these standards (particularly the determination of a reasonable basis for prevailing on the merits) are workable or too restrictive, and whether other standards are more appropriate.

Proposed § 7.2014(c)(2) also requires an individual to execute a formal and binding agreement to reimburse the bank for expenses and fees in the event he or she does not prevail. Proposed § 7.2014(d) also clarifies that based upon a review of an indemnification or

advance, or proposed indemnification or advance, the OCC may direct a national bank to modify a specific indemnification or payment through any appropriate means.

Proposed § 7.2014(e) clarifies that a bank may pay reasonable premiums for insurance covering the expenses, legal fees and liability of directors, officers, or employees, except that the insurance may not cover final orders assessing civil money penalties.

The OCC invites comment on whether the exclusion from insurance coverage should be limited further to require exclusions only for willful or criminal misconduct.

Cashier (§ 7.2015)

Proposed § 7.2015 revises current § 7.5245 to clarify that the cashier's duties may be delegated to the president, chief executive officer, or other officer.

Restricting Transfer of Stock and Record Dates (§ 7.2016)

Proposed § 7.2016 modifies current § 7.6005 to clarify, among other things, that it is the board of directors, rather than the bank, that sets the record date.

Facsimile Signatures on Bank Stock Certificates (§ 7.2017)

Proposed § 7.2017 revises current § 7.6010 to clarify that facsimile signatures include electronic means of signature.

Loan Secured by a Bank's Own Shares (§ 7.2019)

Proposed § 7.2019 modifies current § 7.6030 by removing the first paragraph which merely restates the statute. Proposed § 7.2019 does not alter the substance of current § 7.6030.

Acquisition and Holding of Shares as Treasury Stock (§ 7.2020)

Proposed § 7.2020 is a new section that addresses a national bank's acquisition and holding of shares as treasury stock. Proposed § 7.2020 explains that pursuant to the authority and procedures of 12 U.S.C. 59, a national bank may acquire its outstanding shares and hold them as treasury stock, as long as the acquisition and retention of the shares is for a legitimate corporate purpose. A national bank has authority under section 12 U.S.C. 24(Seventh) to fulfill a legitimate corporate need, so long as it complies with section 59 in its repurchase of outstanding shares with the consequent reduction in capital. Because section 59 limits such capital reductions to situations where the bank receives the approval of the OCC and of two-thirds

of its shareholders, there is little risk of improper use of treasury stock. It would not be permissible, however, for a national bank to acquire and hold treasury stock for speculation or as a means of bypassing some requirement or obligation under the Federal banking laws.

Voting Trusts (§ 7.2022)

Proposed § 7.2022 revises current § 7.6060 by affirmatively stating that a national bank shareholder may establish a voting trust. Proposed § 7.2022 also removes the requirement that the law of the state in which the bank is located should be observed in the preparation of the trust agreement. The OCC recognizes that with the advent of interstate banking, it is increasingly likely that a bank's shareholders will be located in many different states. Accordingly, the voting trust may be established under the law of any state selected by the participants and designated in the trust agreement. Proposed § 7.2022 continues to require that the trust be consistent with safe and sound banking practices.

Bank Hours and Closings (§ 7.3000)

Proposed § 7.3000 revises current § 7.7434 to provide more comprehensive guidance to banks regarding hours and closings.

Proposed § 7.3000(a) maintains the general information that a national bank's board of directors is responsible for establishing a schedule of business hours independently of other banks.

Proposed § 7.3000(b) informs national banks that the Comptroller, a state or a legally authorized state official may declare a day to be a legal holiday for emergency reasons. Proposed § 7.3000(b) sets forth examples to provide guidance regarding the circumstances under which a national bank may remain closed and be assured that the bank will not incur liability for closing.

Proposed § 7.3000(c) also provides that a state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons, and that a national bank may choose to remain open or to close on such holidays.

Finally, proposed § 7.3000(d) reminds national banks to look to applicable law to determine if they may incur liability for closing.

Although not specified in proposed § 7.3000, the proposed ruling would apply to foreign branches and agencies pursuant to the International Banking Act, 12 U.S.C. 3102(b).

Sharing Space and Employees (§ 7.3001)

Proposed § 7.3001 revises current § 7.7516 to reflect current OCC positions

on sharing space and employees. Current § 7.7516 only addresses sharing bank premises with other financial institutions. Through interpretive letters, however, the OCC has allowed national banks to lease excess space in bank-owned buildings.

Proposed § 7.3001(a) codifies existing interpretive letters that have addressed the scope of a national bank's ability to share space with other businesses.

Proposed § 7.3001(b) also addresses the issue of a national bank sharing employees with businesses with which it shares space. In addition to permitting a national bank to lease lobby space to various tenants, the OCC has permitted bank employees to perform services as agent for the bank's tenants under certain circumstances.

Finally, proposed § 7.3001(c) summarizes the supervisory concerns that may be presented by these arrangements, and proposed § 7.3001(d) identifies legal issues a bank should consider when entering into these arrangements.

Commenters are specifically requested to address whether the listed items are appropriate and if other considerations should be identified in lieu of, or in addition to, those described in the proposal.

Books and Records of National Banks (§ 7.4000)

Proposed § 7.4000 revises current § 7.6025 which addresses the exclusive examination authority of the OCC. Proposed § 7.4000 clarifies that state authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with applicable state unclaimed property and escheat laws. Proposed § 7.4000 also removes the current § 7.6025(c) provisions relating to the disclosure of examination reports, which will be incorporated into 12 CFR Part 4 through a later Federal Register document to revise part 4.

Charging Interest at Rates Permitted Competing Institutions; Charging Interest to Corporate Borrowers (§ 7.4001).

Proposed § 7.4001 updates current § 7.7310 to reflect current law and OCC interpretive letters. Under 12 U.S.C. 85, a national bank may charge interest at the highest rate allowed by the state in which the bank is located. Section 85 permits a national bank to "export" the rate of "interest" allowed by the state in which the bank is located to customers in other states. For example, a national bank located in State A can charge

interest in accordance with the law of State A to a borrower in State B even though the laws of State B prohibit or restrict the rate or type of interest charged.

Although the exportation principle of section 85 is well established in case law, the application of section 85 is still the subject of court challenges, usually over whether a particular fee or charge imposed by a bank located in a given state is properly characterized as "interest," and thus is "exportable" to a different state. For example, courts have held that charges such as late fees and overlimit fees are a component of "interest." See *Tikkanen v. Citibank (South Dakota) N.A.*, 801 F. Supp. 270 (D. Minn. 1992); *Cades v. H & R Block, Inc.*, No. 4:92-1454-21, 1993 U.S. Dist. LEXIS 19043 (D.S.C. 1993), *aff'd*, No. 93-2555, 1994 WL 719070 (4th Cir. Dec. 30, 1994); *Ament v. PNC National Bank*, 849 F. Supp. 1015 (W.D. Pa. 1994) (on appeal). But see *Mazaika v. Bank One, Columbus, N.A.*, No. 00231 Phila. 1993, 1994 WL 698016 (Pa.Super.Ct. Dec. 14, 1994) (*en banc*).

The OCC has addressed, through interpretive letters, the issue of what fees or charges may be considered "interest." Most recently, the OCC summarized its previous opinions and concluded that in addition to periodic percentage rates, charges consisting of late charges, annual fees and overlimit charges are included within the meaning of "interest" as used in section 85. Thus, if they are permissible for lenders to impose under the laws of the state where a bank is located, they may be charged and "exported" by the national bank without reference to whether such fees and charges are denominated "interest" by the laws of the state where the bank is located or by the laws of the state where the customer resides. See Letter from Julie L. Williams, Chief Counsel, to John L. Douglas, dated February 17, 1995.

Proposed § 7.4001(a) proposes to codify these interpretive positions. Under proposed § 7.4001(a) "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for any extension of credit, the making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing

repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports. Thus, the description includes items that the OCC considers components of interest, such as late fees and annual fees, as well as items that the OCC generally does not consider interest, such as appraisal fees and premiums. Proposed § 7.4001(a) also is not intended to be a comprehensive treatment of the issue, and other charges may also be found to be components of interest.

National Bank Charges (§ 7.4002)

Proposed § 7.4002 revises current § 7.8000 to clarify that section and to address concerns raised by Congress. The conference report to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 urged the OCC to review current § 7.8000 to determine if it should be withdrawn or revised. H.R. Conf. Rep. No. 651, 103rd Cong., 2d sess. 54 (1994). The conferees expressed the view that in certain circumstances the OCC had applied the principles of preemption in an overly broad manner. In particular, the conferees expressed concern regarding the scope of the broad assertion of current § 7.8000 that Federal law preempts state laws that prohibit, limit, or restrict deposit account service charges imposed by a national bank. Specifically, current § 7.8000 cites the "comprehensive [F]ederal statutory scheme governing the deposit-taking function of national banks" as authority for preemption of these state laws.

Proposed § 7.4002 revises the approach in current § 7.8000.

Proposed § 7.4002(a) addresses the ability of a national bank to charge customers reasonable deposit account service charges and loan-related fees. Proposed § 7.4002(a) incorporates current §§ 7.7315 and 7.7515 which deal with credit report fees and service charges on dormant accounts. The authority of a national bank to charge these fees is well established. Proposed § 7.4002(a) requires such fees to be reasonable and determined through consideration of all factors relevant to a sound business decision.

Proposed § 7.4002(b) sets out the relevant considerations in establishing such charges.

In place of the broad assertion of Federal preemption in current § 7.8000, proposed § 7.4002(c) states that the OCC will consider on a case-by-case basis whether a national bank may establish a particular service charge that is in conflict with a state law. Proposed § 7.4002(c) affirms that in issuing an opinion on whether such state laws are

preempted, the OCC will employ the preemption principles derived from the Supremacy Clause of the U.S. Constitution and judicial precedent. Generally, state laws apply to national banks unless the state law expressly or impliedly conflicts with Federal law. Federal law is so comprehensive as to evidence a congressional intent to occupy a given field, or the state law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law.

Licensing; Request for Comments

The OCC has not proposed a specific interpretive ruling addressing the applicability of state licensing requirements to national banks, but is considering whether it would be advisable to do so in order to clarify its position on various issues that have recently arisen in this area. For example, the OCC has consistently taken the position that a state may not require a national bank to obtain a state license to exercise the powers authorized for national banks under Federal law. This position is consistent with judicial precedent that establishes the parameters of preemption of state law by Federal banking law.² The OCC's position also is supported by *Bank of America v. Lima*, 103 F. Supp. 916 (D. Mass. 1952), which stated that as Federal government instrumentalities, national banks are not required to obtain state approval for the exercise of the powers granted to them by Congress.

Some state laws apply to national banks. However, as a general principle, a national bank need not conform to state laws that conflict with Federal law. In *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896), for example, the Supreme Court drew upon constitutional principles to define the ability of the states to regulate national banks:

National banks are instrumentalities of the Federal government, created for a public purpose and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government

² See *McClellan v. Chipman*, 164 U.S. 347, 356-57 (1896) (National banks are instrumentalities of the Federal government and are necessarily subject to the paramount authority of the United States); see also *Flood v. City Nat'l Bank of Clinton*, 220 Iowa 935, 263 N.W. 321 (1935), cert. denied, 298 U.S. 666 (1936) (National banks derive their powers and authority under Federal law, and thus are not subject to conflicting state law).

to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

161 U.S. 275, 283. The *Davis* decision captures the essential elements of Federal banking preemption analysis and is frequently cited by the OCC and reviewing courts. However, it is not always simple to apply these preemption principles because of the valid role of state law in certain aspects of national bank operations. Moreover, the manner in which the national bank's activities may be conducted may be subject to certain types of state laws, and the OCC often encourages national banks to comply with certain types of state law requirements as a matter of sound business practices.

Commenters are specifically asked to address whether these principles should be included in a new interpretive ruling and if any additional or alternative provisions would also be appropriate.

Sections Removed From Part 7

The OCC is proposing to remove current §§ 7.3000, 7.4005, 7.4015, 7.4100, 7.4200, 7.4205, 7.4400, 7.4410, 7.7400, 7.7410, 7505, 7.7519, 7.7590, 7.7000, and 7.7015 as generally unnecessary, outdated or repetitive. The OCC proposes to remove the following additional sections for the reasons stated below.

Section 7.4010—Quorum for shareholders' meeting. The issues are covered sufficiently by proposed cross-references to the MBCA, § 7.25 (1984) (amended 1993).

Section 7.5210—Same person holding offices of president and cashier. There is no legal impediment to one person serving as both president and cashier. Further, proposed § 7.2015, discusses the assignment of the cashier's duties and clarifies that the duties of cashier may be delegated to the president, chief executive officer, or other officer.

Section 7.5220—Contracts of employment. Any employment contract that is excessive or unreasonable is unsafe and unsound. Therefore, the current "reasonable" standard is necessarily in effect, so it is unnecessary to reiterate the standard in this interpretive ruling. Moreover, section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and regulations to be issued by the OCC and other agencies under section 132 will deal with excessive or unreasonable contracts. See 12 U.S.C. 1831p-1 (c), and (d).

Section 7.7012—Foreign operations. This section has been removed and will be incorporated into 12 CFR part 28 as part of the overall revision of that part.

Section 7.7112—Insuring lives of bank officers. Banking Circular 249 covers the relevant issues in more detail, and § 7.7112 is therefore unnecessary.

Sections 7.7355—Debts of affiliates, 7.7360—Loans secured by stock or obligation of an affiliate, 7.7365—Federal funds transactions between affiliates, and 7.7370—Deposits between affiliated banks. These sections have been transferred to § 31.100 of this chapter.

Sections 7.7378—Issuance of credit cards, and 7.7379—Servicing of mortgage and other loans as agent. These sections have been incorporated into proposed revisions of part 5 of this chapter. See proposed § 5.34(e)(2)(ii)(F) of this chapter, 59 FR 61034, Nov. 29, 1994.

Section 7.7540—Reports of condition: Waiver of affiliate reports. Section 308 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160 (Sept. 23, 1994), eliminated the requirement that national banks and their affiliates periodically publish the reports of condition in a newspaper. See 12 U.S.C. 161.

The OCC's proposed removal or transfer of these sections does not imply any alteration of the underlying authority for national bank activity. The interpretive rulings the OCC proposes to remove or transfer are grounded in statutory authority that remains unchanged. Unless otherwise noted, these proposed changes to part 7 are not intended to effect any change in the substance or influence of the interpretive rulings beyond that described in this preamble.

The OCC requests comments on whether it should retain any of the sections proposed to be removed, and if so, why.

Sections That Remain Substantively Unchanged

The OCC proposes stylistic changes and redesignates the following sections. The OCC does not intend to affect the substance of these sections.

Current § 7.7380 to proposed § 7.1004—Loans originating at other than banking offices;

Current § 7.4110 to proposed § 7.2004—Honorary directors or advisory board;

Current § 7.4415 to proposed § 7.2008—Oath of directors;

Current § 7.4420 to proposed § 7.2009—Quorum of board of directors; proxies not permissible;

Current § 7.5215 to proposed § 7.2013—Fidelity bonds covering officers and employees;

Current § 7.6015 to proposed
§ 7.2018—Lost stock certificates;
Current § 7.6050 to proposed
§ 7.2021—Preemptive rights;
Current § 7.7100 to proposed
§ 7.1001—National banks acting as
general insurance agents;
Current § 7.7430 to proposed
§ 7.1008—Preparing income tax returns
for customers or public;
Current § 7.7312 to proposed
§ 7.1006—Loan agreement providing for
share in profits, income or earnings;

Current § 7.7420 to § 7.1007—
Acceptances;
Current § 7.7455 to proposed 7.1009—
National bank holding collateral as
nominee.
Current § 7.7482 to proposed
§ 7.1010—Postal service by national
bank;
Current § 7.7485 to proposed
§ 7.1011—National bank acting as
payroll issuer;
Current § 7.7535 to proposed
§ 7.1015—Receipt of stock from SBIC;
and

Current § 7.7560 to proposed
§ 7.1018—Automatic payment plan
account.

The OCC includes these sections in
the proposal for the convenience of
readers to present part 7 as proposed in
its entirety.

Distribution Table

The distribution table indicates
where, if applicable, each section of the
current part 7 will appear in the
proposed part 7 or elsewhere.

| Original provision | Revised provision | Comment |
|--------------------|-------------------|---------------------|
| § 7.1100 ..... | ..... | Moved (part 32). |
| § 7.1105 ..... | ..... | Moved (part 32). |
| § 7.3000 ..... | ..... | Moved (part 32). |
| § 7.3005 | § 7.1000 | Significant change. |
| § 7.3010 | § 7.1000 | Significant change. |
| § 7.3100 | § 7.1000 | Significant change. |
| § 7.3300 | § 7.1000 | Significant change. |
| § 7.3500 | § 7.1019 | Significant change. |
| § 7.4000 | § 7.2001 | Significant change. |
| § 7.4005 ..... | ..... | Removed. |
| § 7.4010 ..... | ..... | Removed. |
| § 7.4015 ..... | ..... | Removed. |
| § 7.4020 | § 7.2002 | Modified. |
| § 7.4100 ..... | ..... | Removed. |
| § 7.4105 | § 7.2003 | Significant change. |
| § 7.4110 | § 7.2004 | Unchanged. |
| § 7.4200 ..... | ..... | Removed. |
| § 7.4205 ..... | ..... | Removed. |
| § 7.4210 | § 7.2005 | Significant change. |
| § 7.4300 | § 7.2006 | Significant change. |
| § 7.4305 | § 7.2007 | Modified. |
| § 7.4400 ..... | ..... | Removed. |
| § 7.4410 ..... | ..... | Removed. |
| § 7.4415 | § 7.2008 | Unchanged. |
| § 7.4420 | § 7.2009 | Unchanged. |
| § 7.4425 | § 7.2010 | Modified. |
| § 7.5000 | § 7.2011 | Significant change. |
| § 7.5010 | § 7.2011 | Significant change. |
| § 7.5015 | § 7.2011 | Significant change. |
| § 7.5200 | § 7.2012 | Modified. |
| § 7.5210 ..... | ..... | Removed. |
| § 7.5215 ..... | ..... | Unchanged. |
| § 7.5217 ..... | ..... | Significant change. |
| § 7.5220 ..... | ..... | Removed. |
| § 7.5230 | § 7.1000 | Significant change. |
| § 7.5245 | § 7.2015 | Significant change. |
| § 7.6005 | § 7.2016 | Modified. |
| § 7.6010 | § 7.2017 | Significant change. |
| § 7.6015 | § 7.2018 | Unchanged. |
| § 7.6025 | § 7.4000 | Significant change. |
| § 7.6030 | § 7.2019 | Modified. |
| § 7.6040 ..... | ..... | Moved (part 5). |
| § 7.6050 | § 7.2021 | Unchanged. |
| § 7.6060 | § 7.2022 | Significant change. |
| § 7.6120 ..... | ..... | Moved (part 5). |
| § 7.7000 ..... | ..... | Removed. |
| § 7.7010 | § 7.1017 | Modified. |
| § 7.7012 ..... | ..... | Removed. |
| § 7.7015 ..... | ..... | Removed. |
| § 7.7016 | § 7.1016 | Significant change. |
| § 7.7100 | § 7.1001 | Unchanged. |
| § 7.7115 ..... | ..... | Removed. |
| § 7.7200 | § 7.1002 | Significant change. |
| § 7.7310 | § 7.4001 | Significant change. |
| § 7.7312 | § 7.1006 | Unchanged. |
| § 7.7315 | § 7.4002 | Significant change. |
| § 7.7355 ..... | ..... | Moved (part 31). |
| § 7.7360 ..... | ..... | Moved (part 31). |

| Original provision | Revised provision | Comment |
|--------------------|-------------------|---------------------|
| § 7.7365 ..... | ..... | Moved (part 31). |
| § 7.7370 ..... | ..... | Moved (part 31). |
| § 7.7378 ..... | ..... | Removed. |
| § 7.7379 ..... | ..... | Removed. |
| § 7.7380 | § 7.1004 | Unchanged. |
| § 7.7400 ..... | ..... | Removed. |
| § 7.7405 ..... | ..... | Removed. |
| § 7.7410 ..... | ..... | Removed. |
| § 7.7415 ..... | ..... | Removed. |
| § 7.7420 | § 7.1007 | Unchanged. |
| § 7.7430 | § 7.1008 | Unchanged. |
| § 7.7434 | § 7.3000 | Significant change. |
| § 7.7455 | § 7.1009 | Unchanged. |
| § 7.7482 | § 7.1010 | Unchanged. |
| § 7.7485 | § 7.1011 | Unchanged. |
| § 7.7490 | § 7.1012 | Modified. |
| § 7.7495 | § 7.1013 | Significant change. |
| § 7.7500 | § 7.1014 | Modified. |
| § 7.7505 ..... | ..... | Removed. |
| § 7.7515 | § 7.4002 | Significant change. |
| § 7.7516 | § 7.3001 | Significant change. |
| § 7.7519 ..... | ..... | Removed. |
| § 7.7530 ..... | ..... | Removed. |
| § 7.7535 ..... | ..... | Unchanged. |
| § 7.7540 ..... | ..... | Removed. |
| § 7.7560 ..... | ..... | Modified. |
| § 7.7570 ..... | ..... | Moved (part 1). |
| § 7.7590 ..... | ..... | Removed. |
| § 7.8000 | § 7.4002 | Significant change. |

Derivation Table

This derivation table illustrates which current sections of part 7 the proposed sections are based upon.

| Revised provision | Original provision | Comment |
|-------------------|---|---------------------|
| ..... | § 7.1100 | Moved (part 32). |
| ..... | § 7.1105 | Moved (part 32). |
| ..... | § 7.3000 | Removed. |
| § 7.1000 | §§ 7.3005, 7.3010, 7.3100, 7.3300, 7.5230 | Significant change. |
| § 7.1001 | § 7.7100 | Unchanged. |
| § 7.1002 | § 7.7200 | Significant change. |
| § 7.1003 ..... | ..... | Added. |
| § 7.1004 | § 7.7380 | Unchanged. |
| § 7.1005 ..... | ..... | Added. |
| § 7.1006 | § 7.7312 | Unchanged. |
| § 7.1007 | § 7.7420 | Unchanged. |
| § 7.1008 | § 7.7430 | Unchanged. |
| § 7.1009 | § 7.7455 | Unchanged. |
| § 7.1010 | § 7.7482 | Unchanged. |
| § 7.1011 | § 7.7485 | Unchanged. |
| § 7.1012 | § 7.7490 | Modified. |
| § 7.1013 | § 7.7495 | Significant change. |
| § 7.1014 | § 7.7500 | Modified. |
| § 7.1015 | § 7.7535 | Unchanged. |
| § 7.1016 | § 7.7016 | Significant change. |
| § 7.1017 | § 7.7010 | Modified. |
| § 7.1018 | § 7.7560 | Unchanged. |
| § 7.1019 | § 7.3500 | Significant change. |
| § 7.2000 ..... | ..... | Added. |
| § 7.2001 | § 7.4000 | Significant change. |
| ..... | § 7.4005 | Removed. |
| ..... | § 7.4010 | Removed. |
| ..... | § 7.4015 | Removed. |
| § 7.2002 | § 7.4020 | Modified. |
| ..... | § 7.4100 | Removed. |
| ..... | § 7.4105 | Significant change. |
| § 7.2003 | § 7.4110 | Unchanged. |
| § 7.2004 | § 7.4200 | Removed. |
| ..... | § 7.4205 | Removed. |
| § 7.2005 | § 7.4210 | Significant change. |
| § 7.2006 | § 7.4300 | Significant change. |
| § 7.2007 | § 7.4305 | Modified. |

| Revised provision | Original provision | Comment |
|-------------------|---------------------------------|---------------------|
| § 7.2008 | § 7.4400 | Removed. |
| § 7.2009 | § 7.4410 | Removed. |
| § 7.2010 | § 7.4415 | Unchanged. |
| § 7.2011 | § 7.4420 | Unchanged. |
| § 7.2012 | § 7.4425 | Modified. |
| § 7.2013 | §§ 7.5000, 7.5010, 7.5015 | Significant change. |
| § 7.2014 | § 7.5200 | Modified. |
| § 7.2015 | § 7.5210 | Removed. |
| § 7.2016 | § 7.5215 | Unchanged. |
| § 7.2017 | § 7.5217 | Significant change. |
| § 7.2018 | § 7.5220 | Removed. |
| § 7.2019 | § 7.5245 | Significant change. |
| § 7.2020 | § 7.6005 | Modified. |
| § 7.2021 | § 7.6010 | Significant change. |
| § 7.2022 | § 7.6015 | Unchanged. |
| | § 7.6030 | Modified. |
| | § 7.6040 | Moved (part 5). |
|  | ..... | Added. |
| | § 7.6050 | Unchanged. |
| | § 7.6060 | Significant change. |
| | § 7.6120 | Moved (part 5). |
| | § 7.7000 | Removed. |
| | § 7.7012 | Removed. |
| | § 7.7015 | Removed. |
| | § 7.7355 | Moved (part 31). |
| | § 7.7360 | Moved (part 31). |
| | § 7.7365 | Moved (part 31). |
| | § 7.7370 | Moved (part 31). |
| | § 7.7400 | Removed. |
| § 7.3000 | § 7.7434 | Significant change. |
| § 7.3001 | § 7.7505 | Removed. |
| | § 7.7516 | Significant change. |
| | § 7.7519 | Removed. |
| | § 7.7540 | Removed. |
| | § 7.7570 | Moved (part 1). |
| | § 7.7590 | Removed. |
| § 7.4000 | § 7.6025 | Significant change. |
| § 7.4001 | § 7.7310 | Significant change. |
| § 7.4002 | §§ 7.7315, 7.7515, 7.8000 | Significant change. |

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 31

Credit, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

1. Part 7 is revised to read as follows:

PART 7—INTERPRETIVE RULINGS

Subpart A—Bank Powers

Sec.

- 7.1000 Bank ownership of property.
- 7.1001 National bank acting as general insurance agent.
- 7.1002 National bank acting as finder.
- 7.1003 Loans made at banking offices, or at other than banking offices.
- 7.1004 Loans originating at other than banking offices.
- 7.1005 Credit decisions at other than banking offices.
- 7.1006 Loan agreement providing for share in profits, income or earnings.
- 7.1007 Acceptances.
- 7.1008 Preparing income tax returns for customers or public.
- 7.1009 National bank holding collateral stock as nominee.
- 7.1010 Postal service by national bank.
- 7.1011 National bank acting as payroll issuer.

7.1012 Messenger service.

7.1013 Debt cancellation contracts.

7.1014 Sale of money orders at nonbanking outlets.

7.1015 Receipt of stock from small business investment company.

7.1016 Independent undertakings to pay against documents.

7.1017 National bank as guarantor or surety on indemnity bond.

7.1018 Automatic payment plan account.

7.1019 Use of data processing equipment and furnishing of data processing services.

Subpart B—Corporate Practices

Sec.

7.2000 Corporate governance procedures.

7.2001 Notice of shareholders' meetings.

7.2002 Director or attorney as proxy.

7.2003 Annual meeting for election of directors.

7.2004 Honorary directors or advisory board.

7.2005 Ownership of stock necessary to qualify as director.

7.2006 Cumulative voting in election of directors.

7.2007 Filling vacancy in or increasing board of directors.

7.2008 Oath of directors.

- 7.2009 Quorum of board of directors; proxies not permissible.
- 7.2010 Delegation of directors' duties.
- 7.2011 Compensation plans.
- 7.2012 President as director; chief executive officer.
- 7.2013 Fidelity bonds covering officers and employees.
- 7.2014 Indemnification of directors, officers, and employees.
- 7.2015 Cashier.
- 7.2016 Restricting transfer of stock and record dates.
- 7.2017 Facsimile signatures on bank stock certificates.
- 7.2018 Lost stock certificates.
- 7.2019 Loan secured by own shares.
- 7.2020 Acquisition and holding of shares as treasury stock.
- 7.2021 Preemptive rights.
- 7.2022 Voting trusts.

Subpart C—Bank Operations

- 7.3000 Bank hours and closings.
- 7.3001 Sharing space and employees.

Subpart D—Preemption

- 7.4000 Books and records of national banks.
- 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.
- 7.4002 National bank charges.

Appendix A to Part 7—Corporate Governance Procedures; OCC Approved Model Business Corporation Act Provisions Authority: 12 U.S.C. 1 et seq., 93a.

Subpart A—Bank Powers

§ 7.1000 Bank ownership of property.

(a) *Bank premises*—(1) *General*. Under 12 U.S.C. 29, a national bank may invest in real estate that is necessary for the transaction of its business.

(2) *Type of real estate*. This real estate includes, but is not limited to:

(i) Bank buildings and parking facilities, including the underlying real estate;

(ii) Real estate held for future bank expansion, where the bank in good faith expects to utilize the property as bank premises (property acquired for this purpose should normally be used within five years. See § 34.83(c) of this chapter);

(iii) Residential property for the use of bank officers or employees who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(iv) Property for the use of bank officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a

deductible business expense for Federal tax purposes.

(b) *Fixed assets*. In addition to real estate, a national bank may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) *Permissible means of holding*. A national bank may acquire and hold bank premises real estate by any reasonable and prudent means, including ownership in fee, a leasehold estate, or an interest in a cooperative. Property described in this paragraph may be held directly by the bank, or by one or more subsidiaries. A bank premises subsidiary may be organized as a corporation, a partnership, or similar entity.

(d) *Investment in bank premises*—(1) *Investment limitation; approval*. A national bank's aggregate investment in bank premises generally is limited by 12 U.S.C. 371d to the amount of the bank's capital stock, except where the bank receives approval from the OCC in accordance with § 5.37 of this chapter.

(2) *Options to purchase*. An unexercised option to purchase bank premises or stock in a corporation holding bank premises is not an investment in bank premises. A national bank must receive OCC approval in accordance with § 5.37 of this chapter to exercise the option if the price of the option and the bank's other investments in bank premises/real property, exceed the amount of the bank's capital stock.

(e) *Other real property*—(1) *Lease financing of public facilities*. A national bank may purchase or construct a municipal building, school building, or other similar public facility and, as holder of legal title, lease the facility to a municipality or other public authority having resources sufficient to make all rental payments as they become due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

(2) *Purchase of employee's residence*. To facilitate the efficient use of bank personnel, a national bank may purchase the residence of an employee who has been transferred to another area, in order to spare the employee a loss in the prevailing real estate market. The bank must arrange for early divestment of title to such property.

§ 7.1001 National bank acting as general insurance agent.

Pursuant to 12 U.S.C. 92 a national bank may act as an agent for any fire, life, or other insurance company in any place the population of which does not exceed 5,000 inhabitants. This provision is applicable to any office of a national

bank when the office is located in a community having a population of less than 5,000, even though the principal office of such bank is located in a community whose population exceeds 5,000.

§ 7.1002 National bank acting as finder.

(a) *General*. A national bank may act as a finder in bringing together a buyer and seller.

(b) *Qualification*. Acting as a finder includes, without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate. Acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law.

(c) *Advertisement and fee*. Unless otherwise prohibited, a national bank may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

§ 7.1003 Loans made at banking offices, or at other than banking offices.

(a) *General*. For purposes of 12 U.S.C. 36, a loan generally is deemed to be made at the location where the borrower receives funds. If funds are disbursed to a borrower in person by the lending bank or a subsidiary corporation, or if funds are disbursed to a borrower in person at a facility that is owned or rented by the bank or subsidiary corporation, branching limitations apply and OCC approval is required.

(b) *Disbursed funds*. Funds may be disbursed to a borrower at a location that is not licensed as a branch without violating 12 U.S.C. 36 and 81, provided that a third party is used to deliver the loan proceeds and the location is not owned or rented by the lending bank or subsidiary corporation. A third party includes a person who satisfies the requirements of § 7.1012(c)(2), or one who customarily delivers loan proceeds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

§ 7.1004 Loans originating at other than banking offices.

(a) *General*. A national bank may use the services of and compensate persons not employed by the bank for originating loans.

(b) *Approval*. An employee or agent of a national bank or of a subsidiary corporation may originate a loan at locations other than the main office or a branch office of the bank. This action does not violate 12 U.S.C. 36 and 81 if the loan is approved and made at the

main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank.

§ 7.1005 Credit decisions at other than banking offices.

A national bank or subsidiary corporation also may make credit decisions regarding loan applications at locations other than the main office or a branch office of the bank without violating 12 U.S.C. 36 and 81, provided that loans are not made at those other locations within the meaning of § 7.1003.

§ 7.1006 Loan agreement providing for share in profits, income or earnings.

A national bank may take as consideration for a loan a share in the profit, income or earnings from a business enterprise of a borrower. Such share may be in addition to, or in lieu of, interest. The borrower's obligation to repay principal, however, shall not be conditioned upon the profit, income, or earnings of the business enterprise.

§ 7.1007 Acceptances.

A national bank is not limited in the character of acceptances it may make in financing credit transactions. Bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.

§ 7.1008 Preparing income tax returns for customers or public.

A national bank may not serve as an expert tax consultant. However, a national bank may assist its customers in preparing their tax returns, either gratuitously or for a reasonable fee.

§ 7.1009 National bank holding collateral stock as nominee.

A national bank that accepts stock of another bank or other corporation as collateral for a loan, may have such stock transferred to the bank's name, as nominee.

§ 7.1010 Postal service by national bank.

(a) *General.* A national bank may maintain and operate a postal substation on banking premises and receive income from it. The services performed by the substation may include meter stamping of letters and packages, and the sale of related insurance. The bank may advertise, develop, and extend the services of the substation for the purpose of attracting customers to the bank.

(b) *Postal regulations.* A national bank operating a postal substation shall do so in accordance with the rules and

regulations of the U.S. Postal Service. The national bank shall keep the books and records of the substation separate from those of other banking operations. Under 39 U.S.C. 705 and regulations issued pursuant thereto, the Postal Service may inspect the books and records of the substation.

§ 7.1011 National bank acting as payroll issuer.

A national bank may disburse to employees of its customers payroll funds deposited with the bank by its customers. A national bank may disburse funds by direct payment to any employee, or by crediting an account standing in the employee's name at the disbursing bank.

§ 7.1012 Messenger service.

(a) *Definition.* For purposes of this section, a "messenger service" refers to any service, such as a courier service or armored car service, that is used by a national bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) *Pick-up and delivery of items relating to nonbranching activities.* Pursuant to 12 U.S.C. 24(Seventh), a national bank may establish and operate a messenger service, or use, with its customers, a third party messenger service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the limitations set forth in 12 U.S.C. 36, so long as the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

(c) *Pickup and delivery of items pertaining to branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24(Seventh), a national bank and its customers may use a messenger service to pick up from, and deliver to, customers items that relate to branching functions within the meaning of 12 U.S.C. 36(j) without regard to the limitations set forth in 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this ruling, as it deems appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. However, a messenger service clearly is established by a third party if:

(i) A party other than the national bank owns the service and its facilities (or rents them from a party other than the bank) and employs the person engaged in the provision of the service; and

(ii) The messenger service:

(A) Makes its services available to the public, including other depository institutions;

(B) Retains ultimate discretion to determine which customers and geographical areas it will serve;

(C) Maintains ultimate responsibility for scheduling, movement, and routing;

(D) Does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(E) Assumes responsibility for the items during transit and for maintaining adequate insurance covering holdups, employee fidelity, and other in-transit losses; and

(F) Acts as the agent for the customer when the items are in transit. The bank does not deem items intended for deposit to be deposited until credited to the customer's account at an established bank office or other permissible nonbranch facility. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

(d) *Pickup and delivery of items pertaining to branching activities where the messenger service is established by the national bank.* A national bank may establish and operate a messenger service to transport items relevant to the bank's transactions with its customers if such transactions involve one or more branching functions within the meaning of 12 U.S.C. 36(j), provided the bank receives approval to establish a branch pursuant to § 5.30 of this chapter.

§ 7.1013 Debt cancellation contracts.

A national bank may enter into a contract to provide for losses arising from cancellation of outstanding loans upon the death, disability, or unemployment of borrowers. The imposition of an additional charge and the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of a national bank.

§ 7.1014 Sale of money orders at nonbanking outlets.

A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and their agents should be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. The bank's agents need not report on sales and transmit funds from the nonbanking outlets more frequently than at the end of the third business day following receipt of the funds.

§ 7.1015 Receipt of stock from small business investment company.

A national bank may purchase the stock of a small business investment company (SBIC), (see 15 U.S.C. 682(b)) and may receive the benefits of such stock ownership (e.g., stock dividends). The receipt and retention of a dividend by a national bank from an SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

§ 7.1016 Independent undertakings to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the laws or rules of practice recognized by law (such as the Uniform Commercial Code (1962) (amended 1990)), the Uniform Customs and Practice for Documentary Credits (Int'l Chamber of Com., 1983) (ICC Publication No. 400), the United Nations Commission on International Trade Law (UNCITRAL) Convention on Independent Guarantees and Standby Letters of Credit, and Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (Int'l Chamber of Com., 1995) (ICC Publication No. 525), under which the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions outside the bank's operational purview. A national bank may also confirm or otherwise

undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) Safety and soundness considerations.

(1) Terms. As a matter of safe and sound banking practice, banks that issue independent undertakings must not be exposed to undue risk. At a minimum, banks must consider the following:

(i) The independent character of the undertaking must be apparent from its terms and include a reference to the laws or rules providing for its independent character;

(ii) The undertaking must be limited in duration and in amount; and

(iii) The bank must have a post-honor right of reimbursement from its customer or from another bank, or if the bank's undertaking is to purchase drafts accompanied by documents of title, securities, or other intrinsically valuable documents, the bank must obtain a first priority right to realize on the documents if the bank is not otherwise reimbursed.

(2) *Additional considerations in special circumstances.* Certain undertakings require particular protections against credit, operational and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the bank must ensure that market fluctuations that affect the value of the item will not cause the bank to assume undue market risk;

(ii) In the event that an undertaking provides for renewal, the terms for renewal must be consistent with the bank's ability to make any necessary credit assessments prior to renewal; and

(iii) In the event that a bank issues an undertaking for its own account, the underlying obligation for which it is issued must be within the bank's authority and comply with any safety and soundness requirements applicable to that obligation.

(3) *Operational expertise.* The bank must possess operational expertise that is commensurate with the sophistication of its independent undertaking activities.

(4) *Documentation.* The bank must accurately reflect the bank's undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

§ 7.1017 National bank as guarantor or surety on indemnity bond.

General. A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become

a guarantor, if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability. For example, a bank, as a fiduciary, has a sufficient interest in the faithful performance by a co-fiduciary of its duties to act as surety on the bond of such co-fiduciary.

§ 7.1018 Automatic payment plan account.

A national bank may, for the benefit and convenience of its savings depositors, adopt an automatic payment plan under which a savings account will earn dividends at the current rate paid on regular savings accounts. The depositor, upon reaching a previously designated age, receives his or her accumulated savings and earned interest in installments of equal amounts over a specified period.

§ 7.1019 Use of data processing equipment and furnishing of data processing services.

In general, data processing is a technology rather than a service distinct or different from the underlying services or functions to which the technology is applied. A national bank may use data processing equipment and technology to perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks. Further, when a national bank uses data processing equipment or technology to perform authorized services, the bank may market and sell any legitimate excess capacity in that equipment or technology.

Subpart B—Corporate Practices**§ 7.2000 Corporate governance procedures.**

(a) *General.* A national bank proposing to engage in a corporate governance procedure must comply with applicable Federal banking statutes and regulations, and safe and sound banking practices.

(b) *Model Business Corporation Act.* In the event that there is no applicable Federal banking statute or regulation, a national bank may obtain guidance on proper corporate governance procedures from a variety of sources. In addition to other appropriate sources of guidance, a national bank may engage in a corporate governance procedure in the manner prescribed in those sections of the Model Business Corporation Act (MBCA) (1984) (amended 1993), designated by the OCC, which are set forth in Appendix A of this part.

(c) *No-objection procedures.* The OCC also considers requests for the staff's position on the ability of a national bank

to engage in a particular corporate governance procedure in accordance with the no objection procedures set forth in Banking Circular 205. Requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations, and is consistent with safe and sound banking practices.

§ 7.2001 Notice of shareholders' meetings.

A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least ten days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. The articles of association, bylaws or law applicable to national banks may require a longer period of notice and/or specific means of delivery.

§ 7.2002 Director or attorney as proxy.

Any person or group of persons except the bank's officers, clerks, tellers, or bookkeepers may be designated to act as proxy. The bank's directors or attorneys may act as proxy. An individual who is both an officer and either a director or attorney may not act as proxy.

§ 7.2003 Annual meeting for election of directors.

When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the state in which the bank is located, the shareholders' meeting shall be held, and the directors elected, on the next following banking day.

§ 7.2004 Honorary directors or advisory board.

A national bank may appoint honorary or advisory members of the board of directors to act in advisory capacities without voting power or power of final decision in matters concerning the business of the bank. Any listing of such honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.

§ 7.2005 Ownership of stock necessary to qualify as director.

(a) *General.* A national bank director must own a qualifying equity interest in a national bank or a company that has control of a national bank. The director must own the qualifying equity interest in his or her own right and meet a certain minimum threshold ownership.

(b) *Qualifying equity interest—(1)*

Minimum required equity interest. For purposes of this section, a qualifying equity interest includes common or preferred stock that has an aggregate par

value of not less than \$1,000 in the case of a director whose sole equity interest is held in the stock of a national bank. In the case of a director whose sole equity interest is held in the stock of a company that controls a national bank, the common or preferred stock must have an aggregate par value of not less than either \$1,000, an aggregate shareholders' equity of \$1,000, or an aggregate fair market value of \$1,000.

(i) The value of the common or preferred stock held by a national bank director is valued as of the date purchased or the date on which the individual became a director, whichever value is greater.

(ii) In the case of a company that owns more than one national bank, a director may use his or her equity interest in the controlling company to satisfy, in whole or part, the equity interest requirement for any or all of the controlled national banks.

(iii) Upon request, the OCC may consider whether other interests in a company controlling a national bank constitute an interest equivalent to \$1,000 par value of national bank stock.

(2) *Joint ownership and tenancy in common.* Shares held jointly or as a tenant in common are qualifying shares held by a director in his or her own right only to the extent of the aggregate value of the shares which the director would be entitled to receive on dissolution of the joint tenancy or tenancy in common.

(3) *Shares in a living trust.* Shares deposited by a person in a living trust (inter vivos trust) as to which the person is a trustee and retains an absolute power of revocation are shares owned by the person in his or her own right.

(c) *Non-qualifying ownership.* The following are not shares held by a director in his or her own right:

(1) Shares pledged by the holder to secure a loan. However, all or part of the funds used to purchase the required qualifying equity interest may be borrowed from any party, including the bank or its affiliates;

(2) Shares that are purchased subject to an absolute option vested in the seller to repurchase the shares within a specified period; and

(3) Shares deposited in a voting trust where the depositor surrenders:

(i) Legal ownership (depositor ceases to be registered owner of the stock);

(ii) Power to vote the stock or to direct how it shall be voted; or

(iii) Power to transfer legal title to the stock.

§ 7.2006 Cumulative voting in election of directors.

When electing directors, a shareholder shall have as many votes as

the number of directors to be elected multiplied by the number of the shareholder's shares. The shareholder may cast all these votes for one candidate, or distribute the votes among as many candidates as the shareholder chooses. If, after the first ballot, subsequent ballots are necessary to elect directors, a stockholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate.

§ 7.2007 Filling vacancy in or increasing board of directors.

A majority of the board of directors or a majority of the shareholders may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. The board of directors may appoint persons to fill the resulting vacancies between meetings of shareholders, if authorized by the bank's articles of association. A majority of the board of directors or a majority of the shareholders may increase the number of directors by up to two directors, when the number of directors last elected by shareholders was 15 or less, and by four directors, when the number of directors last elected by shareholders was 16 or more.

§ 7.2008 Oath of directors.

(a) *Administration of the oath.* A notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors. An officer, other than an officer of the bank, having an official seal and authorized by the state to administer oaths, may also administer the oath.

(b) *Execution of the oath.* All directors attending the organization meeting must execute either the joint or individual oath. Directors not attending the organization meeting (the first meeting after the election of the directors) must execute the individual oath. A director must take another oath upon re-election, notwithstanding uninterrupted service. Appropriate sample oaths are located in the "Comptroller's Manual for Corporate Activities."

§ 7.2009 Quorum of board of directors; proxies not permissible.

The articles of association or bylaws of a national bank shall provide that, for the transaction of business, a quorum of the board of directors is at least a majority of the entire board then in office. A national bank director may not vote by proxy.

§ 7.2010 Delegation of directors' duties.

The board of directors of a national bank has the responsibility for supervising the management of the bank

to ensure that the bank is operated in compliance with the policies and procedures established by the board, all applicable laws, rules and regulations, and safe and sound banking practices. The board may delegate the day-to-day operation of the bank to the management of the bank, but the board remains responsible for overseeing the affairs of the bank and the conduct of the management of the bank.

§ 7.2011 Compensation plans.

Consistent with safe and sound banking practices, a national bank may adopt the following compensation plans:

(a) *Bonus and profit-sharing plans.* A national bank may adopt a bonus or profit-sharing plan designed to ensure adequate remuneration of bank officers and employees.

(b) *Pension plans.* A national bank may provide employee pension plans and make reasonable contributions to the cost of the pension plan.

(c) *Employee stock option and stock purchase plans.* A national bank may provide employee stock option and stock purchase plans.

§ 7.2012 President as director; chief executive officer.

Pursuant to 12 U.S.C. 76, the president of a national bank must be a member of the board of directors, but a director other than the president may be elected chairman of the board. A person other than the president may serve as chief executive officer, and this person is not required to be a director of the bank.

§ 7.2013 Fidelity bonds covering officers and employees.

(a) *Adequate coverage.* All officers and employees of a national bank must have adequate fidelity coverage. The failure of directors to require bonds with adequate sureties and in sufficient amount may make the directors liable for any losses which the bank sustains because of the absence of such bonds. Directors should not serve as sureties on such bonds.

(b) *Factors.* The board of directors should determine the amount of such coverage, premised upon a consideration of factors, including:

- (1) Internal auditing safeguards employed;
- (2) Number of employees;
- (3) Amount of deposit liabilities; and
- (4) Amount of cash and securities normally held by the bank.

§ 7.2014 Indemnification of directors, officers, and employees.

(a) *General.* Except as provided in paragraph (b) of this section, a national

bank may provide in its articles of association that the bank will indemnify directors, officers, and employees for damages and expenses reasonably incurred. These damages include the advancement of expenses and legal fees, in actions to which the directors, officers, or employees are parties or potential parties by reason of the performance of their official duties. Indemnification articles which substantially reflect general standards of law as evidenced by the law of the state in which the main office of the bank is located, the law of the state in which the bank's holding company is incorporated, or the relevant provisions of the MBCA are presumed by the OCC to be within the corporate powers of a national bank.

(b) *Prohibitions.* When an administrative proceeding or action instituted by a bank regulatory agency results in a final order assessing a civil money penalty or requiring restitution, or a final removal or prohibition order against such individuals pursuant to 12 U.S.C. 1818(e) or (g), a national bank must require the repayment of all legal fees and expenses advanced pursuant to paragraph (c) of this section, and may not indemnify directors, officers, or employees for expenses. Expenses that may not be indemnified include legal fees, penalties, or other payments incurred.

(c) *Procedural requirements for certain actions and proceedings—(1) Advancing expenses.* A national bank may advance expenses and legal fees to directors, officers, or employees of the bank in connection with an action or proceeding under 12 U.S.C. 164 or 1818 only if the:

(i) Disinterested members of the board of directors of the bank determine in good faith that the director, officer, or employee has a reasonable basis for prevailing on the merits;

(ii) Indemnified individual will have the financial capacity to reimburse the bank in the event he or she does not prevail; and

(iii) Payment of expenses and fees by the bank will not adversely affect the safety and soundness of the bank.

(2) *Restrictions.* The bank must require the individual to execute a formal and binding agreement to reimburse the bank for all expenses and fees advanced by the bank in the event an order is issued against the individual assessing a civil money penalty or requiring restitution, or a removal or prohibition order against the individual is issued pursuant to 12 U.S.C. 1818(e) or (g). The bank must cease advancing expenses and fees at any time the board believes, or reasonably should believe,

that any of the conditions in paragraph (c)(1) of this section are no longer met.

(d) *OCC review.* In accordance with its supervisory responsibilities, the OCC may, in its discretion, review any indemnification or advancement of fees and expenses, or proposed indemnification or advancement of fees and expenses, of directors, officers, or employees by a national bank to evaluate whether the indemnification or advance is consistent with safe and sound banking practices and with the standards adopted by that bank in its articles of association. Based upon this review, the OCC may direct a national bank to modify a specific indemnification or payment.

(e) *Insurance premiums.* A national bank may provide in its articles of association for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of its directors, officers, or employees except that such provision shall explicitly exclude insurance coverage for a final order assessing civil money penalties against such persons by an agency.

§ 7.2015 Cashier.

A national bank's bylaws or board of directors may assign some or all of the duties previously performed by the bank's cashier to its president, chief executive officer, or any other officer.

§ 7.2016 Restricting transfer of stock and record dates.

(a) Conditions for stock transfer.

Under 12 U.S.C. 52, a national bank may impose conditions upon the transfer of its stock reasonably calculated to simplify the work of the bank with respect to stock transfers, voting at shareholders' meetings, and related matters and to protect it against fraudulent transfers.

(b) *Record dates.* Stock records of a national bank may be closed for a reasonable period to ascertain shareholders for voting purposes. The board of directors may fix a record date for determining the shareholders entitled to notice of, and to vote at, any meeting of shareholders. Such record date should be in reasonable proximity to the date that notice is given to the shareholders of such meeting.

§ 7.2017 Facsimile signatures on bank stock certificates.

The president and cashier, or other officers authorized by the bank's bylaws, must sign every national bank stock certificate. The signatures may be manual or facsimile, including electronic means of signature. Each certificate must be sealed with the seal of the association.

§ 7.2018 Lost stock certificates.

If a national bank does not provide for replacing lost, stolen, or destroyed stock certificates in its articles of association or bylaws, the bank may adopt procedures that meet the requirements of the law of the state in which the bank is located.

§ 7.2019 Loan secured by own shares.

(a) *Permitted agreements, relating to bank shares.* A national bank may require a borrower holding shares of the bank to execute agreements:

(1) Not to pledge, give away, transfer, or otherwise assign such shares;

(2) To pledge such shares at the request of the bank when necessary to prevent loss; and

(3) To leave such shares in the bank's custody.

(b) *Use of capital notes and debentures.* A national bank may not make loans secured by a pledge of the bank's own capital notes and debentures. Such notes and debentures must be subordinated to the claims of depositors and other creditors of the issuing bank, and are, therefore, capital instruments within the purview of 12 U.S.C. 83.

§ 7.2020 Acquisition and holding of shares as treasury stock.

Pursuant to the authority and procedures of 12 U.S.C. 59, a national bank may acquire its outstanding shares and hold them for a reasonable period as treasury stock, provided that the acquisition and retention of the shares is for a legitimate corporate purpose.

§ 7.2021 Preemptive rights.

A national bank's articles of association must allow or disallow, by a vote of the holders of two-thirds of the bank's outstanding voting shares, preemptive rights in the bank's shareholders.

§ 7.2022 Voting trusts.

The shareholders of a national bank may establish a voting trust under the applicable law of a state selected by the participants and designated in the trust agreement, provided the implementation of the trust is consistent with safe and sound banking practices.

Subpart C—Bank Operations**§ 7.3000 Bank hours and closings.**

(a) *Bank hours.* A national bank's board of directors should review its banking hours, and, independently of any other bank, take appropriate action to establish a schedule of banking hours.

(b) *Emergency closings.* Pursuant to 12 U.S.C. 95 (b) (1), the Comptroller of the Currency, a state, or a legally

authorized state official may declare a day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks or their offices in the affected geographic area (*i.e.*, throughout the country, in a state, or in a part of a state). Emergency conditions include natural disasters, civil and municipal emergencies (*e.g.*, severe flooding, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller issues a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a state, or a legally authorized state official declares a day to be a legal holiday due to emergency conditions, a national bank may choose to remain open or to close any of its banking offices in the affected geographic area.

(c) *Ceremonial closings.* A state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons. When a state or a legally authorized state official declares a day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close.

(d) *Liability.* A national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied.

§ 7.3001 Sharing space and employees.

(a) *Sharing space.* Subject to paragraphs (c) and (d) of this section, a national bank may:

(1) Lease excess space in bank premises to one or more other businesses (including other banks and financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned or leased by other businesses.

(b) *Sharing employees.* Subject to paragraphs (c) and (d) of this section, when sharing space with other businesses as described in paragraph (a) of this section, a national bank may provide, under one or more written agreements among the bank, the other businesses, and their employees, that:

(1) Bank employees may act as agents for the other businesses; or

(2) Employees of the other businesses may act as agents for the bank.

(c) *Supervisory conditions.* When a national bank engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the bank must ensure that:

(1) The other businesses are conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the bank and of the other businesses so that customers will know the identity of the bank or business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the bank and the other businesses are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the bank;

(5) Security issues arising from the activities of the other businesses on the premises are addressed;

(6) The activities of the other businesses do not adversely affect the safety and soundness of the bank;

(7) The activities of shared employees are consistent with applicable laws and regulations that pertain to agents or employees of such other businesses; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements the bank must ensure that each arrangement complies with 12 U.S.C. 29 and 36, and with any other applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the bank:

(1) The bank must ensure compliance with all applicable statutory and regulatory provisions governing bank transactions with these persons or entities; and

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

Subpart D—Preemption**§ 7.4000 Books and records of national banks.**

(a) *Inspection.* The only provision of Federal banking law authorizing persons other than the Comptroller of the Currency or his authorized representatives to inspect books or records of a national bank is contained in 12 U.S.C. 62, relating to the right of shareholders, creditors, and certain tax officials to inspect the list of shareholders of a bank. Production of records may, however, be required under normal judicial procedures.

(b) *Visitorial powers.* Except as otherwise expressly provided by Federal law, the exercise of visitorial powers over national banks is vested solely in the OCC, 12 U.S.C. 484. State officials have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable state unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with those laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes, 26 U.S.C. 3305(c), for enforcing the Fair Labor Standards Act, 29 U.S.C. 211, and for ascertaining the correctness of Federal tax returns, 26 U.S.C. 7602.

(c) *Report of examination.* The report of examination made by an examiner selected by the OCC is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in part 4 of this chapter.

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) *Definition.* The word "interest" as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for any extension of credit, the making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A national bank located in a state may charge interest at the maximum rate permitted by law of that state to any state-chartered or licensed lending institution. If state law permits

a higher interest rate on a specified class of loans, a national bank making loans at the higher rate is subject only to the provisions of state law relating to the class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company or Morris Plan bank, without being so licensed.

(c) *Usury.* A national bank located in a state the law of which denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by a corporate borrower.

§ 7.4002 National bank charges.

(a) *Customer charges and fees.* A national bank may charge its customers deposit account service charges and loan-related fees. For example, a national bank may impose service charges, that its board of directors determines to be reasonable, on dormant accounts. A national bank may also charge a borrower reasonable fees for credit reports or investigations with respect to a borrower's credit. All charges to customers should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding or discussion with other banks or their officers.

(b) *Considerations.* The establishment of reasonable deposit account service charges and loan-related fees, and the amounts thereof, is a business decision to be made by each bank according to sound banking judgment and safe and sound banking principles. In establishing deposit account service charges and loan-related fees, the bank may consider, but is not limited to considering:

(1) The cost incurred by the bank, plus a profit margin, in providing the service;

(2) The enhancement of the competitive position of the bank in accord with the bank's marketing strategy; and

(3) Maintenance of the safety and soundness of the institution.

(c) *State law.* The OCC evaluates on a case-by-case basis whether a national bank may establish deposit account service charges or loan-related fees pursuant to paragraphs (a) and (b) of this section notwithstanding a contrary state law that purports to limit or prohibit such charges or fees. In issuing an opinion on whether such state laws are preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States

Constitution and applicable judicial precedent.

(d) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by part 9 of this chapter.

Appendix A to Part 7—Corporate Governance Procedures; OCC Approved Model Business Corporation Act Provisions

The following sections of the Model Business Corporation Act (1984), as amended through 1993, are permissible corporate governance procedures for a national bank under § 7.2000(b) of this part:

- 6.24 Share Options
- 6.28 Expense of Issue
- 7.01 Annual Meeting
- 7.02 Special Meeting
- 7.04 Action Without Meeting
- 7.25 Quorum and Voting Requirements for Voting Groups
- 7.26 Action by Single and Multiple Voting Groups
- 8.05(a), (c)–(e) Terms of Directors Generally
- 8.07 Resignation of Directors
- 8.20 Meetings
- 8.21 Action Without Meeting
- 8.22 Notice of Meeting
- 8.23 Waiver of Notice
- 8.25 Committees
- 10.03 Amendment By Board of Directors and Shareholders
- 10.09 Effect of Amendment

PART 31—EXTENSIONS OF CREDIT TO NATIONAL BANK INSIDERS

2. The authority citation for part 31 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b(3), 1817(k), and 1972(2)(G)(ii).

3. Part 31 is amended by adding new subpart C consisting of § 31.100 to read as follows:

Subpart C—Interpretive Rulings

§ 31.100 Transactions with affiliates.

(a) *Debts of affiliates.* A national bank's bad debts do not include bad debts due to an affiliate for purposes of 12 U.S.C. 56 except to the extent of each debt of, or other claim against, the affiliate with respect to which the bank is personally liable either as obligor or guarantor. This section does not apply, however, to debts of operating subsidiaries.

(b) *Loans secured by stock or obligations of an affiliate.* Where a loan is otherwise adequately secured, additional security in the form of the capital stock, bonds, debentures, or other such obligations of an affiliate

need not be considered in determining the limitation contained in 12 U.S.C. 371c with respect to the aggregate amount of loans secured by stock or obligations of an affiliate.

(c) *Federal funds transactions between affiliates.* The limitations contained in 12 U.S.C. 371c apply to the sale of Federal funds by a national bank to an affiliate of such bank.

(d) *Deposits between affiliated banks.* A deposit made by a national bank in an affiliate is considered to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c, except for a deposit made in an affiliated domestic or foreign bank in the ordinary course of correspondent business or as otherwise provided in 12 U.S.C. 371c(d)(1). Loans or extensions of credit to an affiliate are required to be secured under 12 U.S.C. 371c. However, 12 U.S.C. 90 and applicable case law restrict the authority of national banks to pledge their assets to secure private deposits. Similar restrictions on securing deposits also apply to many state-chartered banks. Consequently, a national bank may not make a deposit in an affiliated national bank unless made in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1). A national bank may not make a deposit in an affiliated state bank unless made in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1) or unless the affiliated state bank can legally offer collateral for such deposit in conformance with the requirements of 12 U.S.C. 371c. A national bank may not receive a deposit from an affiliated bank, except in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1), because of its legal inability to provide the required collateral.

Dated: February 17, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95-4703 Filed 3-2-95; 8:45 am]

BILLING CODE 4810-33-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 122

Business Loan Policy and Business Loans; Facsimiles of SBA Forms

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize SBA participating lenders to use computer generated facsimile exact copies of SBA application and closing forms in making SBA guaranteed loans.

SBA lenders, under the proposed rule, would agree to accept liability for a substantial SBA loss attributable to deficiencies in such forms. Under the proposed rule, SBA would deny liability to a lender which fails to use SBA provided forms or computerized facsimile exact copies of the SBA forms if this failure would contribute to a substantial loss by the SBA on the guaranteed loan.

DATES: Comments must be submitted on or before April 3, 1995.

ADDRESSES: Comments may be mailed to John R. Cox, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, 202/205-6490.

SUPPLEMENTARY INFORMATION: For many years, the SBA has required that its participating lenders use SBA provided forms in the SBA guaranteed business loan program. With advances in technology, SBA recognizes that such forms may be reproduced as mirror image facsimiles by computers and that such reproductions may be in the best interest of expedition of the SBA guaranteed loan program.

Under this proposed rule, lenders participating in the SBA guaranteed business loan program would be authorized to use SBA application and closing forms which are computer generated by the lenders or from software prepared by third parties with whom they have contracted. Because SBA in the past has withheld permission to computerize some identified SBA forms, the proposed new § 122.5-6 would specifically include these forms in the general authority to utilize computer generated facsimile copies: SBA Forms 147 (Note), 148 (Guaranty), 155 (Standby Agreement), 601 (Applicant's Agreement of Compliance), 928 (Mortgage), 1050 (Settlement Sheet), 1059 (Security Agreement).

SBA's guaranty to a participating lender with respect to an SBA guaranteed business loan is conditional on the lender's actions in properly and prudently making, closing, servicing, and liquidating a loan. Accordingly, SBA's rules release the agency from its obligation to the lender to purchase the guaranteed portion of a business loan under certain prescribed conditions. SBA is proposing to amend § 120.202-5 of its regulations so that it would be released from an obligation to a participating lender to purchase the guaranteed portion of a loan if the lender fails to utilize SBA provided forms or computer exact facsimile

copies thereof, and this failure contributes to a substantial loss on the loan by the SBA. This means that if the computer generated SBA forms used by a lender are not exact facsimile copies, and such lack of conformity contributes or may contribute to a substantial loss by SBA on the loan, SBA could refuse to honor its guaranty with respect to the lender. In no event could SBA refuse to purchase the guaranteed portion from a registered holder (*i.e.*, investor) in the secondary market. SBA's obligation to a registered holder always unconditional, and this proposed rule would have no effect on such obligation.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic impact on a substantial numbers of small entities.

SBA certifies that this proposed rule, if promulgated in the final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of \$100 million or more.

SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which could be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this proposed rule could not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order. (Catalog of Federal Domestic Assistance Programs, No. 59.012)

List of Subjects

13 CFR Part 120

Loan programs-business, Small Businesses.

13 CFR Part 122

Loan programs-business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend parts