

"Except as otherwise provided in § 4281.15 (regarding the valuation of benefits payable as lump sums under trustee plans), and subject" and adding, in their place, the word "Subject".

§ 4281.15 [Removed and Reserved]

17. Section 4281.15 is removed and reserved.

Issued in Washington, D.C. this 24th day of April, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 317, 351, 353, and 370

Regulations Governing Agencies for the Issue and Offering of United States Savings Bonds, Including Sales by Electronic Means

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury hereby publishes a proposed rule governing the issue and offering of United States Savings Bonds. This document proposes changes to create new categories of savings bond issuing agents and to clarify and expand the means by which bonds may be sold, including electronic means.

DATES: Submit comments on or before June 1, 1998.

ADDRESSES: Comments should be sent to the attention of Wallace L. Earnest, Director, Division of Staff Services, Room 507, Bureau of the Public Debt, 200 3rd St., Parkersburg, WV 26106-1328. Additionally, comments may be sent by e-mail to the following address: <Savbonds@bpd.treas.gov>. When sending comments by e-mail, please provide your full name and mailing address, and send the comments in ASCII format. Comments received will be available for public inspection and copying at the Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW, Washington, D.C. 20220. Individuals wishing to visit the library should call (202) 622-0990 for an appointment. Copies of this proposed rule can be downloaded from the Bureau of the Public Debt at the

following World Wide Web address: <<http://www.savingsbonds.gov>>.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Director, Division of Staff Services, at (304) 480-6319 or by e-mail at <wearnest@bpd.treas.gov>; Troy D. Martin, Senior Program Analyst, Division of Staff Services, at (304) 480-6545 or by e-mail at <tmartin@bpd.treas.gov>; Edward C. Gronseth, Deputy Chief Counsel, at (304) 480-5192 or by e-mail at <egronset@bpd.treas.gov>; or Gregory J. Till, Attorney-Adviser, Office of the Chief Counsel, at (202) 219-3320 or by e-mail at <gtill@bpd.treas.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

The growth of electronic commerce and the World Wide Web have led to a flourishing of financial service providers and new payment methods. However, the Bureau of the Public Debt has been unable to take full advantage of these developments in the sale of United States Savings Bonds because of apparent restrictions in existing regulations. This document proposes changes to create new categories of savings bond issuing agents and to clarify and expand the means by which bonds may be sold, including electronic means.

The most important proposed changes are directed at four areas in title 31 of the Code of Federal Regulations. First, changes in §§ 317.2 and 317.3 would amend the rules used to determine which organizations may serve as issuing agents and the procedures used to qualify these organizations as issuing agents. Second, changes to § 351.5 would expand the means by which issuing agents may sell savings bonds. Third, a new subpart in part 370 would address the use of Automated Clearing House debit entries for the sale of bonds issued through the Bureau of the Public Debt. Fourth, another new subpart in part 370 would address the electronic submission of purchase applications and remittances for the sale of bonds issued through the Bureau of the Public Debt. This second new subpart in part 370 would facilitate Treasury's intention to sell savings bonds through remittances by credit cards at the World Wide Web site of the Bureau of the Public Debt.

II. Summary of Amendments

A. Regulations Governing Agencies for Issue of Savings Bonds (31 CFR Part 317)

(1) Definitions (§ 317.1)

The revised definition of "issuing agent" would note the authority of the

Commissioner of the Public Debt or the Commissioner's designee to qualify issuing agents, as explained in § 317.2. The definition also would clarify that an issuing agent acts as an agent of the purchaser in handling the remittance. The proposed language addressing the handling of the remittance is consistent with current practice. The Secretary of the Treasury collects purchase funds from issuing agents, not the public. If an issuing agent discovers that the remittance is uncollectible or must be returned after the issuance of a bond, the Secretary is nonetheless entitled to payment from the issuing agent. The issuing agent bears the risk of loss for non-collection or return of the remittance.

(2) Organizations Eligible to Serve as Issuing Agents (§ 317.2)

Currently, issuing agent eligibility is limited to financial institutions (such as banks and credit unions), agencies of the United States and state and local governments, and employers operating payroll savings plans. This document proposes to expand the types of organizations that are eligible to serve as issuing agents.

One proposed change, in § 317.2(c), would allow organizations that operate payroll savings plans on behalf of employers to serve as issuing agents. The proposed change is designed to bolster payroll savings plan sales from small businesses, which often do not have the resources to maintain such plans themselves. As is the case with employer organizations, an organization operating a payroll service plan on behalf of an employer organization would be eligible for issuing agent fees under the proposed rule only if it inscribes savings bonds.

Another proposed addition, set out in § 317.2(d), would give the Commissioner of the Bureau of the Public Debt or the Commissioner's designee the authority to qualify issuing agents when to do so would be in the public interest. The Commissioner or the Commissioner's designee could use such process as deemed to be appropriate in selecting the issuing agent. The selected issuing agent would also be subject to such conditions as deemed to be appropriate.

The new § 317.2(d) would be used for the selection of entities to sell bonds in unique ways as new methods of sales emerge. In particular, this provision would facilitate the qualification of issuing agents to sell savings bonds through electronic methods, such as those offered by financial services providers through World Wide Web access.

In qualifying issuing agents under this provision, the Commissioner or the Commissioner's designee would balance the convenience and cost-effectiveness of using new purchase methods against the need to insure the security and reliability of those methods.

(3) Procedures for Qualifying and Serving as an Issuing Agent (§ 317.3)

All organizations currently must apply to a designated Federal Reserve Bank to receive issuing agent qualification. The section would be amended to state that an organization that seeks qualification under § 317.2(d) or because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c) would be approved by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee, though application still would be made through a designated Federal Reserve Bank.

(4) Issuance of Bonds (§ 317.6)

The issuing agent fee provision would be simplified and continue to emphasize that fee schedules are set out not in the regulations, but through a separate publication in the **Federal Register**. The proposed changes would have no effect on the current fee structure, though the Bureau of the Public Debt would reserve the right to create new categories of fees as new ways of selling bonds develop.

(5) Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4-67 (Third Revision), Fiscal Service, Bureau of the Public Debt

The appendix would be revised, primarily for changes in terminology. For instance, the definition of "issuing agent" would be redefined to reflect the changes to that term in § 317.2. The term "over-the-counter" would be redefined to reflect the expanded meaning given to that term in § 351.5 of this chapter. Among other minor changes, paragraph (3) of subpart B would be removed because that provision no longer has application.

B. Offering of United States Savings Bonds, Series EE (31 CFR Part 351)

(1) Governing Regulations for Series EE Bonds (§ 351.1)

This section would state that the regulations governing the transfer of funds by electronic means on account of United States securities in part 370 of this chapter would apply only to transactions for the purchase of bonds issued through the Bureau of the Public

Debt. The regulations in part 370 would have no application to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee.

(2) Purchase of Bonds (§ 351.5)

Currently, this section provides for four categories of savings bond sales: (1) "payroll plans"; (2) "over-the-counter/mail"; (3) "bond-a-month plan"; and (4) "employee thrift, savings, vacation, and similar plans." Because some of these categories are limited and outdated, they may actually inhibit sales rather than facilitate them.

Furthermore, a comparison with the appendix to § 317.8 of this chapter (which discusses the remittance of sales proceeds and registration records by issuing agents) shows a lack of consistency in the categories and terminology used to define bond sales. In discussing bond sales, the appendix does not mirror § 351.5 but rather combines the four categories of sales described in § 351.5 into two categories: (1) "payroll sale"; and (2) "over-the-counter sale." The term "payroll sale" is not used in § 351.5, which means that different terminology is used in the two provisions despite the fact that both provisions address bond sales. Also, the term "over-the-counter" has an expanded meaning in the appendix to § 317.8 as compared to its use in § 351.5, making the regulations more difficult to understand.

The proposed rule would revise § 351.5 (as well as the appendix to § 317.8), using the two categories in the appendix to § 317.8: (1) "payroll sales"; and (2) "over-the-counter sales." The proposed payroll sales category would include sales through "payroll savings plans" and "employee thrift, savings, vacation, and similar plans," the provisions of which are already described in the substance of the current § 351.5. The proposed rule also states that employers and the organizations operating payroll savings plans on behalf of employers would be able to sell bonds only pursuant to payroll savings plans. These types of issuing agents would not be allowed to sell bonds over-the-counter.

Over-the-counter sales would be all sales that are not payroll sales. For over-the-counter sales, the proposed rule would provide that "the purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent." This broad provision would ensure that issuing agents have the flexibility to sell

bonds through channels in addition to those currently set out in § 351.5. For instance, the proposed rule would authorize issuing agents to sell savings bonds through electronic means such as the World Wide Web. Both the application and remittance could be submitted and signed through electronic methods agreed upon by the parties.

The regulation would not impose limitations on the types of remittances which an issuing agent may accept. As always, however, the issuing agent would bear the burden of collection and risk of non-collection for remittances it accepts. The Secretary of the Treasury takes payment from the issuing agent, not the purchaser. The Secretary of the Treasury has no obligation to return funds received from an issuing agent after issuance of a bond if the issuing agent cannot collect or must return the remittance.

Finally, although the proposed changes would have no effect on the current issuing agent fee structure, the Bureau of the Public Debt would reserve the right to make changes to the fee structure as new ways of selling bonds develop.

C. Regulations Governing United States Savings Bonds, Series EE and HH (31 CFR Part 353)

(1) Application for Relief—Non-Receipt of Bond (§ 353.27)

The regulations currently provide little guidance as to the status of bond purchases if the Secretary of the Treasury does not receive payment. While not likely, an issuing agent may fail after receiving the remittance from a purchaser but before the Secretary collects the sales proceeds from the issuing agent.

If an issuing agent has inscribed a bond, the Secretary will honor the bond even if the Secretary cannot collect the sales proceeds from the issuing agent. This policy is consistent with existing regulations, which note that the registration of an issued bond is generally conclusive of ownership. If a bond has not been inscribed, the proposed rule states that the Secretary is authorized to issue bonds to preserve the public's confidence in dealing with issuing agents, even if the Secretary cannot collect the sales proceeds from the issuing agent.

D. Regulations Governing the Transfer of Funds by Electronic Means on Account of United States Securities (31 CFR Part 370)

(1) Scope (§ 370.0)

This section would be amended to clarify that to the extent that the rules

in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the rules in this part 370 would apply in the event of any inconsistencies.

(2) Definitions (§ 370.1)

Several definitions would be added to or changed in this section. The definition of "Automated Clearing House (ACH) entry" would refer to transactions accomplished in accordance with the applicable Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law.

Other terms would be drawn from several authorities. The definition of "deposit account" would be taken principally from Regulation E of the Board of Governors of the Federal Reserve (12 CFR part 205). The definition of "financial institution" would be the same as included in a proposed rule to amend part 208 of this title, "Management of Federal Agency Disbursement," published in the **Federal Register** on September 16, 1997, beginning at page 48714. The definition of "originator" would be derived from the Operating Rules and Operating Guidelines of the National Automated Clearing House Association.

(3) Definition (§ 370.4)

The definition of "payment" would be removed from the general definitional section in subpart A and placed into a specific definitional section applying only to subpart B. The limited definition of a payment as a deposit from the Department to the account of the owner only has application in subpart B and may cause confusion by its application throughout part 370.

(4) Governing Law (§ 370.30)

Subpart D would establish rules and the exclusive liability of the Bureau of the Public Debt for debit entries to a purchaser's account to buy bonds from the Bureau of the Public Debt. As set out in § 351.1, part 370 would apply only to transactions for the purchase of bonds issued through the Bureau of the Public Debt. These rules would not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt or the Commissioner's designee deems otherwise.

It is anticipated that a purchaser would authorize an entity named on an approved authorization form to be the originator for the debit entries. This entity would forward collected funds to Treasury in exchange for a fee (unless

the Bureau of the Public Debt chooses to name itself as the originator). The Bureau of the Public Debt would then issue the bonds through a Federal Reserve Bank acting as a fiscal agent for the United States.

(5) Authorization of Purchaser (§ 370.31)

This section would state that all debit authorizations must be accomplished through a procedure approved by the Bureau of the Public Debt. An authorization would have to be signed. The authorization would allow for recurring debit entries. The section would also provide that except to the extent required by the Bureau of the Public Debt, the originator will not be required to take additional steps to verify the identity of the purchaser or the authenticity of the signature.

The Bureau of the Public Debt would retain the right to name a successor to the originator without additional notice to the purchaser, though it may ask the successor to provide such notice as a customer service. This provision is drawn from the official staff interpretation to § 205.10(b) of Regulation E of the Board of Governors of the Federal Reserve (12 CFR part 205), which allows "successor institutions" to assume an originator's role without notice or a new authorization.

Finally, a purchaser's subsequent authorization would cancel a previous authorization only if so noted by the purchaser on the subsequent authorization form. This provision would allow a purchaser to make additional recurring purchases of savings bonds through debit entries without having to list anew all the recurring purchases on a single form.

(6) Cancellation or Suspension by the Bureau of the Public Debt (§ 370.32)

This section would state that the Bureau of the Public Debt could terminate or suspend the availability of debit entries at any time, and its decision to do so would be final.

(7) Cancellation or Suspension by Purchaser (§ 370.33)

Under this section, a purchaser would be able to cancel or suspend debit ACH entries for the purchase of bonds by providing written notice to the originator.

(8) Changes and Error Resolution (§ 370.34)

This section would provide that if a person gives an oral notice relating to the correctness of bond purchase information or a debit entry to the person's account, the originator could require a written notice from the person,

which must be received within thirty days. In addition, the originator would be allowed to ignore the oral notice if written notice is not received within thirty days. Finally, the originator would be able to suspend further debit entries during a resolution to any notice, written or oral.

(9) Prenotification (§ 370.35)

The section would leave the requirement of a prenotification, as well as the length of the period during which the originator must wait after sending a prenotification before sending a live debit entry, up to the discretion of the Bureau of the Public Debt.

(10) Liability (§ 370.36)

This section would state that the Bureau of the Public Debt would not be liable in disputes arising out of debit entries, unless the Bureau of the Public Debt names itself as an originator. Disputes arising out of debit entries would be the responsibility of the originator. Also, unless the Bureau of the Public Debt designates itself or a fiscal or financial agent as the originator, the originator would serve as the agent of the purchaser in handling the remittance.

In any case, the Bureau of the Public Debt's liability would be limited to the amount of the improper debit, less any losses caused due to the failure of a claimant to exercise due diligence. The Bureau of the Public Debt's responsibility would be to replace lost, stolen, destroyed, mutilated, and defaced bonds, as well as to issue or replace bonds not received, under the rules set out in subpart F of part 353 of this chapter, as proposed to be amended.

(11) Governing Law (§ 370.50)

Subpart E would establish rules for the electronic submission of purchase applications and remittances for the purchase of savings bonds issued through the Bureau of the Public Debt. The subpart explicitly would enable the Bureau of the Public Debt's acceptance of electronic signatures, establish the rules of contract formation accomplished by electronic means, address the admissibility of digital signatures, and set out the exclusive liability of the Bureau of the Public Debt for these transactions.

The first use of these provisions would be to facilitate the sale of savings bonds over the World Wide Web through remittances paid for by credit cards. On April 30, 1997, the Secretary of the Treasury announced his support of this goal, stating:

I am pleased to announce a number of steps we are taking to make savings bonds more attractive investments for American savers. * * *

[W]e are using technology in an effort to make information about the savings bond program more available to all Americans * * *. [W]e will take another step to make savings bonds more available by introducing credit card purchasing on-line.

The bonds will be available at World Wide Web site of the Bureau of the Public Debt, at <<http://www.savingsbonds.gov>>. These sales will utilize the latest in technology (including the issuance of digital certificates to credit card holders and the use of the Secure Electronic Transactions protocol), which may hamper the initial availability of bonds sold in this fashion but which will help insure the security of these sales for the Government and purchasers.

It is important to note the limited scope and extent of these proposed regulations. As would be stated in § 351.1 of this chapter, these rules would apply only to savings bond transactions accomplished through the Bureau of the Public Debt. These regulations would not apply to savings bond sales accomplished through issuing agents such as banks and employers offering payroll savings plans. Furthermore, the regulations are relatively brief, at least in comparison to work done by the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the American Law Institute, and the United Nations Commission on International Trade Law, among others. Also, many states have passed or are contemplating comprehensive legislation in this area.

Given the rapidly changing nature of the technology, its narrow initial use by the Bureau of the Public Debt, and a desire to avoid even the appearance of encroaching upon the right of states to pursue their own legislative approaches, these electronic and digital signature regulations must be drawn in a limited fashion. The regulations would leave unchanged the right of states to determine their own rules for electronic and digital signatures and would not address any issues related to certification authorities. Some brief federal contract law provisions addressing electronic and digital signatures are necessary to facilitate the sale of savings bonds over the Internet by the Bureau of the Public Debt, and that is what these regulations seek to implement.

(12) Definitions (§ 370.51)

The section would list five definitions. The most fundamental would be a definition of "signature." A signature would be "any symbol or method executed or adopted by a party with present intention to be bound," which is a traditional legal definition of a signature. The definition would encompass electronic signatures. Case law on signatures indicates that almost anything can constitute a signature, from printed and typewritten names to account numbers, if executed with an intent to be bound. Electronic signatures are no different from other forms of signatures in this regard. To retain some control over a new and uncertain process, an electronic signature submitted to the Bureau of the Public Debt would have to be of a type approved by the Bureau of the Public Debt.

In addition, the section would include a definition of "digital signature," which is a special type of electronic signature. Treasury will use digital signatures in the sale of savings bonds over the Internet. A digital signature uses "public-key encryption" and a "message digest function" in transforming an electronic "record." The definitions of these terms largely are taken from model, proposed, or existing authorities.

Public-key encryption is a process that relies upon an algorithm to produce two mathematically related but different keys. If public-key encryption is implemented securely, it is computationally infeasible to derive one key from the other. The keys can be used for several purposes, including the creation and verification of digital signatures. One key (the private key) is kept private and can be used to create a digital signature, while the other key (the public key) may be distributed to anyone and may be used by a relying party to verify a digital signature. The association of a public key (and by implication, its corresponding private key) to the identity of a particular person is accomplished through the use of digital certificates, issued by certification authorities.

The use of a message digest function (also known as a hash function) is an essential element in the creation and verification of digital signatures. A message digest function is an algorithm that typically provides a shortened, mathematical version of a longer electronic record. Even a small change to an electronic record can result in a dramatic change to a message digest, aiding in the verification of a digital signature and any electronic record to

which the signature is attached. The signer uses the signer's private key to encrypt the short message digest, rather than the entire electronic record. This digital signature (the message digest, encrypted by the signer's private key) is sent to the recipient, along with a copy of the electronic record.

Upon receipt of the digital signature and electronic record, the recipient uses the signer's public key to decrypt the digital signature and recover the message digest. The recipient then runs the received copy of the electronic record through the same message digest function used to create the received message digest. If the two results are identical, the recipient knows that the electronic record was encrypted by the signer's private key and that the electronic record was not tampered with from the time the signer created the digital signature.

(13) Contract Formation (§ 370.52)

The "mailbox rule" would be adopted for the acceptance of purchase applications submitted electronically to the Bureau of the Public Debt. An application for a purchase of a bond submitted by electronic means would be an offer to create a bond contract. Acceptance of the offer by the Bureau of the Public Debt would be effective and a contract formed upon the transmittal of the message of acceptance by the Bureau of the Public Debt, not upon receipt of that message by the purchaser.

(14) Point of Sale (§ 370.53)

The point of sale for a bond issued as a result of a purchase application submitted electronically under this subpart would be Parkersburg, West Virginia.

(15) Effect of Electronic Signature (§ 370.54)

This section would overcome challenges to the legal effect of an electronically signed record that are based upon the electronic form of the record or signature. Some provisions of law, such as the Statute of Frauds, require evidence of an agreement to be in writing. Other provisions of law can require that an original record be produced in court, rather than a copy, or may require that a record be signed. However, there seems little reason to use these doctrines to preclude the admissibility of electronically signed records. These records are equivalent to signed writings, each copy of which is identical to the original. Accordingly, this section would prevent such challenges from stopping the introduction of electronically signed records into evidence.

(16) Admissibility of Digital Signature (§ 370.55)

This section would address the legal requirement that an item be authenticated before being introduced into evidence. "Authentication" is a term that has a technical meaning specifically linked to the security of electronic signatures, but also has a separate meaning in the law of evidence, at which this section is directed.

Under Rule 901 of the Federal Rules of Evidence, "The requirement of authentication * * * as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." For instance, under Rule 901(b)(2), this evidentiary requirement may be met in regard to a handwritten record by nonexpert testimony as to the genuineness of handwriting. Although there have not as yet been any cases on the matter, the requirement of authentication for digital signatures likely can be met under Rule 901(b)(9), which allows for the sufficiency of "[e]vidence describing a process or system used to produce a result and showing that the process or system produces such a result."

However, in some situations authentication evidence is not required as a condition precedent to admissibility. As noted under Rule 902 of the Federal Rules of Evidence, extrinsic evidence of authenticity is not necessary for certified birth and death certificates, newspapers and periodicals, trade inscriptions, commercial paper, and notarized records, among other things. Because these items are likely to be authentic, a strict adherence to preliminary authentication procedures would unnecessarily expend a court's time and resources. Accordingly, the items are considered to be self-authenticating and—barring other objections to the evidence—may be admitted into evidence without additional preliminary review.

The inclusion of a limited self-authentication provision for digital signatures in these proposed regulations is appropriate. Under this section, extrinsic evidence of authenticity would be unnecessary to establish the existence of a digital signature that corresponds to a public key pair, as well as that an electronic record to which a digital signature is affixed has not been altered from its original form. Importantly, the self-authentication provision would not tie a digital signature to a particular person. Extrinsic evidence tying the public key pair used in the creation of a digital

signature to a particular person still would have to be provided before a digital signature and a record to which it has been affixed could be admissible.

There are several reasons that support the insertion of a limited self-authentication clause into this proposed rule. If public-key encryption has been properly implemented, the risk of a successful forgery or alteration of a digital signature is extremely remote, and is significantly less than the risk of forgery or alteration for paper records. Furthermore, although a legal showing of authenticity in the absence of a self-authentication provision almost certainly could be accomplished, such a showing would require considerable time and resources. Among other things, it would entail extensive scientific testimony on encryption, leading to an expensive and unproductive "battle of the experts." Use of a self-authentication provision would avoid this wasteful problem.

In almost all cases, the existence of a digital signature should be beyond reasonable dispute. The most likely challenges to a digital signature and an electronic record to which it is affixed will turn not on whether a digital signature exists, but on whether it should be attributed to a particular person. These challenges frequently will focus on the issuance, protection, or revocation of the digital certificates used to link a digital signature and accompanying record to a particular person. This section would do nothing to prevent such challenges. This section also would have no application in criminal cases. Furthermore, even to the extent that a self-authenticated digital signature and accompanying record could be introduced into evidence under this section, this section would in no way prevent a party against whom a digital signature is asserted from contesting the existence or authenticity of the signature. However, any arguments would go to the weight of the evidence, not to its admissibility.

(17) Negligence Contributing to Unauthorized Signature (§ 370.56)

This section would hold a person responsible for an unauthorized signature if the person's failure to use ordinary care substantially contributed to the creation or submission of the unauthorized signature. Furthermore, the burdens will be on the person challenging a signature to produce evidence that ordinary care was exercised and to persuade a trier of fact that it is more likely than not that the person exercised ordinary care.

This section is drawn from section 3-406 of the Uniform Commercial Code

(UCC). The responsibilities imposed upon persons in regard to the technology used to create and submit electronic signatures are similar to those imposed under the UCC in regard to rubber signature stamps used to sign checks. Official Comment 3 to UCC section 3-406 is enlightening in this regard. If a person's rubber signature stamp and checks, kept in a unlocked drawer, are stolen and used by an unauthorized party to forge a check, a bank may be able to successfully argue that the person is precluded from disavowing the forged signature because the person's lack of ordinary care substantially contributed to the forgery.

Similarly, under the proposed rule if a person fails to take adequate security precautions to protect access to electronic signature technology (such as by not safekeeping a computer password, for instance) and this failure substantially contributes to the creation or submission of an unauthorized signature, the person would be precluded from disavowing the signature.

(18) Liability (§ 370.57)

This section would limit the Bureau of the Public Debt's liability for claims involving this subpart to the amount of the transaction, less any losses caused by the failure of a claimant to exercise due diligence. For instance, this section would have application to claims involving errors in the handling of otherwise properly authorized transactions.

III. Procedural Requirements

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

This proposed rule relates to matters of public contract and procedures for United States securities. Accordingly, although this proposed rule is being issued to secure the benefit of public comment, the notice and public comment provisions of the Administrative Procedure Act do not apply, pursuant to 5 U.S.C. 553(a)(2).

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

There are no new collections of information contained in this proposed rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Parts 317, 351, 353, and 370

Bonds, Electronic Funds Transfers, Government Securities.

For the reasons set forth in the preamble, 31 CFR parts 317, 351, 353, and 370 are proposed to be amended as follows:

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 is revised to read as follows:

Authority: 2 U.S.C. 901; 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 317.1 to read as follows:

§ 317.1 Definitions.

(a) Bond(s) means those series of United States Savings Bonds currently being offered for sale by the Secretary of the Treasury.

(b) Federal Reserve Bank refers to the Federal Reserve Bank or Branch providing savings bond services to the district in which the issuing agent or the applicant organization is located. See § 317.9(a).

(c) Issuing agent refers to an organization that has been qualified by a designated Federal Reserve Bank, the Commissioner of the Bureau of the Public Debt, or the Commissioner's designee to sell savings bonds. The definition encompasses:

(1) Each organization that accepts and processes purchase orders for bonds sold over-the-counter, but does not inscribe bonds, and

(2) Each organization that is authorized to inscribe bonds sold over-the-counter or through payroll savings plans. An issuing agent acts as an agent of the purchaser in handling the remittance.

(d) Offering circular refers to Department of the Treasury Circular, Public Debt Series No. 1-80, current revision.

(e) Organization means an entity, as described in § 317.2, that may qualify as an issuing agent of bonds.

3. Revise § 317.2 to read as follows:

§ 317.2 Organizations authorized to act.

Organizations eligible to apply for qualification and serve as issuing agents are the following:

(a) Banks, Federal credit unions in good standing, trust companies, and savings institutions chartered by or incorporated under the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) Agencies of the United States and State and local governments.

(c) Employers operating payroll savings plans for the purchase of United States Savings Bonds, as well as organizations operating payroll savings plans on behalf of employers.

(d) Other organizations to be specifically and individually qualified by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee, whenever the Commissioner or the Commissioner's designee deems such a qualification to be in the public interest. In selecting an issuing agent, the Commissioner or the Commissioner's designee may use such process that the Commissioner or the Commissioner's designee deems to be appropriate. The selected issuing agent will be subject to such conditions that the Commissioner or the Commissioner's designee deems to be appropriate.

4. Amend § 317.3 as follows:

A. Revise paragraph (a) introductory text to read as follows:

§ 317.3 Procedure for qualifying and serving as issuing agent.

(a) Execution of application agreement. An organization seeking issuing agent qualification shall obtain from and file with a designated Federal Reserve Bank an application-agreement form. If an organization seeks qualification under § 317.2(d) or because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c), the completed application-agreement form shall be forwarded by the designated Federal Reserve Bank to the Bureau of the Public Debt for approval by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee.

B. Add the words "or the Bureau of the Public Debt" after the words "Federal Reserve Bank" in paragraphs (b) and (c).

5. Revise § 317.6(b) to read as follows:

§ 317.6 Issuance of bonds.

(b) Fees. Each issuing agent, other than a Federal agency, will be paid fees. Only issuing agents are eligible to collect fees. With prior approval, agents that are authorized to inscribe bonds and receive fee payments will also be paid a bonus for presorting savings bond mailings. Schedules reflecting the amount of the fees and presort bonuses, and the basis on which they are computed and paid, will be published separately in the Federal Register.

6. Amend the appendix to § 317.8 as follows:

A. Revise the section heading to the appendix to read as set out below;

B. Remove paragraph 3 of subpart B;

C. Revise paragraphs 2(c) and 2(e) of subpart A, all of subpart C, and paragraphs 2(a)(i) and 2(b) of subpart D to read as follows:

§ 317.8 Remittance of sales proceeds and registration records.

Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4-67, Third Revision (31 CFR Part 317), Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

2. Definition of terms. As used in this appendix:

(c) Over-the-counter sale means any sale of savings bonds other than payroll sales.

(e) Issuing agent, as provided in § 317.1(c) of the Circular, refers to an organization that has been qualified by a designated Federal Reserve Bank, the Commissioner of the Bureau of the Public Debt, or the Commissioner's designee to sell savings bonds.

Subpart C—Remittance of Payroll Sales Proceeds

1. Application of requirements. The remittance requirements for payroll sales apply only to issuing agents. An employer that maintains a payroll savings plan but does not issue bonds shall be notified by the servicing issuing agent that it must remit sales proceeds to the issuing agent in sufficient time to permit compliance with the requirements.

2. Remittance of payroll sales deductions. Issuing agents shall remit sales proceeds throughout the month shown in the issue date as soon as the full amount of the purchase price of the bonds has been received or accumulated. In no case should such proceeds be remitted later than the second business day of the month following the month shown in the issue date. The issuing agent shall ensure that its system properly accounts for and recognizes when the full purchase price has been received, or has been accumulated, so that timely remittance can be made. The issuing agent shall transmit registration records in an electronically processible format within thirty (30) days following the month shown on the issue date.

Subpart D—Interest on Late Remittances

2. (a) Bonds inscribed by issuing agent—(i) Payroll sales. If, during any three (3) month

period, the interest assessed on an issuing agent's late remittance of proceeds from payroll savings plan sales or thrift, savings, vacation, or similar plan sales accumulates to less than \$50 for each type of sales, the interest assessed for the first month will be waived. The interest assessed for each type of sales for the remaining two (2) months will then be carried forward to the next period of three (3) consecutive months.

* * * * *

(b) *Bonds inscribed by the designated Federal Reserve Bank.* The interest assessed on late remittance of all sales proceeds transmitted during a given month will be waived if it is less than \$25.

* * * * *

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 351.1 to read as follows:

§ 351.1 Governing regulations.

Series EE bonds are subject to the regulations of the Department of the Treasury, now or hereafter prescribed, governing United States Savings Bonds of Series EE and HH, contained in Department of the Treasury Circular, Public Debt Series No. 3-80 (part 353 of this chapter). The regulations in part 370 of this chapter apply to transactions for the purchase of United States Savings Bonds issued through the Bureau of the Public Debt. The regulations in part 370 do not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt or the Commissioner's designee.

3. Revise § 351.5 to read as follows:

§ 351.5 Purchase of bonds.

(a) *Payroll sales*—(1) *Payroll savings plans.* Bonds in \$100 and higher denominations may be purchased through deductions from the pay of employees of organizations that maintain payroll savings plans. The bonds must be issued by an authorized issuing agent.

(2) *Employee thrift, savings, vacation, and similar plans.* Bonds registered in the names of trustees of employee plans may be purchased in book-entry form in \$100 multiples through a designated Federal Reserve Bank after Bureau of the Public Debt approval of the plan as eligible for the special limitation under § 353.13 of this chapter, also published as § 353.13 of Department of the Treasury Circular, Public Debt Series No. 3-80.

(b) *Over-the-counter sales*—(1) *Eligible issuing agents.* Bonds may be purchased through any issuing agent, except that an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) of this chapter may sell bonds only through payroll savings plans.

(2) *Manner of sale.* An application for the purchase of a bond must be accompanied by a remittance to cover the issue price. The purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent. An application may authorize purchases on a recurring basis. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the remittance.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

§ 353.6 [Amended]

2. Remove the word "deduction" in § 353.6(b)(4), and add, in its place, the word "savings."

§ 353.13 [Amended]

3. Add the phrase ", as amended" after the word "1954" in § 353.13(c)(3).

4. Revise § 353.27 to read as follows:

§ 353.27 Application for relief—Non-receipt of bond.

If a bond issued on any transaction is not received, the issuing agent must be notified as promptly as possible and given all information about the non-receipt. An appropriate form and instructions will be provided. If the application is approved, relief will be granted by the issuance of a bond bearing the same issue date as the bond that was not received. Also, relief is authorized for the issuance of bonds for which the Secretary has not received payment, in order to preserve public confidence in dealing with issuing agents.

PART 370—REGULATIONS GOVERNING THE TRANSFER OF FUNDS BY ELECTRONIC MEANS ON ACCOUNT OF UNITED STATES SECURITIES

1. The authority citation for part 370 is revised to read as follows:

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

2. Revise § 370.0 to read as follows:

§ 370.0 Scope.

The regulations in this part apply to the transfer of funds by electronic means as employed by the Bureau of the Public Debt in connection with United States securities, except as otherwise provided. To the extent that the rules in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the rules in this part 370 apply in the event of any inconsistencies. Among other things, the written authorization of the Financial Management Service is not necessary for the issuance of routing numbers by a Federal Reserve Bank or for the receipt, origination, or reversal of any credit or debit entries accomplished pursuant to this part.

3. Revise § 370.1 to read as follows:

§ 370.1 Definitions.

In this part, unless the context indicates otherwise:

Automated Clearing House (ACH) entry means a transaction in accordance with applicable Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law. The rules in this part control in the event of any inconsistencies with the applicable Operating Rules and Operating Guidelines.

Credit entry means an ACH entry for the deposit of money to a deposit account.

Debit entry means an ACH entry for the payment of money from a deposit account.

Deposit account means a demand deposit (checking), savings, or asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution.

Financial institution means:

(1) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. § 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term "depository institution" means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. § 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. § 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. § 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. § 1752) or any credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. § 1781);

(v) Any savings association (as defined in section 3 of the Federal Deposit Insurance Act) (12 U.S.C. § 1813) that is an insured depository institution (as defined in such Act) (12 U.S.C. § 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. § 1811 *et seq.*); and

(2) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. § 3101).

Originator means an entity authorized by a person to initiate debit or credit entries to the person's deposit account and that also has an agreement with a financial institution to transmit the debit or credit entries to the person's deposit account.

Owner means the person(s) in whose name(s) a security is registered.

Security means any obligation issued by the United States that, by the terms of the applicable offering circular, is made subject to this part.

Settlement date means the date an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank(s). For a security held in the TREASURY DIRECT system, the issue date will in most cases be the same as the settlement date. For United States Savings Bonds, the issue date will in most cases be the first day of the month in which settlement takes place.

4. Add § 370.4 to subpart B to read as follows:

§ 370.4 Definition.

Payment means, for the purpose of this subpart, the deposit of money from the Department to the deposit account of the owner.

5. Revise the heading of subpart C to read as follows:

Subpart C—Debit ACH Entries for the Sale of Securities in TREASURY DIRECT

6. Redesignate subpart D as subpart F and §§ 370.30 and 370.31 as §§ 370.60 and 370.61.

7. Add subparts D and E to read as follows:

Subpart D—Debit ACH Entries for the Sale of United States Savings Bonds Issued Through the Bureau of the Public Debt

Sec.

370.30 Governing law.

370.31 Authorization by purchaser.

370.32 Termination or suspension by the Bureau of the Public Debt.

370.33 Termination or suspension by purchaser.

370.34 Changes and error resolution.

370.35 Prenotification.

370.36 Liability.

§ 370.30 Governing law.

This subpart provides rules for Automated Clearing House debit entries used for the sale of United States Savings Bonds issued through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for such entries. This subpart does not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Public Debt or the Commissioner's designee requires otherwise.

§ 370.31 Authorization by purchaser.

(a) *General.* The purchaser of a bond shall authorize an originator to initiate Automated Clearing House debit entries and a financial institution and deposit account to receive such entries. An authorization shall be accomplished only through a form approved by the Bureau of the Public Debt. The purchaser's signature is necessary for the authorization to be effective. Except to the extent required by the Bureau of the Public Debt, the originator will not be required to take additional steps to verify the identity of the purchaser or the authenticity of the signature.

(b) *Recurring debit entries.* A single authorization may allow debit entries to be made to a deposit account on a recurring basis.

(c) *Successor originator.* The Bureau of the Public Debt reserves the right to name a successor to the originator named on the debit authorization form. The designation of a successor shall be effective without additional notice to the purchaser.

(d) *Subsequent authorizations.* A purchaser's subsequent authorization cancels a previous authorization only if so noted by the purchaser on the subsequent authorization form.

§ 370.32 Termination or suspension by the Bureau of the Public Debt.

The Bureau of the Public Debt may terminate or suspend the availability of debit entries as a means of purchase for bonds at any time. A decision to

terminate or suspend the availability of debit entries as a means of purchase is in the sole discretion of the Bureau of the Public Debt and shall be final.

§ 370.33 Termination or suspension by purchaser.

The purchaser may terminate all future debits or suspend one or more future debits by providing written notice to the originator. A written notice is also necessary to lift a suspension of indefinite length. All notices must be received by the originator at least three business days before the debit is to be initiated.

§ 370.34 Changes and error resolution.

In response to an oral notice from a person relating to the propriety of bond issuance information or a debit entry involving the person's deposit account, the originator may request the person to submit the notice in writing. If so asked, the person shall respond in writing within thirty calendar days. The originator may ignore the oral notice if written notice is not received within thirty days. The originator may suspend debit entries while reaching a resolution in response to any notice, written or oral.

§ 370.35 Prenotification.

The requirement of a prenotification prior to the initiation of any debit entry, as well as the length of the period during which the originator must wait after initiating a prenotification before initiating a subsequent debit entry, is left to the discretion of the Bureau of the Public Debt.

§ 370.36 Liability.

(a) *Scope of liability.* Unless the Bureau of the Public Debt has designated itself or a fiscal or financial agent as an originator, the Bureau of the Public Debt shall not be liable for any unauthorized, erroneous, duplicative, or otherwise improper debit entries, and shall not be liable for a failure to debit a deposit account. Unless the Bureau of the Public Debt has designated itself or a fiscal or financial agent as the originator, the originator serves as the agent of the purchaser in handling the remittance. Any claims must be pursued against the originator. The Bureau of the Public Debt shall not be liable for its choice of an originator. The Bureau of the Public Debt shall not be liable to any Automated Clearing House association.

(b) *Extent of liability.* For any claim that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the improper debit and does not extend to other damages or costs, including consequential damages,

punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt also shall be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Subpart E—Electronic Submissions of Purchase Applications and Remittances for the Purchase of United States Savings Bonds Issued Through the Bureau of the Public Debt

Sec.

370.50 Governing law.

370.51 Definitions.

370.52 Contract formation.

370.53 Point of sale.

370.54 Effect of electronic signature.

370.55 Admissibility of digital signature.

370.56 Negligence contributing to unauthorized electronic signature.

370.57 Liability.

§ 370.50 Governing law.

This subpart provides rules for the electronic submission of purchase applications and remittances for the sale of United States Savings Bonds issued through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for transactions submitted through electronic means. This subpart does not apply to transactions for the sale of bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt or the Commissioner's designee requires otherwise.

§ 370.51 Definitions.

(a) *Digital signature* is a type of electronic signature. A digital signature uses public-key encryption and a message digest function to transform an electronic record. A person who has the initial electronic record and the signer's public key can verify:

(1) Whether the transformation was accomplished by the private key that corresponds to the signer's public key, and

(2) Whether the initial record has been altered since the transformation was made.

(b) *Message digest function* means an algorithm mapping or translating one sequence of bits into another, generally smaller, set such that:

(1) An electronic record yields the same message digest result every time the algorithm is executed using the same electronic record as input,

(2) It is computationally infeasible that an electronic record can be derived or reconstituted from the message digest result produced by the algorithm, and

(3) It is computationally infeasible that two electronic records can be found that produce the same message digest using the algorithm.

(c) *Public-key encryption* means a process which generates and employs a key pair consisting of a private key and its mathematically related public key, in which one use of the public key is to verify a digital signature created by the private key.

(d) *Record* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(e) *Signature* means any symbol or method executed or adopted by a party with present intention to be bound, and includes electronic methods (such as those accomplished by digital and biometric means) approved by the Bureau of the Public Debt.

§ 370.52 Contract formation.

An application for a purchase of a bond submitted by electronic means is an offer to create a bond contract. An offer is accepted at the moment the message of acceptance is sent to the purchaser, not when the message is received by the purchaser, regardless of the method used to transmit the acceptance.

§ 370.53 Point of sale.

For jurisdiction and venue purposes, the point of sale for a bond purchased pursuant to this subpart is Parkersburg, West Virginia, regardless of from where the application is transmitted or where the application is actually processed.

§ 370.54 Effect of electronic signature.

In any dispute involving this subpart, an electronic signature and any electronic record to which it is affixed shall not be denied legal effect because the signature or record is in electronic form. To the extent that the law requires a signature, a writing, or an original, an electronic signature and any electronic record to which it is affixed shall satisfy that rule of law.

§ 370.55 Admissibility of digital signature.

In any civil litigation or dispute involving this subpart, extrinsic evidence of authenticity as a condition precedent of admissibility shall not be necessary to establish:

(1) The existence of a digital signature that corresponds to a specific public key pair and is affixed to an electronic record, and

(2) The electronic record to which the digital signature is affixed has not been altered from its original form.

§ 370.56 Negligence contributing to unauthorized electronic signature.

A person whose failure to exercise ordinary care substantially contributes to the creation or submission of an unauthorized electronic signature is precluded from disavowing the unauthorized signature and the validity of any electronic record to which the signature is affixed. In any dispute involving this subpart, the burden of production and the burden of persuasion is on the person against whom the signature is asserted to establish the exercise of ordinary care.

§ 370.57 Liability.

For any claim arising out of an electronic transaction that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the transaction and does not extend to other damages or costs, including consequential damages, punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt shall also be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Dated: April 6, 1998.

Donald V. Hammond,

Acting Fiscal Assistant Secretary.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Savannah 98-010]

RIN 2115-AA97

Safety Zones: Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish six (6) temporary safety zones in the vicinity of the Savannah River and approaches during the Americas' Sail marine event to be held from July 2-6, 1998. These regulations are necessary to protect life and property on navigable waters because of the danger associated with the large number of expected participant and spectator craft within the narrow confines of the navigation channel.

DATES: Comments must be received on or before June 1, 1998.