Rules and Regulations

Federal Register

Vol. 61, No. 28

Friday, February 9, 1996

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. 95–048DF]

RIN 0583–AC03

Use of the Fast Antimicrobial Screen Test for Bob Veal Calves

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date.

SUMMARY: On December 22, 1995, the Food Safety and Inspection Service (FSIS) published a direct final rule titled ''Use of the Fast Antimicrobial Screen Test for Bob Veal Calves.'' The direct final rule permits the use of the Fast Antimicrobial Screen Test to be used in lieu of the Calf Antibiotic and Sulfonamide Test under FSIS' bob veal calf residue testing program. No adverse comments or written notice of intent to submit adverse comments were received in response to the direct final rule. Therefore, this rule is effective on February 20, 1996.

EFFECTIVE DATE: February 20, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–7164.

SUPPLEMENTARY INFORMATION: This notice affirms the effective date of the direct final rule titled ''Use of the Fast Antimicrobial Screen Test for Bob Veal Calves,'' that was published on December 22, 1995, at 60 FR 66482. The direct final rule permits the use of the Fast Antimicrobial Screen Test to be used in lieu of the Calf Antibiotic and Sulfonamide Test under FSIS' bob veal calf residue testing program. FSIS did not receive any written adverse comments or written notice of intent to submit adverse comments in response to this rule. Therefore, the effective date of the rule is February 20, 1996.

Done at Washington, DC: February 2, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–2749 Filed 2–8–96; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 9034 and 9038

[Notice 1996–5]

Public Financing of Presidential Primary and General Election Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rule; correcting amendments; announcement of effective date.

SUMMARY: On November 16, 1995, the Commission published final rules correcting promulgation errors made in final rules published June 16, 1995 (60 FR 31854) regarding public financing of presidential primary and general election candidates. The Commission announces that these rules are effective as of February 9, 1996.

EFFECTIVE DATE: February 9, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 16, 1995, the Commission published final rules revising its regulations governing public financing of presidential primary and general election candidates. 60 FR 31854. These rules became effective on August 16, 1995. 60 FR 42429.

On November 16, 1995, the Commission published corrections to these final rules to restore language inserted in 1991 that had inadvertently been dropped from the rules. 60 FR 57538. The June 16 document deleted language in 11 CFR 9034.4(a)(3)(ii) relating to candidates who continue to campaign after their dates of ineligibility. It also deleted language in 11 CFR 9038.2(b)(2)(iii) that shortened the time period during which an ineligible candidate's non-qualified campaign expenses would generate a repayment obligation, thereby reducing the amount of the candidate's repayment. The correcting amendments restored the deleted language.

Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to implement Chapter 96 of Title 26 of the United States Code, the Presidential Primary Matching Payment Account Act, be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 9034.4(a)(3)(ii) and 9038.2(b)(2)(iii) were transmitted to Congress on November 9, 1995. Thirty legislative days expired in the Senate and the House of Representatives on January 5, 1996.

Announcement of Effective Date

11 CFR sections 9034.4(a)(3)(ii) and 9038.2(b)(2)(iii), as published at 60 FR 57538, are effective as of February 9, 1996.

Dated: February 5, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–2758 Filed 2–8–96; 8:45 am]

BILLING CODE 6715–-01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 31

[Docket No. 96–03]

RIN 1557–AB38

Interpretive Rulings

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its interpretive rulings. This final rule is another component of the OCC's Regulation Review Program to update and streamline OCC regulations, focus regulations on key safety and soundness concerns and agency objectives, and eliminate requirements that impose inefficient and costly regulatory burdens on national banks. The final rule

clarifies, revises, and reorganizes existing interpretive rulings, eliminates rulings that are obsolete, adds interpretive rulings to address new issues, and relocates some interpretive rulings to another part of title 12.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090; Jacqueline Lussier, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090; Daniel Cooke, Attorney, Legislative and Regulatory Activities, (202) 874–5090; or Saumya R. Bhavsar, Attorney, Legislative and Regulatory Activities, (202) 874–5090. Office of the Comptroller of Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1995, the OCC published a notice of proposed rulemaking (60 FR 11924, March 3, 1995) (proposal) to revise 12 CFR part 7—the OCC's interpretive rulings. Part 7 serves as a repository of interpretive rulings applicable to national banks that generally are not related to the subject matter contained in other parts of chapter I of title 12.

The proposal sought to implement the goals of the Regulation Review Program by updating and streamlining the regulation and eliminating requirements that imposed inefficient and costly regulatory burdens on national banks. The proposal also eliminated obsolete rulings, added interpretive rulings to address new issues, and transferred some interpretive rulings to 12 CFR part 31.

Comments Received and Changes Made

The final rule implements most of the initiatives contained in the proposal. However, the OCC has made a number of changes in response to the comments received and to further reduce unnecessary regulatory burden.

The OCC received 112 comment letters on the proposal. The vast majority of these commenters supported the proposed changes to part 7. The comment letters included 36 from banks and bank holding companies, 24 from trade associations, 19 from governmental representatives, 16 from law firms, eight from private businesses, four from community groups, three from congressmen, one from an unaffiliated individual, and one from a clearinghouse.

Commenters strongly favored reducing unnecessary regulatory burden and updating and clarifying the interpretive rulings. Overall, most commenters commended the OCC's efforts, and some commenters offered variations on certain of the proposed changes.

Many commenters recommended changes that focused on specific sections of the proposal. The OCC carefully considered each of the comment letters, and the section-by-section discussion later in this preamble identifies and discusses comments received and changes made to certain sections of the proposal.

Overview of the Final Rule

The final rule adopts the proposal's structural format and reorganizes part 7 into four topic areas: Subpart A—Bank Powers, Subpart B—Corporate Practices, Subpart C—Bank Operations, and Subpart D—Preemption. Distribution and derivation tables summarizing sections of former part 7 changed by the final rule are included at the end of this preamble. The OCC anticipates adding rulings in the future to part 7 or other parts in title 12 as necessary to address changing industry practices and developing issues.

The OCC received comments on a number of sections for which it did not propose substantive changes. The OCC has reviewed the comments and is not making any changes to certain of these sections at this time. A list of these unchanged sections is included at the end of the section-by-section summary.

Finally, the final rule removes a number of sections, moves certain sections to another part of title 12, and retains certain sections pending the issuance of final rules for 12 CFR parts 1 and 5. A description of these sections is contained at the end of the preamble.

Section-by-Section Discussion

National Bank Ownership of Property (Section 7.1000)

The proposal simplified and consolidated into a single section, § 7.1000, several interpretive rulings relating to permissible ownership of real property by national banks. Proposed § 7.1000: (1) described real estate that a bank may own pursuant to 12 U.S.C. 29 and permissible means of holding that real estate; (2) stated that a bank may own fixed assets; (3) identified certain limitations on investment in bank premises and on exercising options to purchase bank premises; (4) stated the circumstances under which a national bank may purchase a transferred employee's residence; (5) provided that a bank may engage in lease financing transactions of public facilities; and (6) provided that a bank may organize a bank premises subsidiary as a corporation, a partnership, or similar entity.

Most of the comments generally supported the proposal. One commenter urged the OCC to state in § 7.1000, as it had in the preamble to the proposal, that a bank may organize a bank premises subsidiary as a limited liability company. In response to this suggestion, the final ruling states that the term ''similar entity'' includes limited liability companies.

The OCC also requested comment on whether to expand the proposal permitting a national bank to own real estate for leasing to municipalities or other public authorities to include other types of lease financing transactions. Several commenters urged the OCC to expand the proposal to permit ownership where the lessee is a non-public sector entity. The OCC has decided, however, that it will not address this issue at this time.

The final rule also simplifies and clarifies § 7.1000's description of the types of real estate that may be held pursuant to the authority granted by 12 U.S.C. 29 (First). In addition, the final rule makes a minor organizational change by moving proposed § 7.1000(c), which describes the permissible means of holding real estate necessary for the transaction of business, into proposed § 7.1000(a), which discusses that real estate.

The final rule also eliminates cross references to 12 CFR part 5, because the approval provisions referenced in the proposal have not yet been promulgated in part 5. The OCC will reinsert appropriate cross references when revisions to part 5 are promulgated.

National Bank Acting as Finder (Section 7.1002)

The proposal clarified that a national bank may act as a finder of certain goods and services in addition to acting as a finder for insurance. The proposal also stated that acting as a finder does not include activities that would characterize the bank as a broker under applicable Federal law. Three commenters recommended that the OCC remove this limitation.

Two commenters recommending removal of this limitation expressed concern that the statement is unnecessary and may create some uncertainty concerning a national bank's legal authority to engage in brokerage activities. The OCC does not intend for this provision to limit a national bank's authority to act as a broker where permitted under applicable Federal law. It merely clarifies that the authority to act as a

finder is different from the authority to act as a broker and that a bank may not rely on the ''finder'' authority to engage in ''brokerage'' activities that are otherwise not authorized by Federal law. The proposal also stated that, ''Unless otherwise prohibited,'' a national bank may advertise and accept a fee for acting as a finder. Two commenters suggested that the OCC delete the phrase ''Unless otherwise prohibited'' to permit a national bank to act as a finder without restriction. However, this language recognizes that some limitations may apply to national bank finders fees. For example, state laws may prohibit brokers from splitting commissions with nonbrokers. In addition, the Real Estate Settlement Procedures Act (RESPA) and its implementing regulations prohibit the acceptance of a fee for a referral to a settlement service if the referral involves a federally-related mortgage loan. *See* 12 U.S.C. 2601 through 2617, and 24 CFR 3500.14(b). Therefore, the final ruling retains this phrase.

One commenter also suggested that the OCC reference RESPA in the final ruling to ensure that banks do not mistakenly believe that this ruling preempts RESPA. However, the OCC believes that adding this reference is unnecessary and, therefore, adopts § 7.1002 as proposed.

Money Lent at Banking Offices or at Other Than Banking Offices (Section 7.1003); Loans Originating at Other Than Banking Offices (Section 7.1004); Credit Decisions at Other Than Banking Offices (Section 7.1005)

Proposed §§ 7.1003, 7.1004, and 7.1005 addressed the circumstances under which the OCC would apply the branching limitations and procedures set forth in 12 U.S.C. 36 and 12 CFR 5.30 to lending activities by national banks.

Proposed § 7.1003 incorporated case law relating to where ''money'' is ''lent'' for purposes of branching. Under the proposal, money is lent where the customer, in person, receives loan funds from the bank. Thus, if a customer receives funds from a bank employee or at bank premises, the bank would be subject to branching limitations and require OCC branch approval. However, if the customer receives funds from an independent third party, including a messenger service described in § 7.1012, at a nonbank facility, the bank would not be subject to branching limitations and would not require OCC branch approval. Proposed § 7.1003 also would codify OCC interpretations that branching requirements do not encompass certain accepted industry practices on loan disbursal such as when an attorney or escrow agent disburses funds at a real estate closing.

Proposed § 7.1004 retained the language in § 7.7380, a judicially recognized safe harbor explaining the circumstances under which national banks may originate loans at nonbranch sites, known as loan production offices (LPOs), without those sites being considered branches.

Proposed § 7.1005 incorporated OCC interpretations explaining that offices at which loan *approvals* occur are not, solely by virtue of that activity, considered branches. This interpretation also recognized that a bank may approve loans originated at an LPO at locations other than the bank's main office or branches without causing the LPO to be considered a branch, even though this process does not fit squarely within the safe harbor set forth in § 7.1004. Of course, this LPO or loan approval office would constitute a branch if it undertakes to lend money as defined in § 7.1003 or otherwise is defined as a branch under the McFadden Act (12 U.S.C. 36(j)) and 12 CFR 5.30.

Fifteen commenters addressed one or more aspects of these rulings. Most supported the proposals generally or had specific comments seeking clarification of certain aspects of the proposed language. Several asked the OCC to state that the § 7.1003 language regarding where a loan is made pertains only to the lending of money for branching purposes and does not control where a loan is made for purposes of applying applicable state laws.

In proposing these rulings, the OCC considered only the language and history of 12 U.S.C. 36(j) concerning what constitutes a ''branch'' for purposes of the McFadden Act. Thus, for clarification purposes, the final ruling uses the term ''money lent'' contained in the McFadden Act instead of the phrase ''loan is made'' and explicitly states that the definition of ''money lent'' applies only to that term as used in 12 U.S.C. 36(j) and 12 CFR 5.30. The OCC does not intend to apply this definition to the determination of where a bank is ''located'' for purposes of applying usury limits set forth in 12 U.S.C. 85 or to control the applicability of various state laws pertaining to lending.

Several commenters thought that the branching definition set forth in proposed § 7.1003 was incomplete because it did not take into account whether the bank had established the lending facility or whether the public had access to the facility. However, the OCC has proposed to include a general definition of what constitutes a branch, including the ''public access'' and ''establishment'' tests, in its proposed revisions to 12 CFR part 5.[1]

Several commenters asked the OCC to clarify where money would be considered to be lent for branching purposes. One commenter expressed concern that because many loans do not involve in-person disbursement, a bank could make a loan without branch involvement, thus creating a ''gap'' that causes the test to fail. The OCC recognizes that technology and market developments may, in many instances, result in a bank making a loan without branch involvement. This has long been the case on the deposit side where a customer can make deposits and withdrawals by mail or through shared ATMs or other electronic means without branch involvement. As on the deposit side, this ''gap'' does not cause the test to fail—it just recognizes modern realities that banks can undertake traditional banking activities in ways that Congress did not contemplate in the McFadden Act as adopted in 1927. In the final ruling the OCC specifically includes in § 7.1003(a) the phrase ''if any'' to indicate that the OCC does not believe that the making of a loan necessarily causes any particular location to be a ''branch'' within the meaning of 12 U.S.C. 36.

Several commenters also questioned the interplay of § 7.1004 with §§ 7.1003 and 7.1005. The OCC has retained § 7.1004, former § 7.7380, because it is a judicially recognized safe harbor permitting national banks to undertake certain lending related activities without the constraints of the McFadden Act. The OCC notes, however, that this is a safe harbor; merely because a lending related activity falls outside the scope of § 7.1004, as with § 7.1005 regarding the making of credit decisions, does not mean that the OCC views the bank as violating the McFadden Act.

One commenter also stated that § 7.1003(b) was not broad enough. The OCC emphasizes that any person or entity qualifying under the messenger service ruling (§ 7.1012), could deliver loan proceeds without implicating the branching rules and that § 7.1012 is itself a safe harbor.

[1] *See* 59 FR 61034 (proposed November 29, 1994). In this regard, the OCC also notes that what constitutes ''establishment'' of a branch would more appropriately be determined pursuant to an analysis of the McFadden Act, case law, and 12 CFR part 5. Thus, the OCC has changed references in proposed § 7.1003 to a facility that is ''owned or rented'' by a bank to a facility that is ''established'' by a bank.

Thus, the OCC has adopted §§ 7.1003, 7.1004, and 7.1005 substantially as proposed. The final ruling clarifies that the definition of the phrase ''money lent'' applies solely to that phrase as used in the McFadden Act and 12 CFR 5.30. In addition, the OCC has changed the references in the proposal to the ''disbursal of funds by the bank to a customer'' to the ''receipt of loan proceeds directly from bank funds.'' This change clarifies that the key portion of a loan transaction for branching purposes is in-person receipt by the borrower from the bank or on bank premises of loan proceeds directly from bank funds—not disbursement by the bank through any mechanism, nor disbursement of funds that at the time of receipt by the borrower are not bank funds, nor disbursement of funds that do not at the time of disbursement constitute loan proceeds. In addition, in the final ruling the OCC changes references to a ''subsidiary corporation'' to ''operating subsidiary.''

Loan Agreement Providing for a Share in Profits, Income or Earnings or for Stock Warrants (Section 7.1006)

The proposal did not change this section, which permits a national bank to take as consideration for a loan a share in the profit, income, or earnings from a business enterprise of a borrower. One commenter suggested that the OCC state that a national bank may accept stock warrants as consideration for a loan.

The OCC has previously approved the acceptance of stock warrants taken in addition to, or in lieu of, interest on a loan, provided that a national bank does not exercise the acquired stock warrants. *See* OCC Interpretive Letter No. 517 (August 16, 1990), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,228. The OCC has incorporated this interpretation into the final ruling.

Postal Service by National Bank (Section 7.1010)

The proposal made no substantive changes to this section. One commenter noted that, by stating that the services performed by a postal substation may include meter stamping of letters and packages, and the sale of related insurance, the ruling could imply that a national bank may offer only the listed services. The OCC does not intend for this to be an exclusive list of services and has, by interpretive letters, found that a national bank may engage in other activities, including selling stamps, accepting letters and packages for mailing, and maintaining post office boxes. Because a national bank operating a postal substation must do so in accordance with the regulations of the United States Postal Service, the OCC has changed the ruling to reference those regulations.

National Bank Acting as Payroll Issuer (Section 7.1011)

The proposal made no substantive changes to former § 7.7485, which recognized that a national bank may disburse to employees of a bank customer payroll funds deposited with the bank by that customer. One commenter observed that the proposed ruling could be read narrowly to bar disbursement of payroll funds if made indirectly to the employee by crediting the employee's account with a financial institution other than the disbursing bank. The OCC has recognized that a national bank may forward funds to other banks in which a customer's employees maintain accounts. *See* Letter from F.H. Ellis, Chief National Bank Examiner (July 19, 1971) (unpublished).[2] The OCC has modified the proposal and former ruling to reflect that precedent and to incorporate certain technical changes.

Debt Cancellation Contracts (Section 7.1013)

The former interpretive ruling permitted national banks to offer customers debt cancellation contracts (DCCs) that cancel debt upon the death of the borrower. The proposal added disability and unemployment as types of DCCs that are expressly permitted by the interpretive ruling.

The OCC received several comments on this section. The majority of those commenters supported the proposal. Some urged the OCC to expand the final ruling to state that national banks may offer additional types of DCCs that the OCC did not include in the proposal. Some commenters, however, cautioned that DCCs present certain risks, and, therefore, did not support expansion of the former interpretive ruling.

The final ruling expands the former ruling to provide that a national bank may offer DCCs for the death *or* disability of a borrower. The OCC recognizes that it also may be appropriate for a national bank to offer a DCC that is triggered by other events. However, risk considerations that may be particular to other types of DCCs, or to specific banks, require the OCC to consider these other types of DCCs on a case-by-case basis.

In addition, national banks offering DCCs, whether for death or disability, or for other triggering events, must do so in a safe and sound manner. If a bank is unable to demonstrate an ability by itself to estimate and reserve adequately for the risks attendant to DCCs, the bank may obtain third party coverage or take other measures to cover the risks presented by the DCC.

Independent Undertakings To Pay Against Documents (Section 7.1016)

The proposal updated former § 7.7016 to reflect modern market standards and industry usage and replaced the term ''letters of credit'' with ''independent undertakings.'' The term ''independent undertakings'' is used by the United Nations Commission on International Trade Law (UNCITRAL) to cover a broader array of transactions in this area.

The proposal extended the same safety and soundness principles in the former ruling to this broader class of independent undertakings. The proposal explained that non-documentary conditions on the bank's undertaking are not relevant to the bank's obligation to honor its commitment. Furthermore, the proposal provided a clearer statement of regulatory standards directed to the segment of the banking industry that engages in these activities. The proposal also provided a non-exclusive list of sample laws and rules of practice under which a national bank may issue independent undertakings.

The OCC received 13 comments with the majority supporting the proposal. Several commenters recommended that when referencing applicable laws or rules of practice, the ruling should use generic citation references or citations to their most recent versions. The OCC has updated the non-exclusive list of sample laws and rules of practice to refer to Revised Article 5 of the Uniform Commercial Code (UCC) (1995) (current model code) as well as Article 5 of the UCC (1990) (former model code), and to the 1993 version of the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500) (effective January 1, 1994) instead of the 1983 version. The sample listing is intended to provide non-exclusive examples of laws or rules of practice, as the cited examples may not necessarily apply in a particular case or may be revised in the future, or other applicable laws or rules of practice subsequently may come into effect. The OCC has added the phrase ''as any of the foregoing may be amended from time to tim'' to the end of the non-exclusive listing of sample laws and rules of

[2] All unpublished OCC staff interpretive letters are available (in redacted form) upon request from the Communications Division, 250 E Street, SW, Washington, DC 20219 (202) 874–4700.

practice to recognize that they may be revised from time to time.

Four commenters recommended clarifying that ''evergreen'' clauses are permissible, despite the proposal's requirement in § 7.1016(b)(1)(iii) that the undertaking be ''limited in duration.'' Long-standing OCC precedent permits national banks to use ''evergreen'' or ''automatic extension'' clauses in their letters of credit provided that the bank retains the right not to renew the letter of credit. Therefore, the final ruling adds clarifying language expressly permitting a national bank to issue an undertaking without an express expiration date, provided that the bank has the right to cancel the undertaking upon notice to the parties.

Several commenters objected to the word ''must'' in proposed § 7.1016(b), as ''must'' seemed to impose mandatory safety and soundness conditions on the issuance of independent undertakings. The final ruling changes references in § 7.1016(b) from ''must'' to ''should,'' consistent with former § 7.7016, to provide banks with added flexibility in structuring and entering into financing arrangements. Nonetheless, the OCC strongly urges national banks to evaluate these safety and soundness factors when issuing independent undertakings.

Some commenters asked whether the proposal's reference to a bank issuing an undertaking for its own account meant that the OCC permits national banks to issue two-party letters of credit. As intended in the proposal, the OCC's position is that a national bank may issue a two-party letter of credit provided that it is permissible under applicable law and satisfies the requirements of § 7.1016(b)(2)(iii), regarding a bank's undertaking for its own account. Since a two-party letter of credit is issued for the bank's own account, the two-party letter of credit satisfies the requirements of § 7.1016(b)(1)(iv), regarding a bank's right of reimbursement.

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

The proposal removed a well-settled provision stating that foreign branches may exercise additional powers pursuant to 12 U.S.C. 604a. The proposal made no other substantive changes.

The proposal generally provided that a national bank may act as guarantor or surety to indemnify another if the bank has a substantial interest in the performance of the transaction or a segregated deposit sufficient in amount to cover the bank's total potential liability. One commenter suggested that the OCC should expand the ruling to permit a national bank to guarantee or indemnify a party to a transaction if the guarantee or indemnification is secured by any of the types of collateral acceptable under section 23A of the Federal Reserve Act (FRA) (12 U.S.C. 371c) for a ''covered transaction.''

The OCC finds that the types of collateral listed at section 23A(c)(1) (A) and (B) of the FRA (12 U.S.C. 371c(c)(1) (A) and (B)), the 100 and 110 percent collateral categories, respectively, are acceptable for a national bank to use as security without undue risk when acting as a guarantor or surety to indemnify another. Therefore, the final ruling permits a national bank to lend its credit, bind itself as surety to indemnify another, or otherwise become a guarantor to a transaction if the bank has a security interest in either of these two categories of collateral.

The 100 percent collateral category includes obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, and notes, drafts, bills of exchange, and bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank. The 110 percent collateral category includes obligations of a state or political subdivision of a state.

To ensure that the bank is not exposed to a risk of loss, the bank must perfect its security interest in the collateral. For example, if the collateral is a printed security, the bank must have obtained physical control of the security, and, if the collateral is a book entry security, the bank must have properly recorded its security interest.

Because the value of these types of collateral can fluctuate, the final ruling requires that the collateral have a market value, at the close of each business day, equal to the bank's total potential liability if the collateral is composed of obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, or notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank. If the collateral is composed of obligations of a state or political subdivision of a state, it must have a market value, at the close of each business day, equal to 110 percent of the bank's total potential liability.

Furnishing of Products and Services by Electronic Means and Facilities (Section 7.1019)

The proposal permitted a national bank to use data processing equipment to perform for itself and others ''all services expressly or incidentally authorized under the statutes applicable to national banks.'' The proposal also incorporated the OCC's interpretive position that a national bank using data processing equipment or technology to perform authorized services may market and sell ''any legitimate excess capacity'' in that equipment or technology. *See, e.g.*, OCC Interpretive Letter No. 677 (June 28, 1995), *reprinted in* [1994–1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625.

The OCC requested comment on whether the proposed language is necessary. The OCC also requested comment on whether the OCC should more specifically describe permissible sales of excess capacity and the services that a national bank may provide using data processing equipment or technology.

All 12 of the commenters generally supported the proposal. A majority of the commenters stated that greater specificity in describing authorized services would not be useful because more detailed language would quickly become outdated by the rapid development of technology. In addition, a majority of the commenters urged the OCC to adopt a broader standard than the proposal used to define the scope of permissible sales of data processing equipment and technology. Three commenters urged the OCC to delete the term ''legitimate'' from the phrase ''legitimate excess capacity.'' One commenter suggested that the OCC state that a bank may market and sell any excess capacity in data processing equipment or technology that the bank acquired or developed for banking purposes based on a good faith determination of its own current and future needs.

The OCC considered a number of alternatives for changing the proposal to modernize the treatment of permissible data processing activities. The OCC recognizes that national banks are engaging, and will engage, in an increasing range of activities through electronic means and facilities beyond simply ''data processing.'' For this reason, the OCC has modified this ruling to refer to activities, functions, products, and services provided via electronic means and facilities, rather than ''data processing'' and changes the title of § 7.1019 from ''Use of data processing equipment and furnishing of data processing services'' to ''Furnishing of products and services by electronic means and facilities.''

The OCC also finds the commenter's suggestion of a ''good faith'' standard to be more appropriate than ''legitimate

excess capacity'' to define the scope of a national bank's permissible sales of excess electronic capacities. The good faith requirement is an important safeguard against abusing this authority. Therefore, the OCC adopts the commenter's suggestion. Moreover, the final ruling, which expressly states that these sales are appropriate for a bank to optimize the use of the bank's resources, more closely parallels the standard the OCC applies when national banks utilize their excess *physical* space for non-bank uses. *See, e.g.,* Letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division (July 24, 1987) (unpublished) and cases cited therein, *Wingert* v. *First Nat'l Bank of Hagerstown, Md.,* 175 F. 739 (4th Cir. 1909), *aff'd,* 223 U.S. 670 (1912); *Brown* v. *Schleier,* 118 F. 981 (8th Cir. 1902), *aff'd,* 194 U.S. 18 (1904).

Purchase of Open Accounts (Section 7.1020)

The proposal contemplated moving former § 7.1105 to 12 CFR part 32. However, the section relates to a national bank's ability to engage in factoring, and the OCC has concluded that it more appropriately belongs in part 7. Therefore, the final ruling adopts the language contained in the former ruling, except for the language that ''accounts need not in every case represent an evidence of debt.'' This language is removed because it is well settled under OCC precedents that factoring is an extension of credit for lending limit purposes.

Corporate Governance Procedures (Section 7.2000)

The proposal provided that a national bank undertaking a corporate governance procedure must comply with applicable statutes and regulations, and safe and sound banking practices. The proposal also established a safe harbor for a national bank that undertakes a corporate governance procedure, if the bank complied with certain OCC-designated sections of the Model Business Corporation Act (MBCA), where the Federal banking statutes and regulations are otherwise silent on the matter. The OCC invited comment on whether the MBCA is the appropriate form of guidance to provide national banks with additional flexibility in structuring their corporate practices or whether the Delaware General Corporation Law or other sources are preferable.

The OCC received ten comments on the proposal. A number of commenters recommended that the final ruling permit a national bank to rely on the corporate governance procedures of the state where the bank is located or the state where the bank's holding company, if any, is incorporated. Two commenters recommended expanding the list of permissible MBCA sections so that a national bank could rely on any section of the MBCA to the extent it is not inconsistent with Federal banking statutes or regulations. One commenter suggested permitting the bank to rely on an opinion of counsel that the procedure is permissible for a national bank.

Four commenters also discussed Delaware General Corporation Law as a source of guidance. Two of these commenters stated that Delaware law would be an acceptable source of guidance. One commenter supported permitting the use of Delaware law as an alternative to the MBCA. One commenter opposed the use of Delaware law unless other states' laws are similarly permitted as a source of guidance for national bank corporate governance procedures.

After careful consideration of the comments received, the OCC has adopted a revised two-step approach that provides national banks with maximum flexibility to structure their corporate governance procedures while providing shareholders and others with adequate notice as to the body of corporate standards on which the bank will rely. Under the final ruling, a corporate governance procedure used by a national bank must comply with applicable Federal banking statutes and regulations, and safe and sound banking practices. In addition, to the extent not inconsistent with those Federal banking statutes and regulations, or safe and sound banking practices, a national bank may elect to follow the corporate governance procedures of the state in which the main office of the bank is located, the state where the bank's holding company is incorporated, the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), or the MBCA (1984, as amended 1994, and as amended thereafter). This approach provides national banks with a wide range of choices to structure their corporate governance procedures consistent with the particular needs of the bank.

The OCC is mindful, however, of providing shareholders and other interested parties with adequate notice of the bank's corporate governance procedures. Therefore, the final ruling requires the bank to designate in its bylaws the body of law that will govern its corporate procedures. The final ruling also retains a process for a bank to seek informal staff guidance regarding permissible corporate governance procedures.

Notice of Shareholders' Meetings (Section 7.2001)

The proposal simplified the language in former § 7.4000 and clarified that a national bank must mail notice of the time, place, and purpose of all shareholders' meetings at least ten days before the proposed meeting.

Two commenters recommended revising this section to permit the sole shareholder of a national bank to waive notice of the shareholders' meeting. The OCC agrees that permitting the sole shareholder to waive shareholder notice will not detrimentally affect bank safety and soundness and will eliminate unnecessary regulatory burden. Thus, the final ruling adds a new sentence that the sole shareholder of a national bank may waive the notice requirements of this section.

Two commenters also recommended modifying this section to state that shareholders generally may waive their right to written notice of shareholder meetings. As a general matter, the OCC does not accept written waivers of the general requirement for notice of regular annual meetings of national banks or meetings involving certain types of fundamental corporate changes. The corporate affairs of a bank may not as closely involve shareholders as directors, and thus regular annual meetings provide an important forum for expression of shareholder views. In addition, the absence of notice and full disclosure for meetings, particularly those involving fundamental corporate changes, could jeopardize the ability of shareholders to protect their rights.

Another commenter recommended expanding the section to require a national bank to mail ''or otherwise deliver'' shareholders' notice. However, requiring a national bank to mail shareholders' notice of all shareholders' meetings at least ten days prior to the meeting by first class mail provides the OCC with confirmation of a bank's adherence to the ''ten day'' shareholder notice requirement. Therefore, the final ruling does not incorporate the phrase ''otherwise deliver.''

Honorary Directors or Advisory Boards (Section 7.2004)

The proposal permitted a national bank to 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 bank's business. The proposal made no substantive changes to this section. One commenter suggested clarifying that one or more

separate advisory boards are permitted. The final ruling changes the title and language of this section to clarify that more than one advisory board is permissible.

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

The proposal removed repetitive information requirements relating to directors' qualifying shares under 12 U.S.C. 72. It also incorporated OCC precedent to provide that a director's ownership of preferred stock in a national bank may satisfy statutory requirements. The proposal also clarified that a director may borrow from the bank or its affiliates the funds to purchase the required minimum equity interest.

The OCC received two comment letters on this section. The commenters each requested the OCC to state that a national bank director can hold qualifying shares in individual retirement accounts, retirement plans, 401(k) plans or other similar arrangements.

Twelve U.S.C. 72 requires a national bank director to own the qualifying shares in ''his or her own right.'' The purpose of the qualifying shares requirement is to ensure that a director has a sufficient individual financial interest in the bank to induce him or her to be vigilant in protecting the bank's interests. *Cupo v. Community National Bank & Trust Co. of New York*, 324 F. Supp. 1390, 1393 (E.D.N.Y. 1971). The OCC agrees that various retirement plans and similar arrangements may provide directors with the requisite financial interest to satisfy the qualifying shares requirement of 12 U.S.C. 72. Therefore, the final ruling provides that a director's qualifying interest also may be held through profit sharing plans, individual retirement accounts, retirement plans, and similar arrangements, provided the director retains beneficial ownership and legal control over the shares. For examples of arrangements the OCC has previously approved, *see* Letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division (July 7, 1981) (unpublished); Letter from Larry J. Stein, Senior Attorney, Legal Advisory Services Division (May 28, 1986) (unpublished); Letter from Christopher C. Manthey, Senior Attorney, Legal Advisory Services Division (September 5, 1989) (unpublished); and Letter from James A. Wright, Attorney, Securities and Corporate Practices Division (November 6, 1989) (unpublished).

The OCC has also changed the ruling to reflect OCC precedent that eliminates some of the distinctions between the required amount of ownership a director must hold in national bank stock as opposed to holding company stock. *See* OCC Interpretive Letter No. 503 (April 4, 1989), *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,201. Under the final ruling, a director may hold common or preferred stock of the bank or a company that controls the bank if that stock has not less than an aggregate par value of $1,000, an aggregate shareholders' equity of $1,000, or an aggregate fair market value of $1,000.

Filling Vacancies and Increasing Board of Directors Other Than by Shareholder Action (Section 7.2007)

The proposal modified former § 7.4305 to clarify that ''the majority of shareholders or a majority of directors'' may increase the number of directors and that this increase is limited to two directors (when the number of directors is 15 or fewer) or four (when the number of directors is 16 or more). The proposal also eliminated language that repeated the statute and clarified the procedures for filling vacancies on the board of directors.

The OCC received three comments on the proposal. One commenter noted that the language could be read to preclude shareholders from increasing the board of directors by more than two (when the number of directors is 15 or fewer) or four (when the number of directors is 16 or more). This is not the OCC's intent. Nothing in the final ruling is intended to limit whatever lawful authority shareholders, as distinct from the directors themselves, may have to increase the board of directors. Therefore, the final ruling has been changed to focus solely on increases made by action of the board of directors. Under the final ruling, if authorized by the bank's articles of association, a majority of the board of directors may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. When the board of directors increases the number of directors, that increase is limited to two when the number of directors last elected by shareholders was 15 or fewer, and to four when the number of directors last elected by shareholders was 16 or more.

The final ruling also clarifies that the shareholders, a majority of the board of directors remaining in office, or, if the directors remaining in office constitute fewer than a quorum, an affirmative vote of the directors remaining in office, may fill a vacancy on the board of directors.

Oath of Directors (Section 7.2008)

The proposal removed the last paragraph of former § 7.4415, which restated the statute and separated the section into ''administration'' and ''execution'' of the oath. One commenter recommended clarifying that the oath must be maintained in writing for a specified period of time. The OCC removed the requirement in the former ruling that the director subscribe to the oath and immediately transmit it to the OCC to be filed and preserved for ten years because that requirement merely restates 12 U.S.C. 73. Therefore, the final ruling makes no changes and, as in the proposal, removes the last paragraph of the former ruling.

Directors' Responsibilities (Section 7.2010)

The proposal modified current § 7.4425 to state that while directors may delegate the day-to-day operations of the bank to management, the directors maintain 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.

Two commenters supported the proposal. Two commenters asserted that the word ''ensure'' implies that directors are guarantors of the bank's legal and regulatory compliance. One commenter suggested substituting the word ''determine'' for ''ensure.'' Another commenter criticized the proposal as contrary to statutory and case law in stating that the board may delegate only the bank's day-to-day operations but not the oversight function and for not stating that directors are entitled to rely reasonably on management, officers and inside and outside professionals for nearly all board functions. This commenter recommended issuing a separate interpretive ruling or Banking Circular on duties of national bank directors, or removing the ruling from part 7.

The proposal sought to provide directors with a more informed statement of the OCC's expectations regarding the responsibilities of a national bank's board of directors. However, the OCC acknowledges the limitations inherent in crafting a regulation in this complex area that is not overly detailed yet provides directors with clear and useful guidance as to their responsibilities. Sources already available, such as the OCC's Director's Book and the ''Comptroller's Handbook for National Bank

Examiners,'' [3] provide an informal and more extensive description of these responsibilities.

Thus, the final ruling has been changed to provide a general statement that the business and affairs of the bank shall be managed by or under the direction of the board of directors. However, in order to notify directors of their basic responsibilities and available sources of additional guidance, the final ruling also states that a director should refer to other OCC published guidance for additional information regarding the OCC's views on the responsibilities of national bank directors.

Compensation Plans (Section 7.2011)

The proposal combined and condensed 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.

One commenter suggested that the list of compensation plans should be illustrative rather than exclusive as there are alternative types of compensation programs that may be appropriate for national banks but do not fall within one of these three types. The OCC agrees with the commenter and clarifies the final ruling to allow national banks flexibility to adopt compensation plans other than those specified in this section. The OCC has also changed the ruling to refer to the compensation provisions contained in 12 CFR part 30, Standards for Safety and Soundness.

Indemnification of Institution-affiliated Parties (Section 7.2014)

The proposal revised former § 7.5217 to state that a national bank may indemnify certain individuals and advance legal fees and expenses, subject to certain limitations. Under the proposal, a national bank could not, however, indemnify an individual where an administrative proceeding resulted in a final order that assessed a civil money penalty or required restitution, or a final removal or prohibition order under 12 U.S.C. 1818 (e) or (g).

The proposal also imposed certain procedural requirements for advancing expenses and legal fees in connection with administrative enforcement actions. Under the proposal, a national bank could advance expenses and legal fees if the disinterested members of the board of directors determined, 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 did not prevail; and that the payment of the expenses by the bank is not unsafe or unsound. The indemnified individual would have been required to repay advances to the bank, however, if the action or proceeding resulted 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 proposal also required an individual to execute a formal and binding agreement to reimburse the bank for expenses and fees in the event he or she did not prevail. The OCC invited comment on whether these standards were workable or too restrictive, and whether other standards were more appropriate.

On March 29, 1995, the Federal Deposit Insurance Corporation (FDIC) issued its second proposal relating to bank indemnification of institution-affiliated parties. The FDIC proposal would implement the so-called ''golden parachute'' and indemnification provisions of section 18(k) of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)) and would apply to all depository institutions, including national banks. Several commenters responding to the OCC proposal recommended that the OCC adopt the FDIC proposal in its entirety or specific provisions of the FDIC proposal that were ''less restrictive'' than the OCC proposal. These commenters advocated a single indemnification standard applicable to national banks to avoid conflicting standards.

The OCC agrees that a single set of rules governing permissible indemnification in connection with administrative proceedings or civil actions brought by Federal banking agencies should apply to national banks. One set of rules prevents confusion, reduces compliance and legal costs, and minimizes unnecessary regulatory burden. Because 12 U.S.C. 1828(k) subjects national banks to the requirements of any FDIC regulation on indemnification, FDIC standards would supersede less restrictive separate OCC standards. Therefore, the OCC has changed the part 7 ruling on indemnification to clarify that a national bank may make or agree to make indemnification payments to an institution-affiliated party with respect to an administrative proceeding or civil action initiated by any Federal banking agency, that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and any implementing regulations thereunder.

The FDIC proposal does not address indemnification in circumstances involving an administrative proceeding or civil action not initiated by a Federal banking agency. The former ruling, § 7.5217, provided generally that indemnification articles that substantially reflect general standards of law of the state in which the bank is headquartered, the law of the state in which the bank's holding company is incorporated, or the relevant provisions of the MBCA, were presumed by the OCC to be within the corporate powers of a national bank. The OCC has changed the proposal to provide further flexibility and to maintain consistency with the revised corporate governance procedures in § 7.2000. Under the final ruling, with respect to an administrative proceeding or civil action not initiated by a Federal banking agency, a national bank may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with 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 or Delaware General Corporate Law. In all cases, indemnification payments should be consistent with the safety and soundness of the bank involved. The final ruling also requires the bank to designate in its bylaws the body of law it has selected to govern its indemnification procedures. The final ruling no longer requires banks to include the indemnification provisions in its articles of association.

Cashier (Section 7.2015)

The proposal changed former § 7.5245 to clarify that the cashier's duties may be delegated to the president, chief executive officer, or other officer. One commenter recommended that the OCC change references to the board of directors to a ''duly designated officer.'' The OCC agrees with this recommendation and, consistent with the OCC's continuing effort to reduce unnecessary regulatory burden, changes the final ruling to permit a duly designated officer to assign duties previously performed by the bank's cashier.

Facsimile Signatures on Bank Stock Certificates (Section 7.2017)

The proposal revised former § 7.6010 to clarify that facsimile signatures include electronic means of signature. One commenter recommended further relief from administrative burden by deleting all references to ''seals'' and ''corporate seals'' in the corporate

[3] These sources are available upon request from the OCC Communications Division, 250 E Street, SW, Washington, DC 20219 (202) 874–4700.

governance section, including the reference proposed in § 7.2017. Although the OCC recognizes the need to reduce administrative burden, 12 U.S.C. 52 requires every national bank stock certificate to be sealed with the seal of the association. Therefore, the OCC adopts this section as proposed.

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

The proposal added a new section to address a national bank's acquisition and holding of shares as treasury stock. The proposal explained that 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, as long as the acquisition and retention of the shares is for a legitimate corporate purpose. Because 12 U.S.C. 59 requires OCC approval and a two-thirds vote of shareholders for a reduction in capital, there is less risk of improper use of treasury stock. The OCC notes, however, that it would not be permissible 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. Accordingly, the final ruling adds language providing that it would not be permissible for a national bank to acquire or hold treasury stock for speculation.

One commenter expressed concern that the term ''reasonable period'' is too ambiguous. The commenter contended that as long as the bank complies with 12 U.S.C. 59 regarding the repurchase of outstanding shares, there is no reason that a national bank may not hold treasury stock for as long as the bank sees fit. The OCC agrees with the commenter's suggestion. As long as the acquisition and retention of the shares fulfills a legitimate corporate need, the bank may continue to hold the shares. Therefore, the final ruling does not include the term ''reasonable period'' but clarifies that the retention of the shares must continue, on an ongoing basis, to be for a legitimate corporate purpose.

Bank Hours and Closings (Section 7.3000)

The proposal revised current § 7.7434 to provide more comprehensive guidance regarding bank hours and closings. Proposed § 7.3000(a) maintained the general requirement 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) informed national banks that the Comptroller of the Currency (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) also set forth examples to clarify circumstances under which a national bank may remain closed.

Proposed § 7.3000(c) also provided 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 closed on these holidays.

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

Several commenters requested the OCC to broaden the authority to close a bank or its branch offices. For example, one commenter suggested including provisions allowing a bank office to close if a snow emergency is declared by local authorities. Another commenter suggested following provisions in New York law that permit bank officers to independently protect their institutions by closing offices under certain conditions, provided at least one office remains open.

Twelve U.S.C. 95 clearly authorizes only the Comptroller, a state, or a state official to designate a day as a legal holiday for emergency reasons. Nonetheless, the OCC recognizes the practical concerns raised by the commenters. The ruling attempts to delineate certain emergency conditions under which the Comptroller will act to authorize the closing of bank offices. The OCC does not intend for 12 U.S.C. 95 or the ruling to preclude a bank from asserting defenses, such as impossibility of performance, if compelled to close due to circumstances beyond the bank's control.

Sharing Space and Employees (Section 7.3001)

The proposal revised former § 7.7516 to incorporate current OCC positions on sharing space and employees. Among other things, the proposal clarified that banks may lease excess space in bank premises or share space with businesses other than banks and other financial institutions. The proposal also clarified the OCC's position on a national bank sharing employees with businesses with which it shares space. Finally, the proposal summarized the supervisory conditions that a bank should address in these arrangements, and proposed § 7.3001(d) identified legal issues a bank should consider when entering into these arrangements. The proposal requested commenters to address whether the listed items are appropriate and if the OCC should identify other considerations in lieu of, or in addition to, those described in the proposal.

The OCC received 13 comments addressing this section. Several commenters requested the OCC to clarify whether there are any limitations on the type of business with which the bank may lease or share space. The proposal and the final ruling make clear that a bank may lease excess space in bank premises to one or more businesses. Similarly, a bank may share space jointly held with one or more other businesses. Each of these arrangements is subject to supervisory conditions and legal requirements. However, the ruling does not impose limitations on the type of activity that the other business engages in other than that it cannot adversely affect the safety and soundness of the bank.

One commenter disagreed with the supervisory conditions in proposed § 7.3001(c) (6) and (7) that require the national bank to ensure that (1) the activities of the other business do not affect the safety and soundness of the bank, and (2) the activities of shared employees are consistent with applicable laws and regulations that pertain to agents or employees of such other businesses. This commenter asserted that this would impose inconsistent and duplicative requirements on brokerage firms and, in the case of the latter requirement, impose new obligations on national banks to monitor compliance with securities laws and other regulations by broker-dealers and dual employees of broker-dealers.

The OCC continues to believe that the importance of maintaining a safe and sound national bank system requires banks to ensure that the activities of businesses with which they share premises will not adversely affect bank safety and soundness. Therefore, the OCC retains the requirement contained in proposed § 7.3001(c)(6). However, the OCC did not intend for national banks to monitor compliance on an ongoing basis with all applicable laws affecting broker-dealers or other entities with which the bank shares space or employees. Therefore, the OCC has changed proposed § 7.3001(c)(7) to clarify that a national bank should take steps to ensure that shared employees, or the entity for which they perform services, are duly licensed or meet applicable qualification requirements for the activities in question.

One commenter sought clarification as to whether these supervisory conditions are consistent with, or in addition to, the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994)

(Statement).[4] A number of the supervisory conditions incorporate principal elements of the Statement. However, banks should consult any applicable component of the Statement as a source of guidance in structuring these arrangements.

Books and Records of National Banks (Section 7.4000)

The proposal addressed the exclusive examination authority of the OCC. The ruling clarified that under 12 U.S.C. 484, 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. The comments generally supported the proposal, with two commenters recommending that the OCC clarify the second sentence of § 7.4000(b) by adding the ''filing of reports with state regulators'' to the list of prohibited state-imposed requirements. The OCC has determined that rather than adopting the specific suggested revision, the OCC will continue to consider this issue on a case-by-case basis. Therefore, the OCC adopts the final ruling substantially as proposed with minor revisions to the first sentence of § 7.4000(a).

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

Under 12 U.S.C. 85, a national bank may charge interest at the highest rate allowed to competing lenders by the state where the bank is located without regard to the location of the borrower. Thus, the statute permits a national bank to ''export'' to customers in other states the rate of ''interest'' allowed by the state in which the bank is located. The proposal defined the term ''interest'' in 12 U.S.C. 85 to reflect current case law. The proposed definition also reflected OCC interpretive opinions on the types of fees and charges that are included and not included in the meaning of the term. The proposal provided non-exclusive lists of specific fees that *are* ''interest'' (for example, numerical periodic rates, late fees, not sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and membership fees) and that ordinarily are *not* ''interest'' (for example, appraisal fees, premiums and commissions on insurance guaranteeing repayment, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports).

Whether a particular fee or charge is properly characterized as ''interest'' subject to exportation has been the subject of litigation in a number of jurisdictions,[5] and the OCC received many comments from parties on both sides of the issue. On one hand, certain consumer groups and attorneys representing class action suits opposed the proposal. These groups asserted that the proposed definition is contrary to the accepted meaning of the term ''interest,'' and is contrary to consumers' interests. On the other hand, many national banks supported the proposal because it incorporates clear guidance on the OCC's position on the issue of what constitutes ''interest'' under 12 U.S.C. 85. The OCC believes that the Federal definition of ''interest'' and the components of interest in the proposal are both consistent with law and beneficial to national banks and their customers with respect to interstate lending operations.

The OCC also received comments from Arkansas trade associations and the Arkansas congressional delegation expressing concern that the proposed Federal definition of ''interest'' might be misinterpreted to require the inclusion of certain charges that are ''interest'' under the Federal definition, but not so under Arkansas law, when calculating the maximum effective yield permitted by Arkansas law. The commenters noted that, if the OCC adopts this interpretation, some loans now acceptable under Arkansas usury law could be found to be usurious. The OCC agrees that the language of the proposal is potentially confusing and might be interpreted mistakenly to affect the definition of ''interest'' in the Arkansas usury law (which, for example, permits banks to charge late fees, but does not include those fees as ''interest'' in calculating the maximum effective yield).

The definition of interest in § 7.4001 is intended to define ''interest'' for purposes of determining if a particular charge is subject to 12 U.S.C. 85. Charges that fall within the Federal definition of ''interest'' are subject to 12 U.S.C. 85 and its ''most favored lender'' and exportation rules. The fact that a charge is not labeled ''interest'' under a particular state law does not necessarily mean that it is impermissible, however.

Section 7.4001(b) clarifies that, under the ruling (and 12 U.S.C. 85), one looks to state law to determine what lending charges are permitted for the most favored lender, and thus, also for national banks under 12 U.S.C. 85. However, the Federal definition of ''interest'' generally does not affect state law definitions of ''interest'' or the manner in which state law calculates the amount of interest being charged. For example, if late fees are *not* interest under state law where the national bank is located but state law allows late fees, then a national bank located in that state may charge late fees to its intrastate customers. The national bank could also charge the fees to its interstate customers because the fees are ''interest'' under the Federal definition and an allowable charge under state law where the national bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

The final ruling addresses the concern raised by the Arkansas commenters regarding the effect of the Federal definition of interest on state law. The OCC has added to § 7.4001 a new paragraph (c) that includes a clarifying sentence confirming that the Federal definition of the term interest does not change a state's definition of interest (nor how the state definition of interest is used) solely for purposes of state law. Paragraph (c) of § 7.4001 also provides the example described in the immediately preceding paragraph of this preamble to illustrate this concept. The final ruling is substantially identical to the proposal, with the addition discussed above. In addition, the reference to ''Morris Plan banks'' that appeared in the last sentence of proposed § 7.4001(b) has been removed as obsolete. Finally, paragraph (c), ''Usury,'' in the proposal has been redesignated as paragraph (d) in the final ruling.

Most courts interpreting 12 U.S.C. 85 have concluded that various forms of non-percentage-based charges (including such items as late payment,

[4] Available upon request from the OCC Communications Division, 250 E Street, SW, Washington, DC 20219, (202) 874–4700.

[5] *See, e.g., Smiley v. Citibank (South Dakota), N.A.*, 900 P.2d 690 (Cal. 1995), *cert. granted*, 64 U.S.L.W. 3500 (U.S. Jan. 19, 1996) (No. 95–860) (holding that the term ''interest'' as used in 12 U.S.C. 85 encompasses late payment fees if such fees are allowed by a national bank's home state); *see also Greenwood Trust Co. v. Massachusetts*, 971 F.2d 818 (1st Cir. 1992), *cert. denied*, 113 S. Ct. 974 (1993) (holding that the term ''interest'' as used in section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. 1831d(a)), a statute modeled on 12 U.S.C. 85, includes late payment fees; in construing the term ''interest'' in 12 U.S.C. 1831d(a), the court concluded that these parallel sections should be read *in pari materia*). *Contra Sherman v. Citibank (South Dakota), N.A.*, No. A–102–94, 1005 WL 710414 (N.J. Nov. 28, 1995), *pet. for cert. filed*, 64 U.S.L.W. 3439 (U.S. Dec. 21, 1995) (No. 95–991) (holding that the term ''interest'' as used in 12 U.S.C. 85 does not include late payment fees).

overlimit, and annual fees) for the use of borrowed money fall within the scope of 12 U.S.C. 85. The final ruling is consistent with OCC interpretive letters in this area (*see, e.g.,* OCC Interpretive Letter No. 670 (Feb. 17, 1995), *reprinted in* [1994–1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,618, and the letters cited therein) and reflects the position the OCC has taken in *amicus curiae* briefs in litigation pending in many state and Federal courts (*see, e.g.,* OCC brief filed in the Supreme Court of Pennsylvania in *Bank One, Columbus, N.A. v. Mazaika,* Nos. 1995–31 and 1995–33 (July 17, 1995) (urging reversal of *Mazaika v. Bank One, Columbus, N.A.,* 653 A.2d 648 (Pa. Super. Ct. 1994) (*en banc*), *appeal granted,* 659 A.2d 557 (Pa. 1995)).

Recently, the California Supreme Court upheld the ability of a national bank to charge certain fees as a component of ''interest'' and cited the OCC's recent interpretive opinions, as well as proposed § 7.4001, as consistent with the court's reasoning. *Smiley v. Citibank (South Dakota), N.A.,* 900 P.2d 690 (Cal. 1995), *cert. granted,* 64 U.S.L.W. 3500 (U.S. Jan. 19, 1996) (No. 95–860) (holding that the term ''interest'' as used in 12 U.S.C. 85 encompasses late payment fees, if such fees are allowed by a national bank's home state). *See also Copeland v. MBNA America Bank, N.A.,* 907 P.2d 87 (Colo. 1995) (*en banc*), *pet. for cert. filed,* 64 U.S.L.W. 3469 (U.S. Dec. 28, 1995) (No. 95–1056); *Richardson v. Citibank (South Dakota), N.A.,* No. 94SC670, 1995 Colo. LEXIS 767 (Colo. Dec. 18, 1995) (*en banc*); *Spellman v. Meridian Bank (Delaware),* Nos. 94–3203–3204, 94–3215–3218, 1995 U.S. App. LEXIS 37149 (3d Cir. Dec. 29, 1995).

However, the Supreme Court of New Jersey also issued a recent decision concluding that ''interest'' as used in 12 U.S.C. 85 does not include late payment fees. *Sherman v. Citibank (South Dakota), N.A.,* No. A–102–94, 1005 WL 710414 (N.J. Nov. 28, 1995), *pet. for cert. filed,* 64 U.S.L.W. 3439 (U.S. Dec. 21, 1995) (No. 95–991). The decision of the New Jersey Supreme Court in *Sherman* conflicts with the decisions of the California Supreme Court in *Smiley,* the Colorado Supreme Court in *Copeland* and *Richardson,* and the U.S. Court of Appeals for the Third Circuit in *Spellman,* and the earlier decision of the First Circuit in *Greenwood Trust.* The U.S. Supreme Court recently granted certiorari in *Smiley* to resolve the conflict on an expedited basis.

As noted in the proposal, the ruling is not intended to be a comprehensive treatment of the issue, and other fees or charges may also be found to be components of interest.

National Bank Charges (Section 7.4002)

The proposal responded to concerns raised by Congress regarding the scope of Federal preemption reflected in the former version of this ruling. The conference report to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, H.R. Conf. Rep. No. 651, 103rd Cong., 2d Sess. 54 (1994), urged the OCC to review former § 7.8000 to determine if it should be withdrawn or revised. The conferees expressed the view that the OCC had applied preemption principles in an overly broad manner with respect to state laws that prohibit, limit, or restrict deposit account service charges imposed by a national bank. In addition, the conference report cited *Perdue v. Crocker Nat'l Bank,* 702 P.2d 503 (Cal. 1985), *cert. dismissed,* 475 U.S. 1100 (1986), which held that § 7.8000 is not a valid finding of Federal preemption, in part, because Congress had not established a comprehensive Federal statutory scheme governing the taking of deposits.

The proposal revised the ruling to state that the OCC will consider on a case-by-case basis whether a national bank may establish a particular charge or fee that is in conflict with a state law, and that, in issuing an opinion on whether a particular state law is preempted, the OCC will employ the preemption principles derived from the Supremacy Clause of the United States Constitution and judicial precedent.

The OCC received 26 comments on proposed § 7.4002. Ten commenters expressed dissatisfaction with the OCC's proposal to evaluate state laws on a case-by-case basis. Seven of these commenters, mostly large banks, specifically urged the OCC to either retain § 7.8000 or otherwise generally preempt state law limitations or prohibitions on fees and charges. These commenters stated that the conference report, alone, without clear legislative action, does not invalidate § 7.8000's general preemption. After careful review of the comments, the OCC has determined to adopt § 7.4002 substantially in the form proposed, with certain revisions discussed below.

Ten commenters also expressed concern over the OCC's statement in the proposal that a national bank may charge customers ''reasonable'' charges and fees on dormant accounts, for credit reports or investigations (§ 7.4002(a)), and for deposit account service charges and loan-related fees generally (§ 7.4002(b)). These commenters asserted that inclusion of the term ''reasonable'' in connection with those areas adds uncertainty to their meaning and will provide a basis for litigation over whether charges and fees are ''unreasonable'' and, therefore, impermissible under § 7.4002.

The OCC notes that previous interpretive rulings on service charges on dormant accounts and fees for credit reports or investigations contained a ''reasonable'' standard. Therefore, for those fees and charges, the final ruling continues this standard. However, the OCC also recognizes the commenters' concerns. The final ruling clarifies, in § 7.4002(b), the intent of the proposal that banks have discretion in setting the amount of charges and fees, and that any charge or fee is ''reasonably'' established if the bank considered the factors enumerated in the final ruling.

Some commenters also asserted that, if the references to ''loan-related fees'' are included in the final ruling, the OCC should clarify that these fees do not include fees that are components of ''interest'' under § 7.4001. The OCC agrees with this comment. Therefore, the final ruling omits the phrase ''loan-related fees'' wherever it appears and instead refers to ''non-interest charges and fees'' and includes deposit account service charges within non-interest charges and fees. For additional clarity, the final ruling adds a new paragraph (c), ''Interest,'' that provides that charges and fees that are ''interest'' within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by § 7.4002. Proposed § 7.4002(c) and (d), ''State law'' and ''National bank as fiduciary,'' respectively, have been redesignated as paragraphs (d) and (e), respectively, in the final ruling.

The OCC also notes that the proposal's listing of the standards for consideration in setting charges and fees inadvertently omitted the factor appearing in former § 7.8000(b)(2) on the deterrence of misuse by customers of banking services. The final ruling incorporates this factor.

State Licensing of National Banks

The proposal invited public comment on whether the OCC should propose a specific ruling addressing the applicability of state licensing requirements to national banks. The proposal did not contain any specific language for an interpretive ruling but noted in the preamble the OCC's longstanding position that the authority of a national bank to exercise powers authorized for national banks under Federal law cannot be negated by state licensing requirements. The proposal also restated the principal elements of

Federal preemption analysis as articulated by the courts.

The OCC received 41 comments addressing this issue. Approximately half of the commenters opposed issuing a ruling that they assumed would attempt to preempt state licensing practices. These commenters cited the OCC's lack of authority to issue a ruling, current litigation and legislation on this matter, and arguments that states are better placed to protect consumer interests. Commenters supporting a ruling noted that it would promote competition by removing disparate treatment of national banks located in different states. Due to the variety of state laws that could be implicated and the complexity of the issues presented, the OCC has decided not to address this area generically at this time.

Other Sections Adopted in the Final Rule

The proposal contained a number of rulings that were not substantively changed from the former rule. The OCC received some comments addressing various aspects of these rulings. The OCC has reviewed these comments and has decided not to make any changes to most of these sections.

In addition, there are a number of rulings for which the OCC proposed changes but did not receive any substantive comments. These rulings also are adopted in the final rule as proposed or with nonsubstantive stylistic edits.

The following is a list of these rulings:

Section 7.1001—National bank acting as general insurance agent;
Section 7.1007—Acceptances;
Section 7.1008—Preparing income tax returns for customers or public;
Section 7.1009—National bank holding collateral stock as nominee;
Section 7.1012—Messenger service;
Section 7.1014—Sale of money orders at nonbanking outlets;
Section 7.1015—Receipt of stock from a small business investment company;
Section 7.1018—Automatic payment plan account;
Section 7.2002—Director or attorney as proxy;
Section 7.2003—Annual meeting for election of directors;
Section 7.2006—Cumulative voting in election of directors;
Section 7.2009—Quorum of the board of directors; proxies not permissible;
Section 7.2012—President as director; chief executive officer;
Section 7.2013—Fidelity bonds covering officers and employees;
Section 7.2016—Restricting transfer of stock and record dates;
Section 7.2018—Lost stock certificates;
Section 7.2019—Loans secured by a bank's own shares;
Section 7.2021—Preemptive rights; and
Section 7.2022—Voting trusts.

Sections Removed From Part 7

The OCC also proposed to remove the following former rulings as generally unnecessary, outdated or repetitive: §§ 7.3000, 7.4005, 7.4015, 7.4100, 7.4200, 7.4205, 7.4400, 7.4410, 7.7000, 7.7015, 7.7400, 7.7405, 7.7410, 7.7415, 7.7505, 7.7519, and 7.7590. The OCC received no comment on these sections, and the final rule removes them. The OCC has also removed § 7.7355 (regarding debts of affiliates) as it is no longer necessary.

The following sections are also removed from part 7 or transferred to 12 CFR part 31 for the reasons stated. This list and the list in the immediately preceding paragraph do not describe sections that were incorporated into other sections in part 7.

Section 7.1100—Capital and surplus. This section is no longer needed.

Section 7.4010—Quorum for shareholders' meeting. This section merely indicates that the statutes are silent with respect to the number of shareholders required for a quorum. Therefore, this section is superseded by the new § 7.2000.

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, § 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) (12 U.S.C. 1831p–1), (regarding safety and soundness standards), and regulations issued by the OCC and other agencies under section 132 deal with excessive or unreasonable contracts. *See* 12 U.S.C. 1831p–1 (c) and (d); 12 CFR part 30.

Section 7.7012—Foreign operations. This section has been removed and is expected to be incorporated into pending revisions to part 28. The removal of this section is not intended to imply any change in a national bank's authority in this area.

Section 7.7115—Insuring lives of bank officers. OCC Banking Circular 249 covers the relevant issues in more detail and is currently undergoing review and revision. Therefore, § 7.7115 is removed as unnecessary.

Sections 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 with some stylistic changes to 12 CFR 31.100, 31.101, and 31.102.

Sections 7.7378—Issuance of credit cards, 7.7379—Servicing of mortgage and other loans as agent. The ability of national banks to engage in these activities is well established and a specific interpretive ruling is not needed.

Section 7.7530—Issuance of promissory notes. This section is removed because it merely restates 12 U.S.C. 24 (Seventh).

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 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.

Other Sections

Finally, the OCC had proposed to move a number of sections to other parts of title 12. These sections included § 7.6040—Fractional shares, 7.7570—Separate investment security limitations, and 7.6120—Dividends payable in property other than cash. These sections have been retained, with some minor stylistic changes, pending the issuance of final rules for 12 CFR parts 1 and 5.

Distribution Table

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

Original provision	Revised provision	Comment
§ 7.1100	.....	Removed.
§ 7.1105	§ 7.1020 .	Modified.
§ 7.3000	§ 7.1000 .	Unchanged.
§ 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.

Original provision	Revised provision	Comment
§ 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 .	Modified.
§ 7.4200	.....	Removed.
§ 7.4205	.....	Removed.
§ 7.4210	§ 7.2005 .	Significant change.
§ 7.4300	§ 7.2006 .	Significant change.
§ 7.4305	§ 7.2007 .	Significant change.
§ 7.4400	.....	Removed.
§ 7.4410	.....	Removed.
§ 7.4415	§ 7.2008 .	Modified.
§ 7.4420	§ 7.2009 .	Unchanged.
§ 7.4425	§ 7.2010 .	Significant change.
§ 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	§ 7.2013 .	Unchanged.
§ 7.5217	§ 7.2014 .	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	§ 7.2023 .	Modified.
§ 7.6050	§ 7.2021 .	Modified.
§ 7.6060	§ 7.2022 .	Significant change.
§ 7.6120	§ 7.2024 .	Modified.
§ 7.7000	.....	Removed.
§ 7.7010	§ 7.1017 .	Significant change.
§ 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 .	Significant change.
§ 7.7315	§ 7.4002 .	Significant change.
§ 7.7355	.....	Removed.
§ 7.7360	.....	Moved (part 31).
§ 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 .	Modified.
§ 7.7485	§ 7.1011 .	Modified.
§ 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	§ 7.1015 .	Unchanged.
§ 7.7540	.....	Removed.
§ 7.7560	§ 7.1018 .	Modified.
§ 7.7570	§ 7.1021 .	Unchanged.
§ 7.7590	.....	Removed.
§ 7.8000	§ 7.4002 .	Significant change.

Derivation Table

This derivation table illustrates which former sections of part 7 the final sections are based upon.

Revised provision	Original provision	Comment
	§ 7.1100 ..	Removed.
§ 7.1000 .	§§ 7.3000, 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 ..	Significant change.
	§ 7.7405 ..	Removed.
	§ 7.7410 ..	Removed.
	§ 7.7415 ..	Removed.
§ 7.1007 .	§ 7.7420 ..	Unchanged.
§ 7.1008 .	§ 7.7430 ..	Unchanged.
§ 7.1009 .	§ 7.7455 ..	Unchanged.
§ 7.1010 .	§ 7.7482 ..	Modified.
§ 7.1011 .	§ 7.7485 ..	Modified.
§ 7.1012 .	§ 7.7490 ..	Modified.
§ 7.1013 .	§ 7.7495 ..	Significant change.
§ 7.1014 .	§ 7.7500 ..	Modified.
	§ 7.7530 ..	Removed.
§ 7.1015 .	§ 7.7535 ..	Unchanged.
§ 7.1016 .	§ 7.7016 ..	Significant change.
§ 7.1017 .	§ 7.7010 ..	Significant change.
§ 7.1018 .	§ 7.7560 ..	Unchanged.
§ 7.1019 .	§ 7.3500 ..	Significant change.
§ 7.1020 .	§ 7.1105 ..	Modified.
§ 7.1021 .	§ 7.7570 ..	Unchanged.
§ 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.
§ 7.2003 .	§ 7.4105 ..	Significant change.
§ 7.2004 .	§ 7.4110 ..	Modified.
	§ 7.4200 ..	Removed.
	§ 7.4205 ..	Removed.
§ 7.2005 .	§ 7.4210 ..	Significant change.
§ 7.2006 .	§ 7.4300 ..	Significant change.
§ 7.2007 .	§ 7.4305 ..	Significant change.
	§ 7.4400 ..	Removed.
	§ 7.4410 ..	Removed.
§ 7.2008 .	§ 7.4415 ..	Modified.
§ 7.2009 .	§ 7.4420 ..	Unchanged.
§ 7.2010 .	§ 7.4425 ..	Significant change.
§ 7.2011 .	§§ 7.5000, 7.5010, 7.5015.	Significant change.
§ 7.2012 .	§ 7.5200 ..	Modified.
	§ 7.5210 ..	Removed.
§ 7.2013 .	§ 7.5215 ..	Unchanged.
§ 7.2014 .	§ 7.5217 ..	Significant change.
	§ 7.5220 ..	Removed.
§ 7.2015 .	§ 7.5245 ..	Significant change.
§ 7.2016 .	§ 7.6005 ..	Modified.
§ 7.2017 .	§ 7.6010 ..	Significant change.
§ 7.2018 .	§ 7.6015 ..	Unchanged.
§ 7.2019 .	§ 7.6030 ..	Modified.
§ 7.2020 .	.....	Added.
§ 7.2021 .	§ 7.6050 ..	Modified.
§ 7.2022 .	§ 7.6060 ..	Significant change.
§ 7.2023 .	§ 7.6040 ..	Modified.
§ 7.2024 .	§ 7.6120 ..	Unchanged.
	§ 7.7000 ..	Removed.
	§ 7.7012 ..	Removed.
	§ 7.7015 ..	Removed.
	§ 7.7115 ..	Removed.
	§ 7.7355 ..	Removed.
	§ 7.7360 ..	Moved (part 31).
	§ 7.7365 ..	Moved (part 31).
	§ 7.7370 ..	Moved (part 31).
	§ 7.7378 ..	Removed.
	§ 7.7379 ..	Removed.
	§ 7.7400 ..	Removed.
§ 7.3000 .	§ 7.7434 ..	Significant change.
	§ 7.7505 ..	Removed.
§ 7.3001 .	§ 7.7516 ..	Significant change.
	§ 7.7519 ..	Removed.
	§ 7.7540 ..	Removed.
	§ 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 the final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before

promulgating a rule. Because the OCC has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the final rule has the effect of reducing burden.

Paperwork Reduction Act of 1995

The collection of information requirements contained in this final rule have received approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under OMB control number (1557–0204). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1557–0204, Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division 1557–0204, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. The OCC will submit the collection of information requirements contained in this final rule for renewal of OMB approval following publication of this final rule.

The collection of information requirements in this rule are found in 12 CFR 7.1000(d)(1), 7.1014, 7.2000(b), 7.2004, and 7.2014(b). The collections of information are necessary for regulatory and examination purposes, for national banks to ensure their compliance with Federal law and regulations, and to evidence bank compliance with various regulatory requirements. National banks use the information to ensure their compliance with applicable Federal banking law and regulations. This information assists bank management in its safe and sound operation of the bank. The OCC uses the information in the scheduling and conduct of bank examinations and as an audit tool to verify bank compliance with law and regulations.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are national banks.

Estimated average annual burden hours per recordkeeper: 1.7.

Estimated number of recordkeepers: 2,430.

Estimated total annual recordkeeping burden: 4,156.

Start-up costs to respondents: None.

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 National bank ownership of property.
7.1001 National bank acting as general insurance agent.
7.1002 National bank acting as finder.
7.1003 Money lent 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 a share in profits, income, or earnings or for stock warrants.
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 a 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 Furnishing of products and services by electronic means and facilities.
7.1020 Purchase of open accounts.
7.1021 Separate investment security limitations.

Subpart B—Corporate Practices

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 boards.
7.2005 Ownership of stock necessary to qualify as director.
7.2006 Cumulative voting in election of directors.
7.2007 Filling vacancies and increasing board of directors other than by shareholder action.
7.2008 Oath of directors.
7.2009 Quorum of the board of directors; proxies not permissible.
7.2010 Directors' responsibilities.
7.2011 Compensation plans.
7.2012 President as director; chief executive officer.
7.2013 Fidelity bonds covering officers and employees.
7.2014 Indemnification of institution-affiliated parties.
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 Loans secured by a bank's own shares.
7.2020 Acquisition and holding of shares as treasury stock.
7.2021 Preemptive rights.
7.2022 Voting trusts.
7.7023 Fractional shares.
7.2024 Dividends payable in property other than cash.

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.

Authority: 12 U.S.C. 1 *et seq.* and 93a.

Subpart A—Bank Powers

§ 7.1000 National bank ownership of property.

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

(2) *Type of real estate.* For purposes of 12 U.S.C. 29(First), this real estate includes:

(i) Premises that are owned or occupied (or to be occupied, if under construction) by the bank, its branches, or its consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries;

(iv) 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

(v) 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.

(3) *Permissible means of holding.* A national bank may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The bank may hold this real estate directly or through one or more subsidiaries. The bank may organize a bank premises subsidiary as a corporation, partnership, or similar entity (*e.g.*, a limited liability company).

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

(c) *Investment in bank premises*—(1) *Investment limitation; approval.* 12 U.S.C. 371d governs when OCC approval is required for national bank investment in bank premises.

(2) *Option 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 to exercise the option if the price of the option and the bank's other investments in bank premises exceed the amount of the bank's capital stock.

(d) *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 Money lent at banking offices or at other than banking offices.

(a) *General.* For purposes of what constitutes a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30, ''money'' is deemed to be ''lent'' only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds:

(1) From the lending bank or its operating subsidiary; or

(2) At a facility that is established by the lending bank or its operating subsidiary.

(b) *Receipt of bank funds representing loan proceeds.* Loan proceeds directly from bank funds may be received by a borrower in person at a place that is not the bank's main office and is not licensed as a branch without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30, provided that a third party is used to deliver the funds and the place is not established by the lending bank or its operating subsidiary. A third party includes a person who satisfies the requirements of § 7.1012(c)(2), or one who customarily delivers loan proceeds directly from bank funds 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 its operating subsidiary may originate a loan at a site other than the main office or a branch office of the bank. This action does not violate 12 U.S.C. 36 and 12 U.S.C. 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 operating 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 and its operating subsidiary may make a credit decision regarding a loan application at a site other than the main office or a branch office of the bank without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that ''money'' is not deemed to be ''lent' at those other sites within the meaning of § 7.1003.

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

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. A national bank also may take as consideration for a loan a stock warrant issued by a business enterprise of a borrower, provided that the bank does not exercise the warrant. The share or stock warrant may be taken in addition to, or in lieu of, interest. The borrower's obligation to repay principal, however, may not be conditioned upon the value of the profit, income, or earnings of the business enterprise or upon the value of the warrant received.

§ 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 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 are those permitted under applicable rules of the United States Postal Service and 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 United States 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. 404 and any regulations issued pursuant thereto, the United States 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 an employee of a customer payroll funds deposited with the bank by that customer. The bank may disburse those funds by direct payment to the employee, by crediting an account in the employee's name at the disbursing bank, or by forwarding funds to another institution in which an employee maintains an account.

§ 7.1012 Messenger service.

(a) *Definition.* For purposes of this section, a ''messenger service'' means any service, such as a courier service or armored car service, 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 constituting 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 branching limitations set forth in 12 U.S.C. 36, provided 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 consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(c) *Pick-up and delivery of items constituting 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 branching 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 section and 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 is clearly 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 thefts, 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 constitute 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 12 CFR 5.30.

§ 7.1013 Debt cancellation contracts.

A national bank may enter into a contract to provide for loss arising from cancellation of an outstanding loan upon the death or disability of a borrower. 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 its agent should be 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 a 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 applicable laws or rules of practice recognized by law.[1] Under such letters of credit and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the account party and the beneficiary. 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 should not be exposed to undue risk. At a minimum, banks should consider the following:

(i) The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The undertaking should be limited in amount;

(iii) The undertaking should:

(A) Be limited in duration; or

(B) Permit the bank to terminate the undertaking either on a periodic basis (consistent with the bank's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the bank to cash collateral from the account party on demand (with a right to accelerate the customer's obligations, as appropriate); and

(iv) The bank either should be fully collateralized or have a post-honor right of reimbursement from its customer or from another issuer of an independent undertaking. Alternatively, if the bank's undertaking is to purchase documents of title, securities, or other valuable documents, the bank should obtain a first priority right to realize on the documents if the bank is not otherwise to be 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 should 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 should 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 transaction for which it is issued must be within the bank's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise.* The bank should 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.

(c) *Coverage.* An independent undertaking within the meaning of this section is not subject to the provisions of § 7.1017.

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

A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, if:

(a) The bank has a substantial interest in the performance of the transaction involved (for example, a bank, as fiduciary, has a sufficient interest in the faithful performance by a cofiduciary of its duties to act as surety on the bond of such cofiduciary); or

(b) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability. A segregated deposit under this section includes collateral:

(1) In which the bank has perfected its security interest (for example, if the collateral is a printed security, the bank must have obtained physical control of the security, and, if the collateral is a book entry security, the bank must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to the bank's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value, at the close of each business day, equal to 110 percent of the bank's total potential liability and is composed of obligations of a State or political subdivision of a State.

§ 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 Furnishing of products and services by electronic means and facilities.

A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver. A national bank may also, in order to optimize the use of the bank's resources, market and sell to third parties electronic capacities acquired or developed by the bank in good faith for banking purposes.

§ 7.1020 Purchase of open accounts.

(a) *General.* The purchase of open accounts is a part of the business of banking and within the power of a national bank.

(b) *Export transactions.* A national bank may purchase open accounts in connection with export transactions; the accounts should be protected by insurance such as that provided by the Foreign Credit Insurance Association and the Export-Import Bank.

§ 7.1021 Separate investment security limitations.

The 10 percent investment limitation of 12 U.S.C. 24 (Seventh) may be

[1] Samples of such laws or rules of practice include, but are not limited to: the applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/340–9378); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 500) (available from ICC Publishing, Inc., 212/206–1150); the United Nations Commission on International Trade Law (UNCITRAL) Convention on Independent Guarantees and Standby Letters of Credit (adopted by UNCITRAL 1995) (available from UNCITRAL, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150); as any of the foregoing may be amended from time to time.

applied separately to each security issue of a single issuer of such securities, if the proceeds of each issue are to be used to acquire and lease real estate and related facilities to economically and legally separate industrial tenants and each issue is payable solely from, and secured by a first lien on, the revenues to be derived from rentals paid by such lessee under net noncancellable leases.

Subpart B—Corporate Practices

§ 7.2000 Corporate governance procedures.

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

(b) *Other sources of guidance.* To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

(c) *No-objection procedures.* The OCC also considers requests for its 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 or any subsequently published agency procedures.[2] 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 10 days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly-owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

§ 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 if they are not also employed as an officer, clerk, teller or bookkeeper of the bank.

§ 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 boards.

A national bank may appoint honorary or advisory members of a 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 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 of the bank or of a company that controls the bank that has not less than an aggregate par value of $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 in 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.

(4) *Other arrangements.* A director may also hold his or her qualifying interest through profit sharing plans, individual retirement accounts, retirement plans, and similar arrangements, provided the director retains beneficial ownership and legal control over the shares.

(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 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 shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate.

§ 7.2007 Filling vacancies and increasing board of directors other than by shareholder action.

(a) *Increasing board of directors.* If authorized by the bank's articles of

[2] Available upon request from the OCC Communications Division, 250 E Street, SW., Washington, DC 20219, (202) 874–4700.

association, between shareholder meetings a majority of the board of directors may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. The board of directors may increase the number of directors only by up to two directors, when the number of directors last elected by shareholders was 15 or fewer, and by up to four directors, when the number of directors last elected by shareholders was 16 or more.

(b) *Vacancies.* If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by the shareholders, a majority of the board of directors remaining in office, or, if the directors remaining in office constitute fewer than a quorum, by an affirmative vote of a majority of all the directors remaining in office.

§ 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. Any person, 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.* Each director attending the organization meeting shall execute either the joint or individual oath. A director not attending the organization meeting (the first meeting after the election of the directors) shall execute the individual oath. A director shall 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 the board of directors; proxies not permissible.

A national bank shall provide in its articles of association or bylaws 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 Directors' responsibilities.

The business and affairs of the bank shall be managed by or under the direction of the board of directors. The board of directors should refer to OCC published guidance for additional information regarding responsibilities of directors.

§ 7.2011 Compensation plans.

Consistent with safe and sound banking practices and the compensation provisions of 12 CFR part 30, a national bank may adopt compensation plans, including, among others, the following:

(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 that 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 institution-affiliated parties.

(a) *Administrative proceedings or civil actions initiated by Federal banking agencies.* A national bank may only make or agree to make indemnification payments to an institution-affiliated party with respect to an administrative proceeding or civil action initiated by any Federal banking agency, that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and the implementing regulations thereunder. The term ''institution-affiliated party'' has the same meaning as set forth at 12 U.S.C. 1813(u).

(b) *Administrative proceeding or civil actions not initiated by a Federal banking agency*—(1) *General.* In cases involving an administrative proceeding or civil action not initiated by a Federal banking agency, a national bank may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with 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 Model Business Corporation Act (1984, as amended 1994, and as amended thereafter), or Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), provided such payments are consistent with safe and sound banking practices. A national bank shall designate in its bylaws the body of law selected for making indemnification payments under this paragraph.

(2) *Insurance premiums.* A national bank may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of institution-affiliated parties to the extent that the expenses, fees, or liability could be indemnified under paragraph (b)(1) of this section.

§ 7.2015 Cashier.

A national bank's bylaws, board of directors, or a duly designated officer 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.* A national bank may close its stock records 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. The record date should be in reasonable proximity to the date that notice is given to the shareholders of the meeting.

§ 7.2017 Facsimile signatures on bank stock certificates.

The president and cashier, or other officers authorized by the bank's

bylaws, shall sign each 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 in accordance with § 7.2000.

§ 7.2019 Loans secured by a bank's 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 as treasury stock, provided that the acquisition and retention of the shares is, and continues to be, for a legitimate corporate purpose. It would not be permissible for a national bank to acquire or hold treasury stock for speculation.

§ 7.2021 Preemptive rights.

A national bank in its articles of association must grant or deny preemptive rights to the bank's shareholders. Any amendment to a national bank's articles of association which modifies such preemptive rights must be approved by a vote of the holders of two-thirds of the bank's outstanding voting shares.

§ 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.

§ 7.2023 Fractional shares.

To avoid complicated recordkeeping in connection with fractional shares, a national bank issuing additional stock by stock dividend, upon consolidation or merger, or otherwise, may adopt arrangements such as the following to preclude the issuance of fractional shares. The bank may:

(a) Issue scripts or warrants for trading in fractions;

(b) Make reasonable arrangements to provide those to whom fractional shares would otherwise be issued an opportunity to realize at a fair price upon the fraction not being issued through its sale, or the purchase of the additional fraction required for a full share, if there is an established and active market in the national bank's stock;

(c) Remit the cash equivalent of the fraction not being issued to those to whom fractional shares would otherwise be issued. The cash equivalent is based on the market value of the stock, if there is an established and active market in the national bank's stock. In the absence of such a market, the cash equivalent is based on a reliable and disinterested determination as to the fair market value of the stock if such stock is available; or

(d) Sell full shares representing all the fractions at public auction, or to the highest bidder after having solicited and received sealed bids from at least three licensed stock brokers. The national bank shall distribute the proceeds of the sale *pro rata* to shareholders who otherwise would be entitled to the fractional shares.

§ 7.2024 Dividends payable in property other than cash.

In addition to cash dividends, directors of a national bank may declare dividends payable in property, with the approval of the OCC. Even though the property distributed has been previously charged down or written off entirely, the dividend is equivalent to a cash dividend in an amount equal to the actual current value of the property. Before the dividend is declared, the bank should show the excess of the actual value over book value on the books of the national bank as a recovery, and the dividend should then be declared in the amount of the full book value (equivalent to the actual current value) of the property being distributed.

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 (Comptroller), 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 part of a state). Emergency conditions include natural disasters and 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.* A national bank may:

(1) Lease excess space on 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 to other businesses.

(b) *Sharing employees.* 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) A bank employee may act as agent for the other business; or

(2) An employee of the other business may act as agent 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 shall ensure that:

(1) The other business is 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 business 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 business on the premises are addressed;

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

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; 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;

(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.* Except as otherwise expressly provided by Federal law, including 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, only the Comptroller of the Currency or the Comptroller's authorized representatives are authorized to inspect books or records of a national 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 OCC examiner 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 12 CFR part 4.

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

(a) *Definition.* The term ''interest'' as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, 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 to any state-chartered or licensed lending institution by the law of that state. If state law permits different interest charges on specified classes of loans, a national bank making such loans is subject only to the provisions of state law relating to that class of loans that are material to the determination of the permitted interest. For example, a national bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company, without being so licensed, but subject to state law limitations on the size of loans made by small loan companies.

(c) *Effect on state definitions of interest.* The Federal definition of the term ''interest'' in paragraph (a) of this section does not change how interest is defined by the individual states (nor how the state definition of interest is used) solely for purposes of state law. For example, if late fees are not ''interest'' under state law where a national bank is located but state law permits its most favored lender to charge late fees, then a national bank located in that state may charge late fees to its intrastate customers. The national bank may also charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under state law where the national bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

(d) *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 non-interest charges and fees, including deposit account service charges. For example, a national bank may impose deposit account 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 and fees 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 non-interest charges and fees, and the amounts thereof, is a business decision to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A bank reasonably establishes non-interest charges and fees if the bank considers the following factors, among others:

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

(2) The deterrence of misuse by customers of banking services;

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

(4) The maintenance of the safety and soundness of the institution.

(c) *Interest.* Charges and fees that are ''interest'' within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by this section.

(d) *State law.* The OCC evaluates on a case-by-case basis whether a national bank may establish non-interest charges or 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.

(e) *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 12 CFR part 9.

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, at the end of the part, the undesignated center heading ''Interpretations'' and new §§ 31.100 to 31.102 to read as follows:

Interpretations

§ 31.100 Loans secured by stock or obligations of an affiliate.

A bank that makes a loan to an unaffiliated third party may take a security interest in securities of an affiliate as collateral for the loan without the loan being deemed a ''covered transaction'' under section 23A of the Federal Reserve Act (12 U.S.C. 371c) if:

(a) The borrower provides additional collateral that meets or exceeds the collateral requirements specified in section 23A(c) (12 U.S.C. 371c(c)); and

(b) The loan proceeds are not used to purchase the bank affiliate's securities that serve as collateral.

§ 31.101 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 the bank.

§ 31.102 Deposits between affiliated banks.

(a) *General rule.* The OCC considers a deposit made by a bank in an affiliated bank to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c. These deposits must be secured in accordance with 12 U.S.C. 371c(c). However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (*see, e.g.,* 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 U.S.C. 371c noted in paragraph (b) of this section applies or unless another exception applies that enables a bank to meet the collateral requirements of 12 U.S.C. 371c(c), a national bank may not:

(1) Make a deposit in an affiliated national bank;

(2) Make a deposit in an affiliated state-chartered bank unless the affiliated state-chartered bank can legally offer collateral for the deposit in conformance with applicable state law and 12 U.S.C. 371c; or

(3) Receive deposits from an affiliated bank.

(b) *Exceptions.* The restrictions of 12 U.S.C. 371c (other than 12 U.S.C. 371c(a)(4), which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

(1) Made in the ordinary course of correspondent business; or

(2) Made in an affiliate that qualifies as a ''sister bank'' under 12 U.S.C. 371c(d)(1).

Dated: February 5, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–2903 Filed 2–8–96; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–6]

Amendment to Class D Airspace, Millington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the name of Memphis NAS to Memphis MAS/Millington Municipal Airport and changes the title of the airspace designation for the Memphis NAS/Millington Municipal Airport located at Millington, TN, from Memphis NAS, TN, to Millington, TN.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

The Memphis Naval Air Station (NAS) is now a joint use airport. As a result, the name of the airport located at Millington, TN, changed from Memphis NAS to Memphis NAS/Millington Municipal Airport. This amendment is necessary to reflect that change. The dimensions, configuration and operating requirements of the affected airspace do not change. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action does not change the dimensions, configuration or operating requirements of the Class D surface area airspace for the airport, and as a result, has no impact on users of the airspace in the vicinity of the Memphis NAS/Millington Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulatory (14 CFR part 71) changes the name of Memphis NAS to Memphis NAS/Millington