Department of Agriculture will be the date both such payment and set-off are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31
All other states	April 15

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dry bean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding dry bean insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

d. "Harvest" means the completion of combining or threshing of beans on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on January 15, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: March 8, 1985.

[FR Doc. 85-6091 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Amendment No. 4 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends continuing regulation § 979.304 to permit the regular shipment of honeydew melons in bulk containers of specified sizes. It allows shippers to better serve their customers by providing a container desired by many retailers and thus enhance orderly marketing. Without the change the competitive position of production area shippers could be eroded.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given in the January 28, 1985, Federal Register (50 FR 3797) affording interested persons until February 27, 1985, to submit written comments. None was received.

Marketing Agreement No. 156 and Order No. 979 regulate the handling of melons grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Melon Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in December 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting at McAllen, Texas, on November 14, 1984, the committee recommended that the handling regulation continue but that provision be made under paragraph (c) *Containers* for permitting the shipment of honeydew melons in bulk bins of specified sizes. For several seasons the use of such bulk containers has been permitted under the provisions of special purpose shipments. The bulk bin used is one which can be used in the retail establishment as a bulk display for melons. The committee believes that using the bin as both a shipping container and a retail display tends to increase the efficiency of honeydew melon marketing.

Although the regulation is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before March 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of South Texas melons would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that the following amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

Section 979.304 (47 FR 13118, 47 FR 24109, 48 FR 21881 and 15541) is hereby further amended by redesignating paragraph (b)(4) as (b)(5) and adding a new (b)(4), by revising (e)(3), and by removing paragraph (f)(5) as follows:

§ 979.304 Handling regulation.

* * * * *

(b) *Container-requirements.* * * *

(4) Honeydew melons may be packed in bulk containers of 48 inches long by 40 inches wide by 24 inches deep or similar dimensions.

* * * * *

(e) * * *

(3) Upon approval of the committee, shipments of honeydew melons may be made in pony cartons having dimensions of 17 inches long by 14½ inches wide by 5⅝ inches deep. Container requirements of paragraph (b) of this section shall not apply, but such shipments shall meet all other applicable requirements of this section.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 8, 1985, to become effective May 1, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-6130 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 3 and 7

[Docket No. 84-29]

Minimum Capital Ratios; Issuance of Directives

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency is adopting a final regulation and interpretive ruling on capital requirements for national banks. This regulation and interpretive rule implement section 908 of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX, 97 Stat. 1153) codified at 12 U.S.C. 3907, which directs the Comptroller of the Currency to establish minimum levels of capital for national banks and to require them to achieve and maintain adequate capital. The Office also is required to analyze capital adequacy in taking action on various types of applications such as mergers and branches and in conducting the Office's supervisory activities related to the safety and soundness of individual banks and the banking system. A proposed regulation was published for comment on September 4, 1984 (49 FR 34838) and several changes have been made in response to the comments. The final regulation: (a) Defines capital; (b) establishes required minimum capital ratios; (c) establishes procedures to set higher required minimum capital ratios for an individual bank; and (d) establishes procedures for issuing a directive to require a national bank to achieve and maintain the minimum capital ratios applicable to it.

DATE: This regulation is effective April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Susan K. Fetner, National Bank Examiner, or John H. Noonan, Director, Commercial Examinations Division (202 447-1164), or Dorothy A. Sable, Senior Attorney (202 447-1880).

SUPPLEMENTARY INFORMATION: The final regulation generally is similar to the regulation proposed for comment with respect to required capital ratios and procedures for establishing higher required ratios for individual banks and for issuing directives. The major changes contained in the final regulation are: (1) The treatment of intangible assets (mortgage servicing rights are included in primary capital in their entirety, while all other intangible assets are deducted from capital); (2) grandfathering the treatment of all funding instruments and intangible assets previously allowed as capital by the Office; and (3) retaining the 50% limit on secondary capital contained in the former 12 CFR 7.1100, while discontinuing required amortization of subordinated debt. These changes and others are discussed in the relevant sections of the preamble which follow.

Background

The Office of the Comptroller of the Currency (Office) has always had a strong concern for the maintenance of adequate capital in individual banks and in the banking system. The protection of depositors and fostering of stability in the financial system are critical to the mission of the Office and capital adequacy plays a key role in the policies and programs used in performing the Office's supervisory functions. A determination of capital adequacy is one of the major objectives of a bank examination and is one of the five components which form the basis of the Uniform Financial Institutions Rating System used by the Office in determining the condition of individual banking institutions.

Additionally, by enacting the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) (ILSA) Congress has explicitly recognized the importance capital adequacy assumes in the safe and sound operation of the nation's banking system.

Several factors have emerged over the past few years which are accentuating the potential demands on bank capital. The decrease in banks' net interest margins, together with a weakening of loan portfolios brought about by shocks in the domestic and world economy have caused a decline in bank profitability and increased levels of risk within the system. The competition for financial services has intensified on both an intraindustry and interindustry basis, placing additional pressures on bank profitability. Further, because of the growing interdependency within the system, problems in one institution can have repercussions on other institutions, arguing for stronger capital levels in both individual banks and the system as a whole. Increasing levels of off-balance sheet risks are also a factor in the need for higher capital.

Section 908 of ILSA (12 U.S.C. 3907) directs the federal banking agencies to ". . . cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." Therefore, pursuant to the Office's authority under ILSA and the authority contained in the National Banking Act, the Office proposed a regulation on capital requirements.

The Federal Reserve Board ("FRB") and the Federal Deposit Insurance Corporation ("FDIC") also issued similar capital proposals for comment. The Office's regulation was published for comment on September 4, 1984, and 85 comments were received; the majority from national banks and their representatives. The comments covered a wide range of issues. The Office has carefully reviewed all of the comments and has adopted a number of recommendations in the final regulation. An explanation of the changes to the proposed regulation and a discussion of the comments are contained in subsequent sections of this preamble.

Generally, the final regulation is intended to foster further improvement in bank capital ratios and eliminate the disparities in treatment of federally regulated banks with respect to capital adequacy. The regulation also sets forth the procedures, pursuant to the authority contained in ILSA, for issuing directives to require banks to achieve and maintain adequate capital.

This regulation will supplement, rather than replace, the Office's supervisory evaluations of capital adequacy. The process of determining the adequacy of bank's capital on an ongoing basis begins with a qualitative evaluation of the critical variables that directly bear on the institution's overall financial condition. These variables include the quality, present value, type and diversification of assets; historical and prospective earnings; liquidity (with emphasis on asset/liability management); the quality of management; and the existence of other activities that may expose the bank to risks, including off-balance sheet items, the degree of leverage, and risks undertaken by the parent company or other affiliates and institutions with which the bank has significant financial relationships, including chain banking organizations. Banks with significant weaknesses in one or more of these areas will be expected to maintain higher capital levels than the minimums set forth in the regulation. In addition, the Office stresses that the capital requirements set forth in this regulation are minimums and all banks are encouraged to maintain higher levels of capital in order to provide protection against unforeseen adversities.

General Issues

The regulation applies to national banks and banks located in the District of Columbia. It does not apply to bank holding companies; however, when considering the condition of or an application from banks which are subsidiaries of holding companies, the activities and condition (including capital adequacy) of the holding company will be taken into account by the Office. The minimum capital ratio requirements set forth in the regulation do not apply to federal branches and agencies; however, the Office is studying what change in the capital equivalency deposit requirement for federal branches and agencies would be necessary to make this requirement comparable to the capital ratios required for domestic banks. The procedural portions of the regulation (Subparts C, D, and E, §§ 3.9—3.21) will be made applicable to federal branches and agencies through amendment of 12 CFR Part 28. (See discussion of Issues for Comment, No. 10.)

Like the proposal, the final regulation sets the minimum acceptable ratio of total capital to adjusted total assets at six (6) percent (%) and the minimum ratio of primary capital to adjusted total assets at five and one-half (5½) percent (%). These ratios would apply to well-managed banks of all sizes which have no material weaknesses. Based on the September 30, 1984 Call Reports, approximately 95% of all national banks had a primary capital ratio in excess of 6%, a level which would exceed the primary capital requirement established by this regulation. In addition, most of the larger multinational and regional banks (which generally have lower capital ratios than smaller banks) had primary and total capital ratios which would exceed the minimum requirements.

Fifty-five comments concerned the regulation and/or the ratios generally. The first major topic of these comments was the issue of whether the ratios should be contained in guidelines as proposed by the Federal Reserve Board, rather than in a regulation as proposed by both the Office and the FDIC. The Federal Reserve Board approach was overwhelmingly favored by those commenting on this issue because of its flexibility. Several commentors pointed out the need to retain flexibility as new forms of capital are developed. Only one respondent favored a regulation. Four of the commentors urged that capital requirements be imposed on a bank-by-bank basis.

While guidelines would provide greater flexibility, the Office has determined that capital is of such importance that minimum capital ratios should be a legal requirement and not merely an exhortation set out in guidelines. A regulatory requirement also provides some protection to the industry since it insures that the Office will not change the minimums without public notice and an opportunity for comment. The regulation contains several provisions which preserve flexibility in the case of individual banks with respect to new capital instruments that may be developed in the future.

The commentors overwhelmingly urged that there be uniform rules among the three agencies. However, two commentors argued that uniformity should not prevail over more sensible rules adopted by an individual agency. The agencies have attempted to adopt uniform rules and, with the exception of procedural requirements, the Office's final rule generally will be similar to that of the FDIC.

There was considerable support for the new minimums. However, there was also opposition to the overall emphasis on capital as well as to the new requirements. Several commentors argued that the higher minimum requirements are not needed since 95% of banks already meet these requirements. They believe that it is more important to address banks' overall strength. One commentor believed that the requirements were ill-advised because minimums shortly become the maximum. Others argued that capital is irrelevant to failures and several pointed out that the higher ratios may be counterproductive in that they may lead to riskier asset portfolios as banks seek to increase profits on limited assets.

While this regulation is concerned with, and thus emphasizes, capital, the Office has been and will continue to be, equally concerned about the other factors, such as asset quality, liquidity and management strength, which determine the overall soundness of a bank. The ratios in the regulation were adopted in consideration of banks' existing ability to meet the required and it is stressed that the requirement ratios are minimums which all banks are urged, and some will be required, to exceed. In particular, there is no incentive for banks to reduce liquidity, increase off-balance sheet activity, or structure riskier asset portfolios, since doing so will result in a requirement to maintain higher capital ratios.

There was extensive support for the notion of a level playing field *i.e.*, uniform requirements for both large and small banks. This is embodied in the final regulation. Many commentors pointed out the continuing inequality between banks and savings and loan associations and urged the agencies to work with the Federal Home Loan Bank Board to achieve equal capital requirements for all financial institutions. The Office agrees that capital requirements should be similar for all types of depository institutions. However, concern for competitive equality cannot overrule concern for the soundness of the banking system. The Office will continue to work for increases in the capital required for other types of financial institutions that compete with banks.

Several commentors urged that the agencies provide adequate time for institutions to reach the new minimum requirements. One believed that the time allowed should be set forth in guidelines and another recommended that banks be given three years to reach the new minimums. Since "adequate time" will depend on how much capital an individual bank must raise, as well as extraneous factors such as market conditions, no universal deadline can be set. The Office will consider the circumstances of each bank and intends to allow each bank adequate time to reach the required minimums.

There was some disagreement on the specific ratios and on whether the emphasis should be on primary capital or total capital. One commentor argued that the emphasis should be on equity capital since it is the major source of market discipline. Another believed that a ratio of 5.5% primary capital would be sufficient and that there should be no secondary capital requirement. Three commentors stated that the 6% total capital ratio was appropriate but that the regulation placed too much emphasis on primary capital. One of these commentors argued that a higher percentage of secondary capital should be allowed because it protects depositors and creditors. Moreover, it is difficult to sell new stock and new stock sales pose the problem of diluting existing shareholders' equity. It was suggested that the ratios instead be 5% primary capital and 1% secondary capital. The Office has emphasized primary capital because of its permanence, as well as the protection that it affords to depositors and creditors. As noted, most banks already meet or exceed the 5½% primary capital requirement and for those which do not, retained earnings offer an alternative to the sale of new stock to meet the requirements.

Finally, many commentors were disturbed by the frequency of changes in the agencies' requirements for capital because it is difficult to plan or operate efficiently with frequent changes in capital requirements. These commentors urged that this change be the last for some time. While the Office is aware of the problems which too frequent changes in capital requirements may pose, unforeseen conditions may necessitate change in the requirements in the future.

Primary Capital Definition

The major change in the final regulation is the inclusion of purchased mortage servicing rights in primary capital. This change and other issues pertaining to intangible assets are discussed in the section dealing with specific issues for comment (Issue No. 3).

Primary capital is defined in the regulation as the total of common and perpetual preferred stock, capital surplus, undivided profits, contingency and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 U.S.C. 1823(i), minority interests in consolidated subsidiaries, and the allowance for loan and lease losses; minus intangible assets except those representing purchased rights to service mortgage loans. Primary capital also includes mandatory convertible debt to the extent of 20% of the above components. The amount of mandatory convertible debt included in primary capital is limited because such debt does not represent equity until actually converted. Mandatory convertible debt means subordinated debt instruments which unqualifiedly require the issuer to exchange either common or perpetual preferred stock for such instruments by a date at or before the maturity of the instrument. The definition intentionally does not include subordinated debt that merely requires the issuer to sell stock in sufficient amounts to replace the debt obligation, even though these instruments are considered as primary capital under OCC's present guidelines. This form of mandatory convertible debt does not provide the same assurance that at maturity common or perpetual preferred stock will, in fact, be present to replace the debt. Those instruments approved by the Office as primary or secondary capital and issued prior to the effective date of this regulation will continue to be included in a bank's primary or secondary capital to the extent previously authorized, during the original term of the instrument.

Secondary Capital Definition

Secondary capital includes limited life preferred stock, subordinated notes and debentures and mandatory convertible debt that is not included in primary capital to the extent that the total of these items does not exceed 50% of the bank's primary capital. A bank may issue mandatory convertible debt, other subordinated debt or limited life preferred stock exceeding this 50% limitation, but such stock or debt will not be considered for capital adequacy or statutory purposes without the written approval of the Office. The final regulation changes this section of the proposal by deleting intangible assets from the definition of secondary capital and by imposing a 50% limit on secondary capital relative to primary capital. The reasons for these changes are discussed under the specific issues for comment (Issues Nos. 3, 5, and 6).

Minimum Capital Ratios

The regulation requires banks to have and maintain a ratio of total capital to adjusted total assets (as defined) of at least 6% and a ratio of primary capital to adjusted total assets of at least 5½%. These ratios apply to all national banks, regardless of size. However, the Office retains the right to establish higher ratios for individual banks whose circumstances warrant a stronger capital base. In addition, banks which have entered into, or subsequently enter into a written agreement or which are or become subject to a cease and desist order under 12 U.S.C. 1818 (b) or (c) requiring higher minimum capital ratios for the bank, must achieve and maintain those higher ratios. Similarly, if higher minimum capital ratios have been or are required as a condition for approval of an application, the bank will be governed by those ratios.

The ratios must be achieved as of each Call Report date and will be calculated in terms of the bank's reported total and primary capital to its reported average adjusted total assets. Actual, end-of-quarter figures are to be used in computing the ratios with the exception of the figure for adjusted total assets. Instead, the average adjusted total assets figure should be used unless the bank is instructed otherwise by the Office. If adjusted total assets increase, on average, during the following quarter, the bank must increase its capital (unless it is already above the minimum) before the upcoming Call Report date, in order to be in compliance with the required ratios as of the Call Report date for that quarter.

Banks that are not able to achieve the ratios by the effective date of the rule will be required to submit to the Office an acceptable plan to achieve the minimum capital ratios within a reasonable time. The plan itself must be submitted within 60 days after the effective date of the rule and must set forth the means and time frames in which the bank will achieve the minimum ratios. The Office understands that banks that will need to raise or generate a substantial amount of capital to achieve the ratios will require a reasonable period of time in which to do so and the Office will take this into account in reviewing individual bank plans. Rather than a formal approval or acceptance process, the rule provides that the bank may consider its plan acceptable to the Office unless it is notified to the contrary. It should be noted, however, that under this provision, the Office may subsequently require changes in a bank's plan, such as an acceleration of the time schedule, in the event of changed circumstances. Because not all banks will have the required ratios at the time the final rule becomes effective, or be able to achieve the ratios quickly thereafter, the rule provides that a bank in compliance with an acceptable plan to achieve the ratios will not be considered to be in violation of the regulation.

Two commentors argued that the regulation does not provide sufficient time to formulate a capital plan. One believed that it should be more than 60 days, perhaps as much as six months, while the other urged that the time period be 120 days. Because capital planning already should be an on-going process, the Office believes that the 60-day period is sufficient. One commentor stated that it is impossible to raise capital quickly enough to meet the ratio by the next call report day and another that the ratios for a single period should not automatically trigger enforcement action; rather, the Office should look to a period of at least four quarters. The Office points out that the ratios can be met by reducing assets as well as raising capital. In addition, non-compliance for a single period will not automatically trigger enforcement action, although it will result in some supervisory response from the Office.

Finally, the Office has reserved the authority to permit a bank to operate with capital ratios below the minimum when, in the opinion of the Office, the circumstances justify such action. This provision might apply, for example, to a situation in which a bank in compliance with the minimum ratios would not be in compliance if it undertook a proposed acquisition that would dilute its capital or increase its assets. Such an acquisition, however, may be necessary or desirable to alleviate a troubled or emergency situation involving another bank. In such circumstances, when the Office believes that the acquisition should be approved, it may specifically authorize the acquiring bank to have capital ratios below the minimums during a specified period of time, *i.e.*, the time necessary for the bank to absorb the acquisition and increase its capital to again meet the minimums specified in the regulation. This provision is not intended to authorize banks below the required minimums to continue to operate with lower capital ratios or to authorize banks to reduce their capital.

Higher Capital Requirements for an Individual Bank

The minimum capital ratios set forth in the regulation are intended to apply to sound banks without any significant risks or problems. More capital may be appropriate or necessary for individual banks depending upon their circumstances. The International Lending Supervision Act specifically provides the Comptroller with the authority "to establish such minimum level of capital for a banking institution as the [Office], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." 12 U.S.C. 3907(a)(2). Higher minimum ratios may be established for a bank and required as a part of a written agreement or a cease and desist order under 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application. In addition, the final rule adopts the procedure in the proposed rule for setting higher required minimum capital ratios for an individual bank. Only two comments were received on the procedural aspects of the regulation. One supported the enforcement provisions overall and another concurred that the Office should be able to set higher requirements based on the circumstances of individual banks.

This part of the rule sets out examples of situations when higher minimum capital ratios may be necessary or appropriate and examples of the factors which the Office may consider in deciding what a bank's minimum capital ratios should be. These examples are not intended to be all inclusive because it is not possible to predict in advance each situation in which higher capital ratios may be necessary or every factor which should be considered in a particular situation. Generally, higher capital levels are necessary and will be required for banks exposed to greater than normal risks or requiring special supervisory attention.

The procedure provides for written notice from the Office to the bank indicating the capital ratios that the Office believes are appropriate for the bank, the date when they should be achieved, and an explanation of why those ratios are considered appropriate. The bank will have thirty days in which it may respond to the Office in writing. After the close of the bank's response period, or after the bank's response is received, if sooner, the Office will consider any response from the bank. Unless further information or clarification of the bank's response is required, or the time period is extended for good cause, the Office will reach a decision after the close of the response period. The 30-day time period for the Office's decision that was contained in the proposal has been deleted from the final rule. A required time frame for the Office's decision was determined to be unnecessary because in these cases, when the Office believes that higher capital ratios are necessary for a bank, the Office has an incentive to decide the matter as soon as possible. Moreover, a bank would not be prejudiced by a delay in the Office's decision because delay preserves the status quo in favor of the bank.

After a decision, the Office will advise the bank in writing whether higher capital ratios are required for it and, if, so, what those ratios are and when they must be achieved. The Office also may require the bank to submit an acceptable plan to achieve the required ratios established for it. This procedure is intended to provide an informative and fair, but relatively uncomplicated and prompt method of addressing an individual bank's need for higher capital levels.

Directives

A directive is a form of order specifically authorized under the International Lending Supervision Act, 12 U.S.C. 3907(b)(2). Issuance of a directive is discretionary when a bank does not have or maintain capital at or above the level required for it, whether under the general minimum capital ratios set forth in the rule, under a decision establishing higher minimum capital ratios for the bank, under the terms of a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive also may be issued when a bank has failed to submit or is not in compliance with an acceptable plan to achieve its required minimum capital ratios.

The final rule adopts the procedures in the proposal without change, except for deletion of the 30-day time period for an Office decision. The time period was deleted here for the same reasons set forth in the proceeding section. The rule provides that the Office will notify a bank in writing of the Office's intention to issue a directive to the bank. The notice will include reasons for the action and the contents of the proposed directive. The bank will have thirty days in which to respond in writing to the notice. The response may state why a directive should not be issued; may propose alternative provisions for the directive; and/or may include a plan to achieve the bank's required minimum capital ratios. The response should include any information which the bank would have the Office consider in deciding whether to issue a directive or what the provisions of the directive should be. Failure to respond within the allotted time period will be deemed to be a waiver of any objections to the proposed directive. After the close of the bank's response period, or after receipt of the bank's response, if sooner, the Office will consider the bank's response and will decide whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form. Unless the time period is extended by the Office, for example, in cases where additional information or a clarification of the bank's response is needed, the Office will issue the directive, or notify the bank that a directive will not be issued, after the close of the bank's response period.

The terms of the directive will vary in each individual case. The directive may order the bank to achieve and maintain its required minimum capital ratios by a specified date; comply with a previously submitted plan to achieve those ratios; submit and comply with an acceptable plan to achieve the ratios; reduce assets or the rate of growth of assets, or restrict dividends in order to achieve its required capital ratios; or a combination of any of the above or similar actions.

A directive, or any plan submitted pursuant to a directive, is enforceable to the same extent as an effective and outstanding order issued pursuant to 12 U.S.C. 1818(b) which has become final. In addition, violation of a directive may result in civil money penalties against the bank or its officers, directors, employees, or other persons participating in the conduct of its affairs.

Because of the critical importance of adequate capital to the soundness of a bank's operations, the procedure for issuance of a directive has been designed to reach a resolution in a prompt, but fair manner and the Office intends to actively seek enforcement of directives in the event of noncompliance.

Discussion of the Specific Issues for Comment

The proposed rule specifically requested comment on ten numbered issues. A discussion of the comments received on each issue and the Office's resolution of the issues follows.

(1) Whether the definitions of capital and its components should be the same for the purposes of determining capital adequacy and for statutory purposes, such as the lending limits in 12 U.S.C. 84. The 29 commentors on this issue all agreed that the definition of capital should be the same for both capital adequacy and statutory purposes. One of the commentors, however, would include all secondary capital for capital adequacy purposes even if it is decided to exclude it from capital for statutory purposes. Two of the commentors believed that the definition of capital for statutory purposes could be based on primary capital alone if primary capital were to include mandatory convertible debt and intangibles.

The Office adopted one definition for both purposes in former Interpretive Ruling 12 CFR 7.1100 and believes that the definitions in this regulation and its accompanying interpretive ruling also should govern the determination of capital for both supervisory and statutory purposes since a common definition avoids complexity and confusion.

(2) Whether higher minimum capital ratios are appropriate or feasible. The Office received 30 comments on this issue with a substantial majority of the commentors opposed to any further increases, beyond those proposed, now or in the next year or two. Many of these respondents argued that the Office should not require more capital for banks in good condition. These commentors focused on the current low values of bank stocks in the markets and on the general crowding in the equity markets. They felt it would not be possible to raise significant additional capital externally under current conditions. Some argued that higher capital ratios would be counterproductive because they would reduce returns on equity and increase the cost of incremental capital. This, they felt, would encourage greater risk *e.g.*, reductions in liquid, low return assets to maintain profitability within the constraints on leverage. Additional problems with increased capital requirements which were cited included higher borrowing costs, reduced control of the Federal Reserve over the money supply, higher concentrations in the banking industry due to cost advantages and reduced credit availability. Several commentors suggested that higher primary capital requirements would be a disadvantage to U.S. banks versus foreign bank competitors. Only two comments endorsed higher capital levels and one of those believed they should be required before the next period of economic downturn. If higher capital is required in the future, several commentors suggested that it be in the form of secondary capital.

The Office recognizes the differing views of what constitutes adequate capital. There is general agreement, however, that capital in a bank should be sufficient to maintain public confidence in the institution; support the volume, type and character of the business conducted; provide for the possibilities of loss inherent therein; and permit the bank to continue to meet the reasonable credit requirements of the area served. The quantification of these factors into an appropriate ratio is the center of the controversy.

The Office feels strongly that the minimum capital levels imposed in this regulation are the most appropriate for the current economic environment in which national banks compete. The negative aspects of a further increase in the capital requirements are recognized and will be considered as the issue of capital adequacy continues to be studied.

The Office considered the effect this regulation may have on the equity markets. Call Report data for September 30, 1984, indicates that of the 4,900 national banks, 72 will have, at a minimum, a $1.8 billion shortfall in primary capital. Additionally, 66 of those 72, plus 54 others will have, at a minimum, a $1.3 billion shortfall in total capital. The Office anticipates that most of this additional capital will come from retained earnings rather than the equity markets. For instance, over the three years ending 12/31/83, an average $2.3 billion per year was added to the capital accounts from retained earnings and additions to the loan loss reserves and only $246 million per year from equity markets.

(3) Whether the proposed regulation should "grandfather" capital components now considered primary capital but which would not be included in primary capital under the proposed regulation. This issue provoked the largest number of comments (58). The greatest matter of concern was the proposal to define all intangible assets as secondary capital rather than primary capital. The commentors overwhelmingly urged that all or some portion of intangible assets be included in primary capital.

Many commentors urged that if intangible assets are not included in primary capital, they should at least be grandfathered. Several commentors suggested that the Office follow GAAP in including intangibles in primary capital since GAAP requires the recording and amortization of intangibles, and exclusion of intangibles results in loss of value to shareholders and dilution through new equity. Many of the commentors argued that if intangibles are eliminated it will inhibit sound acquisitions and failing bank takeovers and create a disadvantage for banks *vis a vis* nonbank competitors. A common suggestion was that the Office should consider the composition of intangible assets noting, for example, that mortgage servicing rights have an objectively measurable market value and marketability. Many comments argued in favor of, and a few argued against, the inclusion in capital of specific intangible assets such as core deposits, goodwill, moratgage servicing rights and credit card franchises.

The Office carefully reviewed its position on intangible assets. It is fully recognized that there are substantial differences between the types of intangible assets in terms of the quality and marketability of the values they represent.

Intangible assets are characterized as indentifiable or unidentifiable. In banks, the former typically includes core deposit intangibles, mortgage servicing rights, and favorable leases whereas the latter is simply goodwill.

Core deposit intangibles are a form of intangible asset which can be acquired as a result of the purchase of assets and assumption of liabilities from one or more branch offices of another depository institution or as part of a business combination with another depository institution that has been accounted for as a purchase. Core deposit intangibles represent the value asssigned to the acquisition of a base of stable, low-cost deposits that can be used to fund earning assets. However, a bank cannot sell the core deposit intangibles it holds as an asset separately from the entire institution itself or some substantial part of it (i.e., one or more branch offices).

Mortgage servicing rights represent the right to preform the servicing function for a specific group or mortgage loans that are owned by others. In addition to being acquired in a purchase of all or part or another business enterprise, mortgage servicing rights can be acquired by themselves as a single asset. Accordingly, a bank can dispose of mortgage servicing rights, regardless of the manner in which they were obtained, either through the sale of the rights by themselves on in conjunction with the sale of a segment of the bank's business. One of the factors that distinguishes mortgage servicing rights from other intangible assets is the certainty and predictability of the cash flows coming in to the servicer. These cash flows form the basis for establishing the value of the mortgage servicing rights acquired. There exists today a fairly active market for servicing rights so that the actual sales price for mortgage servicing transactions in this market also helps to confirm the values ascribed to the rights carried on the bank's books. This secondary market also adds liquidity to the mortgage servicing rights, providing the mortgage servicers with the opportunity to dispose of all or a portion of their servicing portfolios separately from the remainder of their business assets. This marketability feature represents a key difference between mortgage servicing rights and other classes of intangibles.

Favorable leases are a type of intangible assets that would be acquired as part of the purchase of all or a segment of another business enterprise that leases property in the conduct of its business. This asset can be disposed of in conjunction with the transfer of the business that uses the leased property or by subleasing the property to another party, unless of course, the bank uses the property in the conduct of its business.

In either case, however, the disposal of this intangible asset can only be accomplished by effectively relinquishing the right to use the property—that is, the intangible cannot be sold by itself. This illustrates one major difference between favorable leases and mortgage servicing rights in that the servicing rights can be sold by themselves whereas the "favorable lease" intangible cannot.

Goodwill can be acquired as a result of a business combination accounted for as a purchase or through the acquisition of a significant part of another company's business (such as a branch network). Similarly, in order to dispose of goodwill, a bank would have to be a target company in a purchase business combination or it would have to sell branch offices or some major segment of its business activities. Hence, a bank cannot sell goodwill separate and apart from itself.

Based on the preceding descriptions of intangible assets, the principal considerations in evaluating their quality for purposes of capital adequacy would appear to be: (1) Whether the asset can be separated from the remainder of the bank's assets and sold or otherwise disposed of apart from the bank as a whole, or a portion of the bank's business; (2) the marketability of the intangible asset; and (3) the certainty of the cash flows represented by the asset.

In this regard, mortgage servicing rights are the most favorable class of intangibles when evaluated against the three considerations mentioned above and, in some aspects, possess attributes very similar to certain items treated as tangible assets. Core deposit intangibles, goodwill and favorable leaseholds cannot be sold separately by an institution. These classes of intangibles are not marketable to the same extent as mortgage servicing rights nor do they have the same degree of certainty of cash flows. For this reason, the OCC has decided to allow national banks to count 100% of mortgage servicing rights as primary capital at the bank level; all other intangible assets are being deducted from primary capital because they lack the combination of separability, marketability and certainty of cash flow which would result in the support that a component of capital must be able to provide. However, the Office has determined that intangible assets previously accounted for in accordance with the Office's instructions may continue to be included in primary capital to the extent of 25% of tangible primary capital. (If mortgage servicing rights already exceed this figure, however, other intangibles may not be included in primary capital.)

Equity commitment notes, a form of mandatory convertible security, were to be eliminated from primary capital and considered to be secondary capital under the proposal. Equity commitment notes require that the convertible debt be repaid solely from the proceeds of sale of common or perpetual preferred stock. Eight comments were received urging that equity commitment notes be included in primary capital. Additional comments suggested that various percentage limitations be imposed. The grandfathering of these instruments received overwhelming support, mainly because the Office previously approved their inclusion in primary capital up to 10% of primary capital, exclusive of mandatory convertible securities.

After careful review of the comments, the Office has decided to no longer allow equity commitment notes to qualify as primary capital. This form of mandatory convertible debt does not provide the same assurance that at maturity common or perpetual preferred stock will, in fact, be present to replace the debt.

If the market in a bank's stock ceases to exist, for all intents and purposes, then the bank cannot market the stock as originally planned. This would prevent these notes from fulfilling the element of permanence necessary in primary capital. However, recognizing that this change would have potentially significant adverse impact on national banks that have used this instrument in the past as a means of raising large amounts of capital, the Office will continue to include in primary capital previously approved equity commitment notes during the effective term of the instruments.

(4) *Whether the reserve for loan and lease losses should be excluded from capital.* Thirty-nine respondents addressed this issue with 35 strongly favoring continued inclusion of the entire reserve for loan and lease losses in primary capital. They noted particularly that inclusion of the loan loss reserve encourages banks to establish and maintain adequate reserves. In addition, several commentors noted that the reserve has the characteristics of permanence and subordination.

The Office believes that the allowance for possible loan and lease losses should be considered as part of primary capital because it is: (1) A first reserve against which losses may be charged; (2) created by charges against bank earnings which would otherwise be added to the equity accounts; and (3) because it reinforces public confidence in the banking system by protecting against future uncertainty. Thus, the final regulation will continue the OCC's current practice of including all of the reserve for loan and lease losses in primary capital.

(5) Whether limits should be placed on the amount of subordinated notes and debentures and limited life preferred stock that is included in secondary capital. The Office received 28 comments on this issue covering both the general issue of whether restrictions were appropriate or not, as well as comments on specific restrictions. Four commentors agreed generally that there should be restrictions on subordinated debt. Seven commentors agreed generally with the current restrictions. However, four commentors argued that there should be no restrictions. Maturity and discounting appeared to be the most significant issues. Several commentors felt that a minimum maturity requirement should allow flexibility in response to market conditions. Two banks opposed the five-year amortization schedule and recommended that all subordinated debt and limited life preferred stock be included in total capital so long as the bank has a plan to replace the capital (if the bank would otherwise fall below the minimum requirements) according to *pro forma* schedules of reductions in capital ratios based on the maturity dates of the secondary capital.

After consideration of the alternatives, the Office has concluded that discounting to maturity for secondary capital instruments is no longer necessary. The capital plans proposed by individual banks to replace maturing instruments will be considered by the Office in assessing the capital adequacy of an individual bank. A bank must be cognizant of future capital needs, including the replacement of maturing instruments, to remain in compliance with the minimum capital ratios.

The seven year average weighted maturity restriction will remain in place. The Office has concluded that the test of permanence, albeit finite, is best met by requiring such a minimum maturity. Although specific characteristics in each bank determine the best maturity structure for that institution, such an approach would be impossible to administer given the 4,900 national banks the Office supervises.

The other existing requirements for subordinated debt are considered necessary for debt which will be included in capital. These requirements are contained in the interpretive ruling which acccompanies the regulation.

(6) Whether limits should be placed on the amount of secondary capital that can be included in total capital. The Office received 33 comments on this issue. Nine commentors agreed with the current policy that secondary capital should be limited to 50% of the amount of primary capital. Three commentors agreed generally that there should be a limitation on the amount of secondary capital. By far the greater number of commentors, however, argued that secondary capital should not be limited because if provides significant protection for depositors and creditors and is inherently limited by the market. If there is a limit, it should be applied only for 12 U.S.C. 84 or other similar purposes, but not for the purpose of capital adequacy. Four respondents noted that secondary capital increases bank liquidity and reduces market risks. Therefore, the Office should emphasize total capital and not merely primary capital.

The Office recognizes the fact that the issuance of such instruments is largely a managerial function and does not wish to needlessly impose constraints on banker's efforts to acquire funds in the most economically prudent manner. Escalating competition from traditional and nontraditional sources, inflation and other developments in financial markets underscore the propriety of banks securing funds at reasonable costs in order to enhance liquidity and improve earnings. Notwithstanding the Office's belief that use of these instruments can be beneficial and that they exhibit many capital characteristics, it must be stressed that they lack permanence. In order to satisfy these prudential concerns for capital, the Office will restrict the total amount of secondary capital that may be included as capital for capital adequacy and statutory purposes to 50% of primary capital unless written approval is received from the Office. In addition, the Office believes that a single definition of capital for adequacy and statutory limitation purposes is desirable to eliminate confusion. However, the Office encourages prudent liquidity and liability management that may dictate that a particular bank should issue secondary capital instruments totaling more than the 50% limitation.

(7) Whether the minimum capital requirements should be tailored to the risk composition and liquidity of assets. The Office received 39 comments on this issue. Many of the commentors supported the notion that capital ratios should be based on risk assets. In their view, it would be fairer than an across-the-board ratio. Some commentors specifically noted that the Office should require additional capital for higher risk and/or lower liquidity. Other commentors agreed that a capital-to-risk assets ratio is ideal. But they also all noted that it would be difficult to implement. In particular, several commentors noted that it would be hard to determine the quality of assets impartially and others concluded that such a system would be too complicated. The most favored solution appeared to be agency consideration of the mix of assets and liabilities in assessing an individual bank's capital adequacy rather than a regulatory formula. Many comments were received on specific items of a risk asset/liquidity capital ratio. Three stated that the Office must consider off-balance sheet risk. Most of the specific comments, however, focused on assets considered to be "risk-free" which should be subtracted from the asset side of the ratio. Three commentors argued generally that risk free or liquid assets should be excluded or discounted from total assets for purposes of computing the ratios.

The Office appreciates the view that a strict capital/asset ratio does not account for the great differences in banks' balance sheet composition and off-balance sheet risks. While the Office has traditionally recognized that certain types of banks require higher capital ratios, e.g., newly chartered institutions, banks receiving special supervisory attention, those institutions experiencing rapid growth, or banks which may be affected adversely due to the activities or condition of their holding company and affiliates; it is also apparent that more capital may be necessary when a bank has a high proportion of off-balance sheet risk, is exposed to a high degree of asset depreciation, interest rate, funding or transfer risk or has a low level of liquid assets in relation to short term liabilities.

The Office proposes to study the various methods of deriving a ratio based on risk assessment to determine the feasibility of either using a risk asset ratio in conjunction with the traditional capital/asset ratio or possibly as a substitute. Until such time as this study is complete, the Office will continue to assess the risk exhibited in an individual bank's balance sheet to determine if that bank should maintain capital ratios above the minimums set forth in the regulation.

(8) Whether the capital ratios should be calculated on the basis of average or actual total assets. The Office received 35 comments on this issue with the commentors almost unanimously endorsing the average total assets figure on the grounds that it is fairer and that it smooths out the "bumps" in bank assets. Two believed that the total assets figure should be adjusted by subtracting average, rather than end-of-period intangibles and reserves for losses. One commentor stated that the ratio should be based on the average of the last four call reports in order to take account of seasonal fluctuations. One dissenting commentor argued that the total assets figure should be used since it is the only relevant figure if a bank does encounter problems. Moreover, that figure is better understood by bank analysts and depositors.

The final rule uses the average total assets figure as proposed. However, it clarifies that all other figures used in computing the ratios, such as the figures for capital, intangible assets, and the allowance for loan and lease losses should be the actual end-of-quarter figures. The Office does not want to require banks at the margin to make calculations prior to each increase in their asset portfolios. Similarly, the Office wishes to minimize the likelihood of inadvertent or technical violations. Therefore, in order to avoid these problems, yet assure that the ratios are maintained on a relatively constant basis, total and primary capital would be computed as of each Call Report date and the capital ratios calculated based on average total assets for the Call Report period. Use of the average total assets figure should eliminate the potential for inadvertant violations and simplify banks' internal procedures for compliance. End-of-quarter figures should be used for components of the ratios other than average total assets, because these components are less subject to fluctuation than assets. All of these figures already are required to be stated in Call Reports, and the report form likely will be amended to include a statement of the capital ratios.

Compliance on a quarterly basis is not unduly burdensome. Banks experiencing seasonal fluctuations in average total assets should plan for those variances by maintaining capital at a level sufficient to meet the required ratios during quarters when asset growth is expected to be high.

The Office is concerned that some banks may have total assets as of the Call Report dates or otherwise that are substantially higher than their average total assets so that the bank, while technically in compliance with the regulation, actually is defeating its purpose, *i.e.*, to assure that banks have the minimum adequate level of capital to support their operations. Therefore, Call Report and examination data on total assets will be reviewed and compared with the reported average total assets figure. Where there is significant disparity between these figures on a repeated basis, the final rule allows the Office to require the bank to maintain its minimum capital ratios in relation to its actual total assets.

(9) Whether the zone concept provides useful guidance to banks. Comments were received on this issue from 28 respondents. The majority of the commentors supported continuation of the zone guidelines. Eight commentors stated that the zones are appropriate and useful. Six other commentors noted that the zones are particularly useful because they relate to the overall management and condition of the bank. Five commentors remarked that the zone concept is appropriate because of its flexibility but that the Office should retain the minimum capital requirements and the zones should be applied consistently. On the other hand, ten commentors were opposed to continuation of the zone system. Of these, six contended that the zones are not useful; that they are confusing and too discretionary. Five commentors stated that if the zones are retained they should be guidelines only and the Office should take action against individual banks on a case-by-case basis and not automatically by virtue of the zone concept.

After careful consideration of the issue and the intent of the regulation, the Office has decided to discontinue the use of the zone concept for assessing adequacy of total capital. The regulation is intended to set basic minimums for primary and secondary capital and provide for bank-by-bank analysis to determine if higher minimums are appropriate for a particular institution. This premise is clouded by the inclusion of zones which may be construed to imply that a bank is adequately capitalized because it falls within a particular zone, when in fact an analysis by this Office indicates that higher capital is necessary for the safe and sound operation of the bank. The regulation indicates the range of administrative and supervisory actions which the Office may take if a bank does not have the minimum capital ratios required for it or has not submitted or complied with an acceptable plan to achieve those ratios. Since the appropriate supervisory action must be determined on a case-by-case basis, the zone concept is no longer considered particularly helpful.

(10) Whether the minimum capital requirement should apply to federal branches and agencies. The Office received 18 comments on this issue. Domestic banks and others commented that in the interest of fairness and competitive equality, the minimum requirements should apply to federal branches and agencies. However, two federal branches and the Institute of Foreign Bankers urged for varying reasons that the requirements not be imposed on federal branches and agencies. One federal branch argued that working capital already includes cash balances of the head office and other branches, retained earnings and reserves. Another commentor stated that the requirement should not be imposed because the capital of the branch is important only with respect to the assets available in the U.S. if the parent fails and there is no evidence of a deficiency in the protection of U.S. customers of foreign banks. There would be no across-the-board competitive advantage to branches if this requirement was not imposed, since there are differing capital requirements for their parent banks.

The Office has determined that the capital ratios required by the regulation should not apply to federal branches and agencies because they already are subject to a parallel statutory requirement of a capital equivalency deposit based upon liabilities. Under 12 U.S.C. 3102(g), federal branches and agencies are required to maintain capital equivalency deposits which, at a minimum, equal 5% of liabilities with certain adjustments. However, the International Banking Act of 1978 (IBA) also mandates competitive equality between national banks and federal branches and agencies. Because the operations of federal branches and agencies are not inherently either more or less risky than those of national banks, the Office believes that federal branches and agencies should be subject to comparable capital adequacy requirements. However, since the IBA requires that the capital equivalency deposit consist of cash or investment securities and be computed as a percent of liabilities, a capital-to-assets ratio would be inappropriate for federal branches and agencies. Therefore, the Office is studying what increase, if any, in the capital equivalency-to-liabilities ratio would be comparable to the capital-to-assets ratio required for domestic banks. Such an increase, if necessary, will be proposed for comment before being adopted. Meanwhile, because a capital equivalency deposit higher than the statutory minimum may be appropriate for an individual federal branch or agency, due to its or its parent bank's condition or circumstances, 12 CFR Part 28 will be amended so that the procedural sections of this regulation (Part 3), but not the minimum capital-to-assets ratios, will apply to federal branches and agencies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.)* the Comptroller of the Currency has certified that this regulation will not have a significant economic impact on a substantial number of small entities since nearly all small banks (those with total assets of less than $1 billion) already meet or exceed the primary and total capital ratios required by the regulation.

Executive Order 12291

The Comptroller of the Currency has determined that this regulation is a "major rule" and a regulatory impact analysis has been performed in connection with the Office's consideration of this rule. In reviewing the impact of the rule, the analysis considered that:

(1) 72 national banks have a shortfall, at a minimum, of $1.8 billion in primary capital;

(2) 66 of those banks, plus an additional 54, have a shortfall, at a minimum, of $1.3 billion in secondary capital;

(3) 389 national banks meet both minimums, but face credit and other risks that warrant higher capital ratios (the amount of capital they must raise cannot be easily estimated);

(4) Underwriting costs associated with raising needed capital could approach $185 million, the precise amount depending on the volume of funds raised in capital markets as opposed to the use of retained earnings; and

(5) Until capital ratios are met, national banks could reduce dividend payments below historical averages.

However, OCC believes the costs of the minimum capital ratios mandated by the rule are outweighed by the benefits. These benefits cannot be easily quantified, but include:

(1) An increased capacity, especially among large banks, to withstand losses associated with credit and other risks that are a normal part of banking;

(2) Increased stability in our financial system; and

(3) Increased capacity to fund economic growth.

A copy of the regulatory impact analysis may be obtained from the Office's Communications Division under procedures set fourth in 12 CFR 4.17 and 4.17a.

Paperwork Reduction Act

The paperwork burdens contained in this rule pertaining to: (1) The preparation of a written plan to increase capital by a national bank that does not have the minimum capital ratios specified in the regulation or individually required for it; and (2) the written response that a bank may make to the Office when notified that higher minimum capital ratios may be required for it; have been approved by the Office of Management and Budget pursuant to 44 U.S.C. 3504(h) and assigned control number 1557-0166.

Memorandum of Law Required by Section 4(a) of Executive Order 12291 for a "Major Rule"

This regulation is authorized by, and consistent with the intent of Congress as expressed in, the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) The Act provides in pertinent part that:

> Each appropriated Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

12 U.S.C. 3907(a)(1). The Comptroller of the Currency is the appropriate Federal banking agency for national banks (12 U.S.C. 3902; 12 U.S.C. 1813(q)) and is authorized by 12 U.S.C. 3909, as well as other existing authority (12 U.S.C. 1 *et seq.*, 93a, 1818) to issue regulations and interpretive rules defining "capital" and other related terms and carrying out the purpose of section 3907.

List of Subjects

12 CFR Part 3

Banks, Banking, Primary, Secondary and total capital, Minimum capital ratios, Procedures for establishing higher minimum capital ratios for an individual bank, Enforcement of minimum capital ratios, Issuance of directives.

12 CFR Part 7

National banks, Management and ownership rights, Other powers.

Authority and Issuance

Accordingly, pursuant to authority under 12 U.S.C. 93a, 3907, and 3909, the Comptroller of the Currency hereby amends Title 12 of the Code of Federal Regulations by adding a new Part 3 and amending Part 7 as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority for Part 7 is:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et. seq.*

2. By revising § 7.1100 to read as follows:

§ 7.1100 Capital and surplus.

(The text of this section has been superseded by 12 CFR Part 3. Any reference in this chapter to § 7.1100 shall be considered to be a reference to 12 CFR Part 3.)

3. By adding a new Part 3 to read as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

Subpart A—Authority and Definitions

§ 3.1 Authority.

This part is issued under the authority of 12 U.S.C. 1 *et. seq.*, 93a, 161, 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153), 12 U.S.C. 3907 and 3909.

§ 3.2 Definitions.

For the purposes of this part:

(a) "Adjusted total assets" means the average total assets figure required to be computed for and stated in a bank's most recent quarterly "Consolidated Report of Condition and Income" (Call Report), plus the end-of-quarter allowance for loan and lease losses, minus end-of-quarter intangible assets not included in primary capital. The Office reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when necessary to carry out the purposes of this regulation.

(b) "Bank" means a national banking association or a District of Columbia bank.

(c) "Primary capital" means the sum of (c) (1), (2) and (3) of this section.

(1) Common stock, perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 U.S.C. 1823(i), minority interests in consolidated subsidiaries, and allowances for loan and lease losses; minus intangible assets;

(2) Purchased mortgage servicing rights; and

(3) Mandatory convertible debt to the extent of 20% of the sum of (c) (1) and (2) of this section.

(d) "Secondary capital" means the sum of (d) (1) and (2) of this section, to the extent that this figure does not exceed 50% of the bank's primary capital: (1) Mandatory convertible debt that is not included in primary capital; and (2) limited life preferred stock and subordinated notes and debentures. These instruments must meet the requirements set forth in 12 CFR 3.100 or otherwise published by the Office (A bank may issue mandatory convertible debt, other subordinated debt or limited life preferred stock in amounts exceeding the limitation in this paragraph, but such stock or debt shall not be considered capital for capital adequacy or statutory purposes without the written approval of the Office.).

(e) "Total capital" means the sum of primary capital and secondary capital. The end-of-quarter figures as of the Call Report date shall be used in computing the bank's capital ratios.

§ 3.3 Transitional Rules.

(a) Instruments approved by the Office as primary or secondary capital and issued prior to the effective date of this regulation may continue to be included in a bank's primary or secondary capital to the extent previously authorized, during the original effective term of the instrument.

(b) Intangible assets (other than mortgage servicing rights) purchased prior to the effective date of this regulation and accounted for in accordance with the instructions of the Office, may continue to be included in primary capital up to 25% of the sum of § 3.2(c)(1).

§ 3.4 Reservation of Authority.

Notwithstanding the definitions of "primary capital" and "secondary capital" in § 3.2 (c) and (d), the Office may find that a particular type of purchased intangible asset or a newly developed or modified capital instrument constitutes or may constitute "primary capital" or "secondary capital," and the Office may permit one or more banks to include all or a portion of such intangible asset or funds obtained through such capital instrument as primary or secondary capital, permanently or on a temporary basis, for the purposes of compliance with this Part or for other purposes. Similarly, the Office may find that a particular asset or primary or secondary capital component has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of primary or secondary capital.

Subpart B—Minimum Capital Ratios

§ 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in Subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

§ 3.6 Minimum capital ratios.

A bank must have and maintain total capital equal to a least 6 percent of adjusted total assets and primary capital equal to at least 5½ percent of adjusted total assets.

§ 3.7 Plan to achieve minimum capital ratios.

Any bank having total or primary capital ratios less than the minimums set forth in § 3.6 shall, within 60 days of the effective date of this regulation, submit to the Office a plan describing the means and schedule by which the bank shall achieve the minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the Office. A bank in compliance with the acceptable plan to achieve the minimum capital ratios will not be deemed to be in violation of § 3.6.

§ 3.8 Reservation of authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

§ 3.9 Purpose and scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios for an individual bank above the ratios that would otherwise be applicable to the bank under § 3.6. The Comptroller is authorized under 12 U.S.C. 3907 (a)(2) to establish such minimum capital requirements for a bank as the Office, in its discretion, deems necessary or appropriate in light of the particular circumstances of that bank. Proceedings under this subpart also may be initiated to require a bank having capital ratios above those set forth in § 3.6, or other legal authority to continue to maintain those higher ratios.

§ 3.10 Applicability

Higher minimum capital ratios may be required for an individual bank when the Office believes that the bank's capital is or may become inadequate in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank which has or is expected to have losses resulting in capital inadequacy;

(d) A bank having a high proportion of off-balance sheet risks, especially standby letters of credit; or exposed to a high degree of asset depreciation or interest rate, funding, transfer, or similar risks; or having a low level of liquid assets in relation to short term liabilities;

(e) A bank that is growing rapidly, either internally or through acquisitions; or

(f) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships, including concentrations of credit.

§ 3.11 Standards for determination of appropriate individual minimum capital ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Office's determination that higher minimum capital ratios are appropriate or necessary for the bank;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);

(d) The bank's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and

(e) The views of the bank's directors and senior management.

§ 3.12 Procedures.

(a) *Notice.* When the Office determines that minimum capital ratios above those set forth in § 3.6 or other legal authority are necessary or appropriate for a particular bank, the Office will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable), and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the bank.

(b) *Response.* (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the time period when, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time period, or with the consent of the bank. In its discretion, the Office may extend the time period for good cause.

(2) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the bank's response period, the Office will decide, based on a review of the bank's response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) *Submission of plan.* The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) *Change in circumstances.* If, after the Office's decision in paragraph (c), there is a change in the circumstances affecting the bank's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank's plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office's original decision and any plan required under that decision shall continue in full force and effect.

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or cease and desist proceedings under 12 U.S.C. 1818 (b) or (c) (12 CFR 19.0–19.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether established in Subpart B of this regulation, in a decision pursuant to Subpart C, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a bank that has failed to submit or comply with an acceptable plan to attain those ratios will be subject to such administrative action or sanctions as the Office considers appropriate, including issuance of a Directive pursuant to Subpart E, other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. Failure to achieve or maintain the minimum primary capital ratio also may be the basis for an action by the Federal Deposit Insurance Corporation to terminate federal deposit insurance. See 12 CFR 325.4(c).

Subpart E—Issuance of a Directive

§ 3.15 Purpose and scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in § 3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to (a) achieve the minimum capital ratios applicable to it by a specified date; (b) adhere to a previously submitted plan to achieve the applicable capital ratios; (c) submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios; (d) take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment of dividends, to achieve the applicable capital ratios; or (e) a combination of any of these or similar actions. A directive issued under this rule, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.16. Notice of intent to issue a directive.

The Office will notify a bank in writing of its intention to issue a directive. The notice will state:

(a) Reasons for issuance of the directive; and

(b) The proposed contents of the directive.

§ 3.17. Response to notice.

(a) A bank may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the bank would have the Office consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the bank. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the 30-day time period (1) when, in the opinion of the Office, the condition of the bank so requires, provided that the bank shall be informed promptly of the new time period; (2) with the consent of the bank; or (3) when the bank already has advised the Office that it cannot or will not achieve its applicable minimum capital ratios. In its discretion, the Office may extend the time period for good cause.

(b) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed directive.

§ 3.18. Decision.

After the closing date of the bank's response period, or receipt of the bank's response, if earlier, the Office will consider the bank's response, and may seek additional information or clarification of the response. Thereafter, the Office will determine whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 3.19 Issuance of a directive.

(a) A directive will be served by delivery to the bank. It will include or be accompanied by a statement of reasons for its issuance.

(b) A directive is effective immediately upon its receipt by the bank, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Office.

§ 3.20 Change in Circumstances.

Upon a change in circumstances, a bank may request the Office to reconsider the terms of its directive or may propose changes in the plan to achieve the bank's applicable minimum capital ratios. The Office also may take such action on its own motion. The Office may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

§ 3.21 Relation to other administrative actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Office also may, in its discretion, take any action authorized by law, in lieu of a directive, in response to a bank's failure to achieve or maintain the applicable minimum capital ratios.

Interpretations

§ 3.100 Capital and surplus.

(a) *Capital.* The term "capital" as used in provisions of law relating to the capital of national banking associations shall include the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired.

(b) *Capital Stock.* The term "capital stock" as used in provisions of law relating to the capital stock of national banking associations, other than 12 U.S.C. 101, 177 and 178, shall have the same meaning as the term "capital" set forth in paragraph (a) of this section.

(c) *Surplus.* The term "surplus" as used in provisions of law relating to the surplus of national banking associations means the sum of (c) (1), (2), (3) and (4) of this section:

(1) Capital surplus; undivided profits; reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock); net worth certificates issued pursuant to 12 U.S.C. 1823(i); minority interests in consolidated subsidiaries; and allowances for loan and lease losses; minus intangible assets;

(2) Purchased mortgage servicing rights;

(3) Mandatory convertible debt to the extent of 20% of the sum of paragraphs (a) and (c) (1) and (2) of this section;

(4) Other mandatory convertible debt, limited life preferred stock and subordinated notes and debentures to the extent set forth in paragraph (f)(2) of this section.

(d) *Unimpaired Surplus Fund.* The term "unimpaired surplus fund" as used in provisions of law relating to the unimpaired surplus fund of national banking associations shall have the same meaning as the term "surplus" set forth in paragraph (c) of this section.

(e) *Definitions.* (1) "Allowance for loan and lease losses" means the balance of the valuation reserve on December 31, 1968, plus additions to the reserve charged to operations since that date, less losses charged against the allowance net of recoveries.

(2) "Capital surplus" means the total of those accounts reflecting (i) amounts paid in in excess of the par or stated value of capital stock; (ii) amounts contributed to the bank other than for capital stock; (iii) amounts transferred from undivided profits pursuant to 12 U.S.C. 60; and (iv) other amounts transferred from undivided profits.

(3) "Intangible assets" means those purchased assets that are to be reported as intangible assets in accordance with the "Instructions—Consolidated Reports of Condition and Income" (Call Report).

(4) "Limited Life preferred stock" means preferred stock which has a maturity or which may be redeemed at the option of the holder.

(5) "Mandatory convertible debt" means subordinated debt instruments which unqualifiedly require the issuer to exchange either common or perpetual preferred stock for such instruments by a date at or before the maturity of the instrument. The maturity of these instruments must be 12 years or less. In addition, the instrument must meet requirements (i) through (v) for subordinated notes and debentures contained in paragraph (f)(1) of this section or other requirements published by the Office.

(6) "Minority interest in consolidated subsidiaries" means the portion of equity capital accounts of all consolidated subsidiaries of the bank that is allocated to minority shareholders of such subsidiaries.

(7) "Mortgage servicing rights" means the bank-owned rights to service for a fee mortgage loans that are owned by others.

(8) "Perpetual preferred stock" means preferred stock that does not have a stated maturity date and cannot be redeemed at the option of the holder.

(f) *Requirements and Restrictions: Limited Life Preferred Stock, Mandatory Convertible Debt, and Other Subordinated Debt*—(1) *Requirements.* Issues of limited life preferred stock and subordinated notes and debentures (except mandatory convertible debt) must have original weighted average maturities of at least seven (7) years to be included in the definition of "surplus." In addition, a subordinated note or debenture must also:

(i) Be subordinated to the claims of depositors;

(ii) State on the instrument that it is not a deposit and is not insured by the FDIC;

(iii) Be approved as capital by this Office;

(iv) Be unsecured;

(v) Be ineligible as collateral for a loan by the issuing bank;

(vi) Provide that once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year; and

(vii) Provide that no accelerated payment by reason of default or otherwise may be made without the prior written approval of the Office.

(2) *Restrictions.* The total amount of mandatory convertible debt not included in paragraph (c)(3) of this section, limited life preferred stock, and subordinated notes and debentures considered as surplus is limited to 50 percent of the aggregate amount of primary capital, as defined in 12 CFR 3.2(c), unless specifically approved in writing by the Office.

(3) *Reservation of Authority.* The OCC expressly reserves the authority, in exigent circumstances, to waive the minimum maturity requirement and the percentage restriction set forth in paragraphs (f) (l) and (2) of this section, in order to allow the inclusion of other limited life preferred stock, mandatory convertible notes and subordinated notes and debentures in the capital base of any national bank for capital adequacy purposes. The OCC further expressly reserves the authority in exigent circumstances, to impose more stringent conditions than those set forth in paragraphs (f) (l) and (2) of this section in order for any component of primary or secondary capital to be included, in whole or in part, as part of a national banking association's capital and surplus for any purpose.

(Approved by the Office of Management and Budget under control number 1557-0166.)

Dated: February 12, 1985.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85-6127 Filed 3-13-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-47; Amdt. 39-5008]

Airworthiness Directives; Sikorsky Model S-76A Helicopters Certificated in All Categories.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Sikorsky S-76A helicopters by individual telegrams. This AD requires inspections of the engine compartment center firewall for proper installation, fit, and clearance with the rotating tail rotor driveshaft and prescribes corrective modifications and repairs if unsafe conditions are found. This AD is needed to prevent damage to the tail rotor driveshaft and subsequent loss of directional control of the helicopter which may occur if the engine compartment center firewall is not correctly installed.

EFFECTIVE DATE: Effective March 7, 1985, as to all persons except those persons to whom it was made immediately effective by telegraphic AD Nos. T84-19-51 issued September 27, 1984, and T84-19-51 R-1 issued October 15, 1984, which contained this amendment.

ADDRESSES: The applicable customer service notices (CSN), alert service bulletin (ASB), and appropriate sections of the maintenance manual (MM) may be obtained from United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Stratford, Connecticut 06601.

Copies of the CSN, ASB, and sections of the MM are contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113 or (617) 273-7001.

SUPPLEMENTARY INFORMATION: On September 27, 1984, telegraphic AD No. T84-19-51 was issued and made effective immediately as to all known