

defined in § 170.3(n)(40) of this chapter; and 0.001 percent for all other food categories.

(e) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1210, to read as follows:

§ 184.1210 Calcium oxide.

(a) Calcium oxide (CaO, CAS Reg. No. 1305-78-8) is also known as lime, quick lime, burnt lime, or calx. It is produced from calcium carbonate, limestone, or oyster shells by calcination at temperatures of 1700-2450° F.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 55, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, D.C. 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(c) The ingredient is used as an anticaking and free-flow agent as defined in § 170.3(o)(1) of this chapter;

firming agent as defined in § 170.3(o)(10) of this chapter; nutrient supplement as defined in § 170.3(o)(20) of this chapter; pH control agent as defined in § 170.3(o)(23) of this chapter; and texturizer as defined in § 170.3(o)(32) of this chapter.

(d) The ingredient is used in food at levels not to exceed current good manufacturing practice in accordance with § 184.1(b)(1). Current good manufacturing practice results in a maximum level, as served, of: 0.1 percent for baked goods and baking mixes as defined in § 170.3(n)(1) of this chapter; 0.03 percent for nonalcoholic beverages and beverage bases as defined in § 170.3(n)(1) of this chapter; 0.3 percent for confections and frostings as defined in § 170.3(n)(9) of this chapter; 0.3 percent in frozen dairy desserts as defined in § 170.3(n)(20) of this chapter; 0.15 percent for gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter; 0.06 percent for grain products and pastas as defined in § 170.3(n)(23) of this chapter; 0.075 percent for milk products as defined in § 170.3(n)(31) of this chapter; 0.02 percent for processed vegetables as

defined in § 170.3(n)(36) of this chapter; 0.4 percent for soft candies as defined in § 170.3(n)(38) of this chapter; and 0.01 percent for all other food categories.

(e) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Interested persons may on or before August 24, 1982, file with the Dockets Management Branch (address above), written comments (preferably two copies, except that individuals may submit one copy) regarding this tentative final rule. Comments may be accompanied by a memorandum or brief in support thereof. Comments are to be identified with docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 1982.

William F. Randolph,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 82-17046 Filed 6-24-82; 8:45 am]

BILLING CODE 4160-01-M

Registered Federal Reporter

Friday
June 25, 1982

Part VI

Department of Health and Human Services

Public Health Service

Project Grants Provisions

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 51a, 51d, and 51f

Project Grants Provisions

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) revised Title V of the Social Security Act (Act) to establish the Maternal and Child Health Services Block Grant. Section 502(a) of the Act, as amended, provides that 15 percent of the appropriation for Title V for Fiscal Year 1982 shall be retained by the Secretary for the purpose of carrying out, through grants, special projects of regional and national significance, maternal and child health research and training, genetic disease testing, counseling and information and hemophilia diagnostic and treatment centers. These programs were previously supported under sections 503(2) and 504(2), 511 and 512 of the Act and sections 1101 and 1131 of the Public Health Service Act.

The Secretary of Health and Human Services is amending the regulations previously issued under the authorities described in the preceding sentence to make those regulations applicable to grants for the same purposes awarded under the new section 502(a) authority.

EFFECTIVE DATE: The amendments made by this document are effective on June 25, 1982.

FOR FURTHER INFORMATION CONTACT: Vince Hutchins, M.D., Associate Bureau Director, Office for Maternal and Child Health, Bureau of Community Health Services, 5600 Fishers Lane, Room 7-39, Rockville, Maryland 20857, (301) 443-2170.

SUPPLEMENTARY INFORMATION:

I. General

As noted above, Pub. L. 97-35 revised Title V of the Act to establish the Maternal and Child Health Services Block Grant. For Fiscal Year 1982, 15 percent of the funds appropriated for Title V are to be retained for the award of grants for the purposes specified above. For subsequent fiscal years, the amount to be retained for the award of these grants is to be between 10 and 15 percent of the funds appropriated for Title V. The 15 percent set aside level for FY 1982 is \$52,128,000.

The Secretary intends to develop and publish a concise regulation governing projects to be funded under section

502(a). Until that can be accomplished, however, the Secretary has decided that funds awarded for the project grants specified under section 502(a) should be governed by the regulations issued under the former categorical authorities. Thus, for example, hemophilia diagnostic and treatment centers funded under section 502(a) will be governed by the regulations at 42 CFR Part 51d, Subpart A, which were issued under the authority of section 1131 of the Public Health Service Act. Accordingly, the Department is amending those regulations to include references to section 502(a) as part of the statement of the authority under which they are issued. The Secretary realizes that there are some repetitive and unnecessary provisions in the existing regulations. These sections will be deleted when the new regulations are published.

II. Limited Funding

Because of the limited funds available for grants under section 502(a) in Fiscal Year 1982 many previously funded projects will not receive continuation funding, and few, if any, new projects will be funded under section 502(a).

The Secretary intends to allocate from the funds available under section 502(a) amounts for each category of projects authorized (i.e., a specified portion will be available for maternal and child health training projects, a specified portion will be available for genetic diseases testing and counseling projects, etc.). Applicants competing for funds within each category will be evaluated on the basis of the present regulatory criteria for deciding which applicants to fund. See 42 CFR 51a.206(a), 51a.406(a), 51d.107(a), and 51f.108. In addition, those sections are amended to provide that funds will be awarded to applicants which will, in the Secretary's judgment, best promote the purposes of Title V of the Social Security Act, as amended by Pub. L. 97-35, rather than the purposes of the former categorical statutes.

III. Rulemaking Procedures

Because this document simply continues in effect existing regulations, with the addition of a reference to section 502(a) of the Social Security Act in their statements of authority and applicability, the Secretary views these amendments as being only technical in nature and has determined that public participation in rulemaking is unnecessary and that an impact analysis is not required under the Regulatory Flexibility Act, Pub. L. 96-354, or Executive Order 12291.

IV. List of Subjects in 42 CFR Parts 51a, 51d, and 51f¹

Colleges and universities, Grant programs—health, Handicapped, Infants and children, Maternal and child health, Sudden infant death syndrome, Supplemental security income (SSI), Blood diseases, Genetic diseases, Health care, Health facilities.

Dated: April 28, 1982.

E. N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: June 7, 1982.

Richard S. Schweiker,

Secretary.

Title 42 of the Code of Federal Regulations is amended as follows:

PART 51a—GRANTS FOR MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

Subpart B [Amended]

1. 42 CFR Part 51a, Subpart B, is amended by adding to the "authority" statement, before the period, the following:

* * *; sec. 502(a), Social Security Act, as amended, 95 Stat. 819-20 (42 U.S.C. 702(a))

2. 42 CFR 51a.201 is revised to read as follows:

§ 51a.201 Applicability.

The regulations of this subpart apply to grants to State agencies for projects of regional or national significance which may contribute to the advancement of maternal and child health or crippled children's services. For grants to States that do not participate in the Maternal and Child Health Block Grant, as authorized by Title V of the Social Security Act (as amended by Pub. L. 97-35), the grants are awarded under sections 503(2) and 504(2) of the Social Security Act as in effect before the enactment of Pub. L. 97-35. For other States, the grants are awarded under section 502(a) of that Act (as amended by Public Law 97-35).

§ 51a.206 [Amended]

3. 42 CFR 51a.206(a) is revised by replacing the words "sections 503(2) and 504(2) of the Act" with the words "Title V of the Act, as amended by Public Law 97-35,".

Subpart D [Amended]

4. 42 CFR Part 51a, Subpart D, is amended by adding to the "Authority"

¹ The Public Health Service is providing this list in compliance with 1 CFR 18.20. That regulation requires agencies to include a list of index terms for each CFR part affected in Rules and Proposed Rules documents published in the Federal Register, beginning April 1, 1982.

statement, before the period, the following:

* * *; sec. 502(a), Social Security Act, as amended, 95 Stat. 819-20 (42 U.S.C. 702(a))

5. 42 CFR 51a.401 is revised to read as follows:

§ 51a.401 Applicability.

The regulations of this subpart apply to grants to public or nonprofit private institutions of higher learning for special projects of regional or national significance which may contribute to the advancement of maternal and child health or of services for crippled children and/or for training personnel for health care and related services for mothers and crippled children. For grants to institutions in States that do not participate in the Maternal and Child Health Block Grant, as authorized by Title V of the Social Security Act (as amended by Pub. L. 97-35), the grants are awarded under sections 503(2), 504(2) and 511 of the Social Security Act as in effect before the enactment of Public Law 97-35. For institutions in other States, the grants are awarded under section 502(a) of that Act (as amended by Pub. L. 97-35).

§ 51a.406 [Amended]

6. 42 CFR 51a.406(a) is revised by replacing the words "sections 503(2), 504(2), or 511 of the Act" with the words "Title V of the Act, as amended by Public Law 97-35,".

PART 51d—GRANTS FOR SERVICE PROJECTS FOR GENETIC AND OTHER DISEASES

Subpart A [Amended]

7. 42 CFR Part 51d, Subpart A, is amended by adding to the "authority" statement, before the period, the following:

* * *; sec. 502(a) of the Social Security Act, as amended, 95 Stat. 819-20 (42 U.S.C. 702(a)).

8. 42 CFR 51d.101 is revised to read as follows:

§ 51d.101 Applicability.

The regulations of this subpart apply to grants to public and nonprofit private entities for projects for the establishment of comprehensive hemophilia diagnostic and treatment centers. For grants to entities in States that do not participate in the Maternal and Child Health Block Grant, as authorized by Title V of the Social Security Act (as amended by Public Law 97-35), the grants are awarded under section 1131 of the Public Health Service Act (42 U.S.C. 300c-21) as in effect before the enactment of Public Law 97-35. For entities in other States, the grants are awarded under section 502(a) of the Social Security Act (as amended by Public Law 97-35).

§ 51d.102 [Amended]

9. 42 CFR 51d.102(a) is revised to read as follows:

* * * * *

(a) Except for references to the Social Security Act and except as set forth in § 51d.101, "Act" means the Public Health Service Act as in effect before the enactment of Public Law 97-35.

* * * * *

§ 51d.107 [Amended]

10. 42 CFR 51d.107(a) is revised by replacing the material preceding paragraph (a)(1) with the following:

(a) Within the limits of funds available, the Secretary may award grants to applicants which will, in his judgment, best promote the purposes of Title V of the Social Security Act, as amended by Pub. L. 97-35, and which submit approvable applications.

* * * * *

PART 51f—PROJECT GRANTS FOR GENETIC DISEASES TESTING AND COUNSELING PROGRAMS

11. 42 CFR Part 51f is amended by adding to the "Authority" statement, before the period, the following:

* * *; sec. 502(a) of the Social Security Act, as amended, 95 Stat. 819-20 (42 U.S.C. 702(a)).

12. 42 CFR 51f.101 is revised to read as follows:

§ 51f.101 To whom do these regulations apply?

The regulations of this part apply to grants for projects to plan, establish, and operate voluntary genetic diseases testing and counseling programs. For grants to entities in States that do not participate in the Maternal and Child Health Block Grant, as authorized by Title V of the Social Security Act (as amended by Pub. L. 97-35), the grants are awarded under section 1101(c) of the Public Health Service Act (42 U.S.C. 300b(a)(1)) as in effect before the enactment of Pub. L. 97-35. For entities in other States, the grants are awarded under section 502(a) of the Social Security Act (as amended by Pub. L. 97-35).

§ 51f.102 [Amended]

13. 42 CFR 51f.102 is amended by revising the definition of "Act" to read as follows:

* * * * *

Except for references to the Social Security Act and except as set forth in § 51f.101, "Act" means the Public Health Service Act as in effect before the enactment of Pub. L. 97-35.

* * * * *

§ 51f.108 [Amended]

14. 42 CFR 51f.108(a) is amended by replacing the words "section 1101(a)(1) of the Act" with the words "Title V of the Social Security Act, as amended by Pub. L. 97-35,".

[FR Doc. 82-17198 Filed 6-24-82; 8:45 am]

BILLING CODE 4160-16-M

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF BIOLOGY
CHICAGO, ILLINOIS 60637

TO: [Name]
[Address]
[City, State, Zip]

FROM: [Name]
[Address]
[City, State, Zip]

SUBJECT: [Subject]

[Text of the letter follows, consisting of several paragraphs of text that are mostly illegible due to the quality of the scan. The text appears to be a formal letter or report, possibly related to a biological study or project.]

United States Federal Reserve

Friday
June 25, 1982

Part VII

Department of the Treasury

Comptroller of the Currency

Fiduciary Powers of National Banks and
Collective Investment Funds

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 9

[Docket No. 82-10]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is taking final action with respect to certain proposed amendments to 12 CFR Part 9 ("Part 9"), its regulation governing the exercise of fiduciary powers and the management of collective investment funds by national banks. These amendments are intended, in a number of respects, to liberalize and make less burdensome the requirements of Part 9.

The Office is adopting amendments which (i) delete the definition of the term "equity security" from Part 9; (ii) require a national bank which exercises investment discretion with respect to customer accounts to adopt and follow written policies and procedures intended to ensure that its brokerage placement practices, including the use of brokerage commissions to purchase research and other services, comply with applicable law; (iii) specify a three-year retention period for required trust department records, unless applicable law prescribes a different period; (iv) require a national bank to adopt and follow written policies and procedures generally intended to ensure that the maximum return available for "trust-quality," short-term investments be obtained on trust funds awaiting investment or distribution; and (v) describe the conditions under which trust powers can be revoked. A proposal to revise the definition of the term "trust department" has not been adopted.

In addition, the Office is adopting four proposals that affect collective investment funds. These amendments (i) require valuation of fund assets at market value, or fair value determined in good faith by fund trustees in certain circumstances; (ii) permit a one-year prior notice requirement for withdrawals from a collective investment fund of employee benefit plan assets, if such fund invests in real estate or other illiquid assets; (iii) permit a fund's liquidity level to be determined on the basis of anticipated needs of the fund, rather than a specified percentage of fund assets; and (iv) permit the valuation on a cost basis of short-term

investment funds if certain conditions are satisfied.

In a related document published in this issue of the *Federal Register*, the Office is giving consideration to further action relating to Part 9 and seeks the views of the public regarding such possible action.

EFFECTIVE DATE: The amendments are effective July 26, 1982.

FOR FURTHER INFORMATION CONTACT: Dean E. Miller, Deputy Comptroller for Specialized Examinations, Telephone: (202) 447-0447 or Richard L. Galin, Attorney, Securities & Corporate Practices Division, Telephone: (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:**Special Studies**

The adopted amendments will not have sufficient economic effect to constitute "major rules" for the purposes of Executive Order 12291 (46 FR 13193). In addition, because notice of proposed rulemaking was published in the *Federal Register* prior to January 1, 1981, the provisions of the Regulatory Flexibility Act do not apply. In any event, the Office believes that the amendments will not impose significant compliance burdens, nor have a significant impact on a substantial number of small businesses.

Issuance of Final Rules

On October 29, 1980, the Office proposed for comment in the *Federal Register* (45 FR 71571) certain amendments to Part 9. These proposals included certain new rules, as well as amendments to existing rules, regarding the exercise of trust powers and the operation of collective investment funds by national banks. In response to the proposals, the Office received over 200 letters of comment, including letters from banks, their counsel and other interested members of the public. As discussed below, in taking final action, the Office has given careful consideration to the views expressed by the commentators and, in a number of instances, incorporated the suggestions of commentators in the final rules.

1. *Definition of "equity security"*. The Office is adopting its proposal to delete the definition of "equity security" set forth in § 9.1(b) (12 CFR 9.1(b)). That term no longer appears in Part 9 and commentators generally supported its deletion.

2. *Definition of "trust department"*. The Office proposed to amend the definition of "trust department" in 12 CFR 9.1(k) to include expressly any

person to whom a bank assigns or delegates the performance of its fiduciary duties, regardless of whether such person is an officer, employee or other affiliated person of the bank, or a person who is not affiliated with the bank. The intent of the proposal was to clarify the long-standing position of the Office that if a bank causes a fiduciary undertaking (e.g., the management of an agency account) which it has assumed, and is responsible for, to be performed by another person, such bank, together with the person actually performing such undertaking, is subject to Part 9.

Some commentators suggested that the proposal might give rise to varying and unintended interpretations as to the scope of the Office's authority regarding delegated fiduciary powers and, therefore, could result in confusion. In this regard, the Office has statutory authority to examine and enforce banking laws with respect to non-bank employees and organizations. Federal law (12 U.S.C. 481) directs the Office to examine both affiliates (as defined in 12 U.S.C. 221a) and agents of national banks. In addition the Office is empowered (12 U.S.C. 1865) to examine any off-premises performance of bank services (as defined in 12 U.S.C. 1861(b)), which, in the Office's view, includes trust services. Under 12 U.S.C. 1818(b)(1), the Office's enforcement powers extend to, among other persons, "any . . . agent, or other person participating in the conduct of the affairs" of a national bank.

In light of the suggestions of the commentators, which the Office believes have merit, and the foregoing examination and enforcement authority, the Office is of the view that it is unnecessary to amend Part 9 in order to enforce its provisions with respect to either third-parties performing fiduciary services on behalf of national banks or banks assigning fiduciary duties to third parties. Accordingly, the Office is not adopting the proposed amendment.

3. *Brokerage placement practices*. As proposed, § 9.5 generally would have required a national bank to prepare and make available to customers a detailed disclosure statement for each account over which it exercises "investment discretion." As provided in 12 CFR 12.2(c), a bank is deemed to exercise investment discretion with respect to an account if, (i) directly or indirectly, the bank is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (ii) the bank actually makes investment decisions, even though some other person may have ultimate responsibility for such decisions.

Many persons who commented on the proposal were critical of its detailed disclosure provisions. In particular, the commentators questioned whether the proposed statistical disclosures were useful to a customer in selecting an investment manager, especially in evaluating the potential conflicts of interest presented by an investment manager using account brokerage commissions to pay for services and products. In addition, several commentators argued that the "safe-harbor" provisions, described below, of section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78bb(e)) adequately address regulatory concerns about possible breaches of fiduciary duty by investment managers, including banks which use account commissions to purchase research and other services. In that connection, it was suggested by some commentators that the Office's trust examination process provides an adequate means to supervise bank compliance with federal and state law applicable to brokerage placement practices of banks.

On the other hand, several commentators indicated that a rule requiring general, as opposed to detailed, disclosures by a bank concerning its brokerage placement practices could be an appropriate way to address the potential conflicts of interest inherent in the use of account commissions to purchase research and other services. In this regard, as an alternative to the specific disclosures which would have been required by proposed section 9.5, it was suggested that the Office could require general narrative disclosures similar to those provided by registered investment advisers to prospective and existing advisory clients pursuant to Rule 205-3 (17 CFR 275.205-3) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-201 *et seq.*).

On the basis of the comments, the Office has determined not to adopt the rule proposal. Instead, it is adopting a new § 9.5 (12 CFR 9.5) which requires that each national bank exercising investment discretion, as defined in 12 CFR 12.2(c), adopt and follow written policies and procedures to ensure that its brokerage placement practices, including the use of brokerage commissions to purchase research and other services, comply with applicable law. The new requirement adopted today should enhance this Office's continuing efforts to ensure compliance with the law applicable to the brokerage placement practices of national banks.

The policies and procedures required by the new rule should address, among

other relevant matters, (i) the selection of persons to effect securities transactions and the evaluation of the reasonableness of brokerage commissions paid to such persons; (ii) the acquisition of products or services, including research services, in return for commissions paid for effecting securities transactions for accounts; (iii) the allocation of research or other services among accounts, including the use of such services for the benefit of accounts which did not generate the commissions paid for the services; and (iv) the need, in appropriate instances, to make disclosures to prospective and existing customers concerning such policies and procedures.

In adopting written policies and procedures intended to prevent breaches of fiduciary duty relating to the use of account commissions, banks should be aware of, among other things, the conditions which must be satisfied in order for the "safe harbor" of section 28(e) to be available. That section generally provides that no person who exercises investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty solely by reason of having caused the account to pay a commission in excess of the commission another broker or dealer would have charged for effecting the same transaction. To be eligible for this "safe harbor," however, the person exercising investment discretion must determine in good faith that the commission is reasonable in relation to the value of the brokerage and research services provided by the executing broker or dealer, viewed in terms of either the particular transaction or the person's overall responsibilities with respect to the accounts as to which the person exercises investment discretion.

As a general matter, whether a fiduciary's receipt of particular products or services is protected by section 28(e) will depend on the particular facts and circumstances. Such a determination, of course, requires an inquiry as to whether the particular products and services constitute "brokerage and research services" within the meaning of section 28(e)(3) of the Exchange Act (15 U.S.C. 78bb(e)(3)), whether the services are "provided" by a broker or dealer, their manner of use by the fiduciary, and the factors providing the basis for the fiduciary's good faith determination required by section 28(e). In this regard, the fiduciary is generally in the best position to determine whether the conditions of section 28(e) have been satisfied.

In the absence of section 28(e)'s "safe harbor," national banks are reminded that applicable law may, in certain circumstances, require them to obtain the informed consent of customers concerning their brokerage placement practices. For example, as this Office stated in Trust Banking Circular No. 17, if a bank chooses to purchase products or services and pay for them with brokerage commissions arising from securities transactions for trust accounts, the bank must either (i) avail itself of the safe-harbor provisions of section 28(e); or (ii) make accurate and complete disclosure of the bank's brokerage placement policies and practices to prospective trust customers, or, with respect to existing trust accounts generating brokerage commissions, to the persons with rights of termination or the vested beneficiaries of irrevocable trusts, and obtain such persons' consent.

In addition to adopting the rule discussed above, the Office is seeking comment as to whether it should propose for comment a disclosure rule modified from the initial proposal regarding a bank's brokerage placement practices. Among other things, comments are sought as to the nature of appropriate disclosures. For example, the proposal could provide for limited narrative, as opposed to detailed statistical, disclosures concerning a bank's brokerage placement practices. Such general disclosures could include, as an illustration, a statement as to whether the bank may pay a broker or dealer an amount of commission in excess of that which another broker or dealer might charge for effecting the same transaction in recognition of the value of (i) brokerage and/or (ii) research services provided.

Comments are also sought concerning the persons to whom disclosure should be furnished, when such disclosure should be furnished, and the appropriate disclosure form (e.g., a separate brochure or an addendum to the trust instrument). In addition, comments are requested as to whether a disclosure rule should apply to all national banks which exercise investment discretion or only to those which do not come within the safe harbor of Section 28(e).

4. Record retention requirement. Department of the Treasury Directive 80-23 directed all of its Bureaus, including this Office, to comply with a request made by the Office of the Federal Register to establish specific retention periods for all recordkeeping required of the public. In response to the directive, the Office proposed an amendment to § 9.8 (12 CFR 9.8) which

provided that a national bank would not be required to retain the records required by Part 9 for a period in excess of four years from the termination of an account, or of litigation relating to such account, unless applicable federal or state law specifically prescribed a longer period. Under the pre-existing rule, which contained no specific retention period, the Office recommended that banks be guided by local law, including state statutes of limitations, and advice of counsel in establishing a retention policy for trust department records. The majority of comments received on the proposal supported the adoption of a limited retention period.

The Office has decided to adopt, as suggested by several commentators, a three-year record retention requirement. A three-year retention period is also specified in 12 CFR Part 12, the Office's regulation concerning recordkeeping and confirmation requirements for securities transactions effected by national banks. The Office notes, however, that safe and sound banking practice requires bank fiduciaries to consider the possible need, in certain circumstances, for retaining particular records beyond a specified statutory or regulatory period. For example, prudent practice might require retention of a trust account's records until expiration of a statute of limitations, which does not require record preservation, if a suit subject to that statute is likely to ensue. To make clear that the Office is not sanctioning imprudent record destruction, the adopted rule addresses only record retention requirements for purposes of examination by the Office.

5. Funds awaiting investment or distribution. The Office has determined not to adopt the specific requirements contained in the proposal to amend § 9.10(a) (12 CFR 9.10(a)) regarding funds awaiting investment or distribution. As proposed, such funds could remain deposited in the bank after 60 days only if: (i) specifically authorized in advance by the instrument creating the relationship, or by prior court order or local law; (ii) prior consent was obtained from the party having power to terminate the account or, if there was no such party, the holders of all vested beneficial interests in the account after full disclosure of all relevant facts, including the availability and approximate rate of return of instruments outside the bank; or (iii) the bank included in the file of each such account a written justification, updated at least every 30 days, specifying in detail why the funds were properly designated as awaiting investment or

distribution. After 365 days such funds could remain deposited in the bank only if conditions (i) or (ii) above were met.

Many commentators suggested that the specific requirements were, among other things, inflexible and unduly restricted the exercise of a bank's fiduciary discretion. Although the Office remains of the view that the substance of many of the requirements contained in the proposal reflects sound fiduciary practice, it agrees that banks should not be unnecessarily hampered in the administration of trust accounts. Accordingly, the Office is adopting, as a revision to existing paragraph (a) of § 9.10, a requirement that national banks which exercise fiduciary powers adopt and follow written policies and procedures to ensure that the maximum rate of return available for trust-quality, short-term investments be obtained on funds awaiting investment or distribution, consistent with the requirements of the governing instrument and local law. Such policies and procedures should address, among other relevant factors, the cost of making the investment, the anticipated liquidity requirements of each account, requirements of local law, and the anticipated return which may be obtained during the period cash will remain uninvested or undistributed.

The revised § 9.10(a) retains the current requirement that funds held by a bank awaiting investment or distribution shall not be so held any longer than is reasonable for the proper management of the account. In addition, there has been no change in the existing provision, contained in paragraph (b) of the section (12 CFR 9.10(b)) that funds awaiting investment or distribution may, unless prohibited by the instrument creating the trust or local law, be deposited in the commercial, savings, or other department of the bank, provided that the bank sets aside qualifying securities as collateral to the extent that such deposits are not insured by the Federal Deposit Insurance Corporation.

Some commentators criticized the proposed revision to § 9.10(a) on the grounds that a system to "sweep" uninvested cash into income-producing media on a daily basis would be extremely costly and require extensive time to institute. The Office questions the validity of such criticism. Many banks have established, or are considering the establishment of, "sweep" programs. It appears that the cost of implementing such programs is not necessarily prohibitive; indeed, many banks, in response to competitive pressures, are already providing daily investing of cash balances of pension

funds. The Office also has been advised that certain money market funds can provide banks with a daily investment service for individual accounts.

6. Revocation of fiduciary powers. The Office proposed to add a new paragraph (b) to § 9.17 (12 CFR 9.17) describing conditions under which trust powers could be revoked by the Office. It was intended to reflect the authority granted the Office under Section 704 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221). A number of commentators suggested that the rule should be modified to contain (i) specific guidelines concerning the exercise of this authority and (ii) definitions of certain terms in the proposal.

After giving due consideration to the comments, the Office has determined to adopt the amendment as proposed. Although the Office is sensitive to the concerns expressed by the commentators, it has decided that the Office's need for flexibility in exercising this authority outweighs any possible benefits derived from having more specific standards in the rule. The rule as adopted provides this necessary flexibility. Moreover, the Office notes that any revocation of fiduciary powers will be subject to the procedural requirements of 12 CFR Part 19, which sets forth requirements governing the conduct of formal administrative proceedings brought by the Office under statutory authority.

7. Collective investment funds. Four amendments to Section 9.18 (12 CFR 9.18), which relates to collective investment funds, were proposed. Three have been adopted with certain modifications suggested by commentators. One has been adopted as proposed.

a. Valuation of fund assets. The Office proposed to amend § 9.18(b)(1) (12 CFR 9.18(b)(1)) insofar as it relates to the valuation of collective investment fund assets. The Office's long-standing position had been that such assets must be valued at market value, or fair value as determined in good faith by the fund trustees. The proposed amendment was intended to codify this position by requiring that fund plans specify "the basis and method of valuing at market value." Several commentators pointed out, however, that, since the proposed amendment referred only to market value, valuation of certain assets such as real estate or mineral interests could be unduly costly or otherwise difficult to accomplish. The Office did not intend such a result and, accordingly, has provided in the final rule that a "fair value" determined in good faith by the

fund trustees may be used in cases where "market value" is not readily ascertainable.

b. *Real estate funds.* Another proposal was to amend § 9.18(b)(4) (12 CFR 9.18(b)(4)) to codify the Office's position that a prior notice period in excess of 90 days is permissible for withdrawals from real estate funds for employee benefit accounts. In Opinion 9.5960, the Office permitted a prior notice period of up to one year provided that no more than ten percent of any participant's assets could be invested in the fund. Although the commentators generally favored adoption of a rule formally authorizing funds requiring a one-year prior notice period for withdrawals, many suggested that the 10 percent limit should be liberalized. Some supported a 20 or 25 percent limit. Others noted that employee benefit plans are already governed by the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, as amended ("ERISA"). They questioned whether, in light of ERISA's comprehensive regulatory scheme, it was necessary or appropriate for the Office to impose specific investment limitations. The Office finds these comments to be persuasive. Therefore, the final rule provides that a prior notice period of up to one year for withdrawals is permitted and no separate investment limitation based upon a participant's account assets is imposed.

c. *Liquidity of fund assets.* The Office proposed to amend § 9.18(b)(9)(iii) (12 CFR 9.18(b)(9)(iii)) to reduce the percentage of a fund's assets which must consist of cash or readily marketable investments from 40 percent to 20 percent. Virtually all of the commentators who addressed this proposal favored a liberalized liquidity requirement, but many suggested that the requirement be less than 20 percent or that the Office merely require maintenance of a liquidity level that is adequate to meet anticipated cash needs of the fund. The Office is persuaded by the suggestions made by the commentators that banks should have increased flexibility to establish an appropriate liquidity level for a fund. Accordingly, in lieu of a liquidity requirement expressed as a fixed percentage of fund assets, the final rule contains a more liberal requirement which enables a bank to maintain in cash and readily marketable investments only such percentage of a fund's assets as shall be necessary to provide adequately for the liquidity needs of the fund and to prevent inequities among participants.

d. *Short-term investment funds.* A further proposal was to add a new

subparagraph (b)(15) to § 9.18 (12 CFR 9.18(b)(15)) to codify Opinion 9.5900 of the Office, issued pursuant to 12 CFR 9.18(c)(5). This would authorize national banks to create short-term investment funds ("STIFs") whose assets are valued on a cost, rather than market value, basis provided certain conditions are met. These conditions currently include the liquidity requirements that (i) 40 percent of the fund's assets be composed of cash, demand obligations, and assets that will mature on the fund's next business day and (ii) at least 80 percent of the assets be composed of debt instruments with a maturity of 91 days or less. The Office proposed to liberalize the first liquidity requirement for STIFs by lowering it from 40 percent to 20 percent.

The commentators generally supported codification of STIF authorization and liberalization of STIF liquidity requirements; however, many favored further liberalization of requirements for the operation of these funds. The Office's experience indicates that a minimum next-day liquidity requirement of 20 percent and a 91-day maturity restriction are necessary for proper STIF operation, particularly for banks having relatively small trust departments. Further, valuation on a cost, rather than market value, basis may raise certain issues of equitable treatment for all fund participants and thus should be elected only after careful consideration of the effects of this method on the interests of all participants and the possible necessity, if it is elected, to disclose these effects to current or potential fund beneficiaries. Accordingly, the Office, has decided to adopt the amendment as proposed. As noted below, however, the Office is requesting additional public comments concerning its collective investment fund rules generally. Suggestions as to the further liberalization of STIF requirements will be considered in connection with such comments.

List of Subjects in 12 CFR Part 9

Fiduciary powers, National banks.

Adoption of Amendments

PART 9—FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

For the reasons set forth in the preamble, 12 CFR Part 9 is amended as follows:

1. The authority citation for Part 9 is revised to read as follows: Sec. 1, Pub. L. 87-722, 76 Stat. 668, as amended (12 U.S.C. 92a); R.S. 5240, as amended (12 U.S.C. 481), unless otherwise noted.

§ 9.1 [Amended]

2. 12 CFR 9.1 is amended by removing paragraph (b) and redesignating paragraphs (c)-(m) as (b)-(1) respectively.

3. 12 CFR 9.5 is added, to read as follows:

§ 9.5 Adoption of policies and procedures with respect to brokerage placement practices.

Each national bank exercising investment discretion (as defined in 12 CFR 12.2(c)) with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations. Among other relevant matters, such written policies and procedures should address, where appropriate, (i) the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons (including the factors considered in these determinations); (ii) any acquisition of services or products, including research services, in return for brokerage commissions; (iii) the allocation of research or other services among accounts, including those which did not generate commissions to pay for such research or other services; and (iv) the need, in appropriate instances, to make disclosures concerning such policies and procedures to prospective and existing customers.

4. 12 CFR 9.8 is amended by adding a new paragraph (c), to read as follows:

§ 9.8 Books and records.

(c) Solely for purposes of examination by the Comptroller of the Currency, a national bank shall retain the records required by this Part for a period of 3 years from the later of the termination of the fiduciary account relationship to which the records relate or of litigation relating to such account, unless applicable law specifically prescribes a different period.

5. 12 CFR 9.10 is amended by revising paragraph (a) to read as follows:

§ 9.10 Funds awaiting investment or distribution.

(a) Funds held by a national bank in a fiduciary capacity which are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Each national bank exercising fiduciary powers shall adopt and follow written policies and procedures intended to ensure that the maximum rate of return available for trust-quality, short-term

investments is obtained upon funds so held, consistent with the requirements of the governing instrument and local law. Such policies and procedures shall take into consideration all relevant factors, including but not limited to the anticipated return that could be obtained while the cash remains uninvested or undistributed, the cost of investing such funds, and the anticipated need for the funds.

6. 12 CFR 9.17 is revised to read as follows:

§ 9.17 Surrender or revocation of fiduciary powers.

(a) Any national bank which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the Comptroller of the Currency a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller shall make an investigation and if satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, shall issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

(b) If, in the opinion of the Comptroller, a national bank is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise its fiduciary powers, or otherwise fails or has failed to comply with any of the requirements set forth in 12 U.S.C. 92a, the Comptroller may, in accordance with the provisions of that section, revoke the fiduciary powers granted to the bank.

7. In 12 CFR 9.18, paragraph (b)(1) is revised to read as follows:

§ 9.18 Collective investment.

(b) * * *

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the bank's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency as to the manner in which the fund is to be operated, including provisions relating to the investment

powers and a general statement of the investment policy of the bank with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing assets in the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided in paragraph (b)(15) of this section, fund assets shall be valued at market value unless such value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used. A copy of the Plan shall be available at the principal office of the bank for inspection during all banking hours, and upon request a copy of the Plan shall be furnished to any person.

8. In 12 CFR 9.18, paragraph (b)(4) is revised to read as follows:

§ 9.18 Collective investment.

(b) * * *

(4) Not less frequently than once during each period of 3 months, a bank administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except (i) on the basis of such valuation and (ii) as of such valuation date. No participation shall be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank and approved in such manner as the board of directors shall prescribe. No requests or notices may be cancelled or countermanded after the valuation date. If a fund described in paragraph (a)(2) of this section is to be invested in real estate or other assets which are not readily marketable, the bank may

require a prior notice period, not to exceed 1 year, for withdrawals.

9. In 12 CFR 9.18, paragraph (b)(9)(iii) is revised to read as follows:

§ 9.18 Collective investment.

(b) * * *

(9) * * *

(iii) A bank administering a collective investment fund shall maintain, in cash and readily marketable investments, such percentage of the assets of the fund as is necessary to provide adequately for the liquidity needs of the fund and to prevent inequities among fund participants.

10. 12 CFR 9.18(b) is amended by adding a new subparagraph (15), to read as follows:

§ 9.18 Collective investment.

(b) * * *

(15) Short-term investment funds established under paragraph (a) of this section may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies the following conditions:

(i) Investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations;

(ii) The difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis;

(iii) Assets of the fund must be held until maturity under usual circumstances; and

(iv) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

Dated: May 18, 1982.

C. T. Conover,
Comptroller of the Currency.

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