year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins.

The Committee's final estimate of 1985–86 production of Natural (sundried) Seedless raisins totaled 359,221 tons, which includes the 1985 diversion tonnage of 59,378 tons (6,094 tons more than its preliminary estimate of 353,127 tons). Dividing the computed trade demand of 211,045 tons by the final estimate of production results in a final free percentage of 58.75 percent. The Committee rounded that percentage to 59 percent which results in a final reserve percentage of 41 percent.

For Dipped Seedless raisins, the Commttee's final estimate of 1985–86 production totaled 12,765 tons (332 tons more than its preliminary estimate of 12,433 tons). Dividing the computed trade demand of 9,489 tons by the final estimates of production for this varietal type results in a free percentage of 74.33 percent. The Committee rounded that percentage to 74 percent which results in a final reserve percentage of 26 percent.

For Oleate and Related Seedless raisins, the Committee's final estimate of 1985–86 production totaled 4,907 tons (127 tons less than its preliminary estimate of 5,034 tons). Dividing the computed trade demand of 4,172 tons by the final estimate of production for this varietal type results in a free percentage of 85.02 percent. The Committee rounded that percentage to 85 percent which results in a final reserve percentage of 15 percent.

For Zante Currant raisins, the Committee's final estimate of 1985–86 production totaled 3,509 tons (383 tons more than its preliminary estimate of 3,126 tons). Dividing the computed trade demand of 2,584 tons by the final production estimate results in a free percentage of 73.63 percent. The Committee rounded that percentage to 74 percent which results in a final reserve percentage of 26 percent.

For Monukka raisins, the Committee's final estimate of 1985–86 production totaled 1,492 tons (708 tons less than its preliminary estimate of 2,200 tons). Because the computed trade demand of 1,556 tons exceeds the final production estimate, a free percentage of 100 percent must be established and the reserve percentage shall be 0 percent.

Pursuant to § 989.54(c), the Committee at its December 30, 1985, meeting, computed and announced interim free percentages of 58 percent for Natural (sun-dried) Seedless, 73 percent for Dipped Seedless, 84 percent for Oleate and Related Seedless, 73 percent for Zante Currants, and 99 percent for Monukka raisins. These percentages released almost all of the computed trade demand for each of these varietal types. This decision reflects the strong marketing conditions which currently exist in domestic and export markets, and the Committee's belief that it's final production estimates are accurate.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the designation, under §§ 989.54 and 989.55, of final free and reserve percentage for the 1985–86 crop year for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.238 is added to Subpart—Supplementary Regulations to read as follows:

Note. The following section will not be published in the Code of Federal Regulations.

§ 989.238 Final free and reserve percentages for the 1985–86 crop year.

The percentage of standard Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins acquired by handlers during the crop year beginning August 1, 1985, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	59	41
Dipped Seedless	74	26
Oleate and Related Seedless	85	15
Zante Currant	74	26
Monukka	100	0

Dated: March 17, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R-0565]

Definition of Deposit and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board is adopting final rules amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). Concurrently, the Board is adopting a final rule amending 12 CFR Part 217 (Regulation Q—Interest on Deposits). The amendments are being adopted after consideration of public comments received on proposed amendments to Regulation D (51 FR 27, January 2, 1986) and Regulation Q (51 FR 31, January 2, 1986).

The amendments are due to the expiration on March 31, 1986, of the Depository Institutions Deregulation Committee ("DIDC") and with it the authority to set regulatory interest rate ceilings on deposits other than demand deposits. In addition, the DIDC's rules authorizing money market deposit accounts ("MMDAs") expire on that date along with the provisions in Regulation Q prescribing early withdrawal penalties. The statutory prohibition against the payment of interest on demand deposits remains in effect.

Generally, the amendments to Regulation D are intended to preserve the current scheme of reserve requirements for transaction accounts, savings deposits (including MMDAs), and time deposits. The amendments to Regulation D include revised minimum early withdrawal penalties designed to distinguish between certain types of deposits for reserve requirement purposes. The amendments also include minor changes to the definitions in Regulation D and clarification of existing requirements for classifying accounts.

At this time, the Board is also adopting other technical amendments to Regulations D and Q. The Board will be amending the advertising rule in its Regulation Q at a later date.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452–3778) or Patrick J. McDivitt, Attorney (202/452–3818), Legal Division, Thomas Simpson, Deputy Associate

Director (202/452-3546), Division of Research and Statistics, or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b) of the Federal Reserve Act, 12 U.S.C. 461(b), provides the Board with the authority to impose reserve requirements on deposits held by depository institutions, and section 19(a) of that Act, 12 U.S.C. 461(a), gives the Board the authority to define terms used in section 19 and to prevent evasions of section 19. Pursuant to this authority, the Board promulgated Regulation D. In the past, Regulation D definitions of deposit categories have been used in the regulation of the payment of interest on deposits under the Board's Regulation Q—Interest on Deposits (12 CFR Part 217), and this practice will continue. One such definition is the money market deposit account ("MMDA").[1]

The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) directed the DIDC to create the MMDA. As implemented by the DIDC, the MMDA permits depositors limited authority to make third party payments from the account. Senate Joint Resolution 97-271 (Pub. L. 97-457) also provided that the MMDA would not be considered a "transaction account" for purposes of Regulation D, provided that third-party payments were limited. Consequently, Regulation D excluded the MMDA from the definitions of "transaction account" and "demand deposit" even though funds could be withdrawn from an MMDA by check or draft.

On March 31, 1986, the regulations of the DIDC implementing the MMDA expire along with the regulatory limitations on the payment of interest on deposits and the prescribed early withdrawal penalties.[2]

In order to take these changes into account and to make clarifying and technical changes, the Board is amending its Regulation D. The amendments are designed to: (1) Preserve the MMDA, largely in its current form; (2) establish limited early withdrawal penalties for reserve requirement purposes; and (3) remove the $150,000 limit on business savings deposits and clarify the limit on telephone transfers from such accounts. In so doing, the amendments redefine the terms "transaction account," "savings deposit" and "time deposit" and, with certain exceptions, preserve the current scheme of reserve requirements on deposits. The amendments also make other clarifying and technical changes to Regulation D.

The principal amendments are discussed in detail below.

Preservation of the MMDA

The current Regulation D incorporates by reference the regulatory description of the MMDA adopted by the Depository Institutions Deregulation Committee ("DIDC"). Because the DIDC and its rules expire on March 31, 1986, Regulation D, as amended, will include the descriptive characteristics of the MMDA for the purposes of the regulation. Generally, the MMDA continues to be limited to six preauthorized, automatic, or telephone transfers per month. Three of the six transfers may be by check payable to third-parties. Consequently, an existing MMDA will continue to be treated as a "savings deposit" under the amended rule, provided the applicable transfer limitations are adhered to. Generally, comments favored retention of the current MMDA treatment.

The amendments also liberalize the treatment of certain transfers from MMDAs. Under existing rules, loan payments from an MMDAs. Under existing rules, loan payments from an MMDA to the institution itself are counted toward the six transfer limit, while such payments made from an ordinary savings account are not counted toward the three transfer limit currently applicable to such accounts for preauthorized or telephone transfers. Consequently, a depositor may make unlimited loan repayments from a savings account but only three per month from an MMDA. Several comments suggested treating both accounts similarly to reduce monitoring and administrative costs. The revised regulation provides for unlimited loan payments to the institution from an MMDA as well as from a savings deposit.

Currently, any account from which a payment can be made to a third party by debit card is a "transaction account." The Board's proposal would have permitted debit card transfers to third parties from MMDAs so long as they were counted towards the three check or draft limitation. The revised Regulation D incorporates this change.

Time Deposits and Early Withdrawals

Currently, section 19(j) of the Federal Reserve Act provides that a depositor may withdraw funds from a time deposit before maturity only under the rules and regulations of the Board. Under this authority, Regulation Q currently prescribes certain minimum penalties for early withdrawals from time deposits. Early withdrawal penalties help to maintain the distinction between a "transaction account" and a "time deposit" and to maintain the differences in maturities on time deposits primarily to enforce interest rate ceilings. The express statutory authority to prescribe rules regarding early withdrawals from time deposits expires on March 31, 1986 and the Board no longer will require such a penalty under that authority. Nevertheless, the Board still believes that the early withdrawal of funds from time deposits undermines the distinction between a "transaction account" and a "time deposit" and between time deposits of varying maturities for monetary policy purposes under Regulation D.

The Board is amending its definition of "time deposit" to provide that a time deposit with a minimum maturity of seven days or more from which withdrawals are permitted within the first six days after the date of deposit will be a "time deposit" only if it meets the other criteria for a time deposit and is subject to a minimum early withdrawal penalty equal to seven days' simple interest on the amount withdrawn.

Under Regulation D, nonpersonal time deposits with a maturity of one and one-half years or more are subject to a zero percent reserve requirement while nonpersonal time deposits with a shorter maturity are subject to a three percent reserve requirement. If a nonpersonal time deposit has a stated maturity or notice period of one and one-half years or more and early withdrawals are permitted after six days but within one and one-half years after the date of deposit, it must be subject to a minimum penalty equal to one month's simple interest on the amount withdrawn in order to be treated as a "nonpersonal time deposit" with a maturity of one and one-half years or more for purposes of Regulation D.

Any deposit failing to meet either the definition of "time deposit" or "savings deposit" will be considered a "transaction account" and will be subject to the transaction account reserve requirements.

[1] Similar categories were established under comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board.

[2] Statutory limitations, such as the prohibition against the payment of interest on demand deposits and the eligibility requirements for NOW and ATS accounts, are not affected by the expiration.

The proposal had provided that after a partial early withdrawal, a deposit ceased to be a time deposit unless the remaining balance was placed in a new account. A number of commentators indicated that it would be burdensome to establish separate new accounts in such cases. Accordingly, the final rule provides that the remaining balance in a time deposit after a partial early withdrawal will continue to be regarded as a "time deposit" if subsequent early withdrawals are subject to the seven day penalty for withdrawals made within six days after the last partial withdrawal.

Several commentators expressed concern over the implementation of the early withdrawal penalty provisions in the definition of "time deposit." This issue was of particular concern to the National Credit Union Administration which noted that for Federal credit unions, limitations on early withdrawals were deregulated in 1982. The NCUA requested a transition period to allow modification of credit union forms.

In general response to these comments, under the final rule, existing time deposits will continue to be time deposits. The new early withdrawal penalties must be imposed on accounts opened on or after April 1, 1986. In response to the NCUA's concerns, the final rule provides a longer implementation period for institutions that currently lack a regulatory requirement for such a penalty, as in the case of Federal credit unions or nonfederally insured institutions that have no such penalty prescribed by state law or regulation. For these institutions, the penalty must be included in any account opened, renewed or to which additional deposits are made on or after January 1, 1987.[3]

Commentators also suggested retention of the current exceptions to the early withdrawal penalty rules. The final rule incorporates into Regulation D the exceptions for early withdrawals penalties currently specified by Regulation Q.

[3] For institutions with an existing stock of deposit contract forms, the Board believes that early withdrawal penalties may be implemented with an addendum attached to the existing form. For example, the following language could be used to implement the seven day penalty: "Addendum to (*time deposit or the institution's name for such deposit*) issued to (*name of customer*) on (*date*). This deposit has a maturity of (*state maturity*), if it is withdrawn within the six (6) calendar days following the date of deposit, or within six (6) days following any partial withdrawal made prior to the maturity date, such withdrawal shall be subject to a minimum penalty of seven (7) days' simple interest on the amount withdrawn."

Additional Early Withdrawal Penalties

In its proposal, the Board indicated an interest in retaining early withdrawal penalties in order to assist institutions in matching the maturities of assets and liabilities for purposes of safety and soundness of the institutions. A number of comments supported this concept. The Board also indicated that it would consult with the federal depository institution regulatory agencies concerning the appropriate structure and use of penalties for this purpose. This issue has been raised with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Home Loan Bank Board. In proposed regulations adapting to the expiration of the DIDC, the Federal Home Loan Bank Board also requested comment on the retention of early withdrawal penalties for this purpose. The Board intends to study the economic and legal issues relating to imposing early withdrawal penalties for safety and soundness purposes in cooperation with the other federal depository institution regulatory agencies. In the interim, the Board continues to believe that such penalties serve a useful purpose in maintaining the stability of an institution's liabilities, and institutions are encouraged to consider including them in their time deposit contracts.

Transfers From Savings Deposits

Under existing regulations, a depositor may make up to three preauthorized or telephone transfers per month from a savings deposit to another account of the depositor or a third person. MHDAs permit up to six preauthorized, telephone or automatic transfers per month.

The final rule permits automatic transfers to be included within the three transfers per month permitted for savings deposits, in order to make the transfer limitations more consistent with the transfer limitations applicable to MMDAs.

Enforcement of Transfer Limitations

Under the proposed rule and the final rule, the definition of "savings deposit" includes an ordinary savings account and an MMDA unless the depositor is authorized to exceed the transfer limitations for such accounts. If the depositor is authorized to exceed the transfer limitation, the account would be considered to be a "transaction account" for the purposes of Regulation D reserve requirements. (Such account would not be a "demand deposit" for purposes of the Regulation Q prohibition against payment of interest on demand deposits if the depositor is eligible to hold another type of transaction account, such as a NOW account or an ATS account, that would permit the particular excess transfers.)

Commentators expressed concern that under the proposal, an excess transfer might result in automatic reclassification of the account even though the transfer was an isolated occurrence and the depository institution could not prevent the occasional excess transfer at the time it occurred. The final rule incorporates the procedures for monitoring accounts on an *ex post* basis that are currently specified in § 217.7(g)(5)(ii) of Regulation Q for MMDAs.

Under this procedure, institutions must contact customers who exceed the transfer limitations on more than an occasional basis. For customers who continue to violate the transfer limitations after being contacted, the institution must close the account or take away its transfer and draft capacities. If an institution continues to permit recurring excess transfers from a savings deposit or an MMDA or fails to maintain procedures to enforce the transfer limitations, the account may be determined to authorize such excess transfers and the institution may be required to reclassify the account as a "transaction account." For example, if the depositor is eligible to maintain a NOW account and excess transfers are made by check, the account may be required to be reclassified as a NOW account against which transaction account reserves will be required to be held. If the depositor is not eligible to hold a NOW account, the account may be required to be reclassified as a demand deposit on which interest could not be paid under Regulation Q.

Business Savings Deposits

The proposal removed the separate definition of savings deposit from Regulation Q and relied instead on the Regulation D definition. This change eliminated the current $150,000 limitation on business savings deposits, this bringing the treatment of business savings deposits in line with the treatment of MMDAs. All comments on the proposal to remove this limitation supported the change.

This change also limited business telephone transfers from a savings deposit to three per month. If a depository institution authorized a business depositor to exceed the applicable transfer limitation, however, the institution may be required to reclassify the account as a "demand deposit" because businesses are not

authorized to maintain NOW accounts or ATS accounts. The final rule also retains this limitation.

Miscellaneous

1. The proposal treated transfers made by remote (or home) computer or other telecommunications access device, other than an ATM, as transfers counting toward the telephone transfer limitations. The few comments that were received on this issue were divided. The Board is amending its definitions of "transaction account" and "savings deposit" (including "MMDA") to clarify that each such transfer should be counted toward the monthly limitations because there is no practical difference between the customer using data signals from a site remote from the premises of the depository institution to order transfers and using oral commands over the telephone to order transfers.

2. A number of comments on the proposal expressed concern that the wording of the draft regulation seemed to indicate that the Board was seeking to place limits on withdrawals from savings deposits and MMDAs at ATMs where no such limits currently exist. The Board intended no such change. The final rule incorporates language currently found in Regulation Q delineating permissible withdrawals from MMDAs at ATMs in the definition of savings deposits, including the definition of MMDAs.

3. Under the existing definitions in Regulation D, the term "transaction account" includes demand deposits, NOW accounts, and ATS accounts. Currently, the term "demand deposit" in Regulation D includes any deposit that is not a "time deposit" or a "savings deposit." Currently, NOW accounts and ATS accounts are "savings deposits" and therefore are not "demand deposits." Under the revised definitions, the term "transaction account" continues to include "demand deposits," NOW accounts, and ATS accounts and specifically provides that the term includes any deposit that is not a "time deposit" or "savings deposit." The definition of "demand deposit" expressly excludes NOW accounts and ATS accounts. NOW accounts and ATS accounts enjoy a statutory exemption from the prohibition against the payment of interest on demand deposits and, under the amendments to Regulation Q being adopted concurrently with these amendments, the Regulation D definition of demand deposit is used in Regulation Q to define those accounts on which the payment of interest is prohibited.

4. The Board is making technical amendments to other portions of the regulation to remove obsolete terms and requirements. These technical amendments include the following provisions:

a. Section 204.3(h) of Regulation D provides for a phase-in of the carryover of excesses or deficiencies for depository institutions that report reservable liabilities weekly. Because the phase-in is now complete, the Board is simplifying the section and eliminating its obsolete phase-in schedule.

b. Section 204.4 prescribes transitional adjustments for computing federal reserve requirements. Reserve phase-in schedules were established in 1980 for member, former member, and nonmember depository institutions. Because several of these transitional schedules have been completed, and because the statute providing that MMDAs are not subject to the phase-in expires on March 31, 1986, the Board is revising §204.4, and cross references in other sections of the regulation, to remove obsolete provisions and schedules.

c. Section 204.8(e) provides that the failure of an international banking facility to comply with the requirements of §204.8 may cause it to be subject to the limitations on the payment of interest on time deposits contained in the Board's Regulation Q. Because these limitations expire on March 31, 1986, the Board is deleting the cross reference.

5. Finally, nonpersonal MMDA-type deposits held by depository institutions (other than Hawaiian nonmember institutions), will be subject to the phase-in schedules for federal reserve requirements rather than to full reserve requirements beginning with April 1, 1986. The Board has determined that for weekly reporters full reserves shall continue to be maintained on these deposits until the reserve maintenance period for nontransaction accounts beginning April 24, 1986, which corresponds to the computation period commencing March 25, 1986. For quarterly reporters, full reserves shall be maintained until the reserve maintenance period commencing April 17, 1986, which corresponds to the quarterly computation period beginning March 18, 1986. Hawaiian institutions will continue to be governed by the Board's December 13, 1985 amendment to Regulation D (50 FR 51508; December 17, 1985).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, the Board recognized a potential transition problem for credit unions and other entities not now subject to regulations requiring early withdrawal penalties. It acted to alleviate this problem by delaying the effective date of its requirements for such penalties for such institutions until January 1, 1987. It is the Board's view that the amendments will not impose any additional reporting or recordkeeping requirements. To a large extent, the amendments retain the current reserve maintenance and deposit reporting system. Obsolete terms and provisions are being removed from the regulation to simplify it, and several of the clarifying amendments ensure more liberal treatment for savings deposits and MMDAs. This rule applies to all depository institutions. It is not anticipated that the amendments will have a negative effect on the ability of small depository institutions to attract deposits.

This rule relieves certain existing regulatory restrictions on depository institutions, preserves current policies regarding the treatment of these deposits under the regulation, and replaces statutory and regulatory provisions expiring March 31, 1986. Accordingly, the Board finds good cause for implementing this rule on April 1, 1986, which is within thirty days after the date of publication.

List of Subjects in 12 CFR Part 204

Banks, banking; Federal Reserve System; Foreign banking.

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 USC 461(a)), the Board is amending Part 204 as follows:

PART 204—[AMENDED]

1. The authority citation for 12 CFR Part 204 continues to read:

Authority: Secs. 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 461, 601, 611); and sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105), unless otherwise noted.

2. In § 204.2, the introductory text and paragraphs (b); (c); (d); (e); (f)(1)(i), (ii), and (v) are revised; and (f)(3) is added to read:

§ 204.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

* * * * *

(b)(1) "Demand deposit" means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing

funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of:

(i) Checking accounts;

(ii) Certified, cashier's and officer's checks (including checks issued by the depository institution in payment of dividends);

(iii) Traveler's checks and money orders that are primary obligations of the issuing institution;

(iv) Checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices;

(v) Letters of credit sold for cash or its equivalent;

(vi) Withheld taxes, withheld insurance and other withheld funds;

(vii) Time deposits that have matured or time deposits upon which the contractually required notice of withdrawal as given and the notice period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); and

(viii) An obligation to pay, on demand or within six days, a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited.

(2) The term "demand deposit" also means deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which the depositor is authorized to make withdrawals or transfers in excess of the withdrawal or transfer limitations specified in § 204.2(d)(2) for such an account and the account is not a NOW account, or an ATS account or other account that meets the criteria specified in either § 204.2(b)(3)(ii) or (iii) below.

(3) "Demand deposit" does not include:

(i) Any account that is a time deposit or a savings deposit under this Part;

(ii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and either—

(A) Is subject to check, draft, negotiable order of withdrawal, share draft or similar item, such as an account authorized by 12 USC 1832(a) ("NOW Account") and an MMDA as described in § 204.2(d)(2)(ii), provided that the depositor is eligible to hold a NOW account; or

(B) From which the depositor is authorized to make transfers by preauthorized transfer or telephonic (including data transmission) agreement, order or instruction to another account or to a third party, provided that the depositor is eligible to hold a NOW account;

(iii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such other account, such as accounts authorized by 12 USC 371a (automatic transfer account or ATS account), provided that the depositor is eligible to hold an ATS account;

(iv) Any obligation that is a time deposit under § 204.2(c)(1)(iv);

(v) Checks or drafts drawn by the depository institution on the Federal Reserve or on another depository institution; or

(vi) IBF time deposits meeting the requirements of § 204.8(a)(2).

(c)(1) "Time deposit" means:

(i) A deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit.[1] A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal. If such additional early withdrawal penalties are not imposed, the account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account.[2] "Time deposit" includes funds—

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal;

(D) Held in "club" accounts (such as "Christmas club" accounts and "vacation club" accounts that are not maintained as "savings deposits") that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period; or

(E) Share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations;

(ii) A "savings deposit;"

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[1] Accounts existing on March 31, 1986, may satisfy the early withdrawal penalties specified by this Part by meeting the Depository Institutions Deregulation Committee's early withdrawal penalties in existence on March 31, 1986. Accounts that otherwise meet the requirements for time deposits but that lack such penalties due to a lack of a regulatory requirement for such a penalty, as in the case of Federally-chartered credit unions, may continue to be classified as time deposits; however, the penalty should be included in time deposits opened, renewed or to which additional deposits are made on or after January 1, 1987.

A time deposit, or a portion thereof, may be paid before maturity without imposing the early withdrawal penalties specified by this part:

(a) Where the time deposit is maintained in an Individual Retirement Account established in accordance with 26 U.S.C. 408 and is paid within seven days after establishment of the Individual Retirement Account pursuant to 26 CFR 1.408-6(d)(4), or where it is maintained in a Keogh (H.R. 10) plan; provided that the depositor forfeits an amount at least equal to the simple interest earned on the amount withdrawn;

(b) Where the depository institution pays all or a portion of a time deposit representing funds contributed to an Individual Retirement Account or a Keogh (H.R. 10) plan established pursuant to 26 U.S.C. 408 or 26 U.S.C. 401 when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. 72(m)(7)) or thereafter;

(c) Where the depository institution pays that portion of a time deposit on which federal deposit insurance has been lost as the result of the merger of two or more federally insured banks in which the depositor previously maintained separate time deposits, for a period of one year from the date of the merger;

(d) Upon the death of any owner of the time deposit funds;

(e) When the owner of the time deposit is determined to be legally incompetent by a court or other administrative body of competent jurisdiction; or

(f) Where a time deposit is withdrawn within ten days after a specified maturity date even though the deposit contract provided for automatic renewal at the maturity date.

[2] A nonpersonal time deposit with a stated maturity of one and one-half years or more may be treated as having an original maturity of one and one-half years or more for reserve requirement purposes only if it is subject to the minimum penalty described in § 204.2(f)(3).

(iii) An "IBF time deposit" meeting the requirements of § 204.8(a)(2); and

(iv) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by—

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof,[3] engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[4]

(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, or statement, or by book entry or otherwise.

(d)(1) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term "savings deposit' includes a regular share account at a credit union and a regular account at a savings and loan association.

(2) The term "savings deposit" also means:

(i) A deposit or account that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the account agreement, or by practice of the depository institution, the depositor is permitted or authorized to make no more than three withdrawals per calendar month, or statement cycle (or similar period) of at least four weeks, for the purpose of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, provided that no such withdrawals may be by check, draft or similar order (including debit card) drawn by the depositor to third persons. A "preauthorized transfer" includes any arrangement by the depositor institution to pay a third party from the account of a depository upon written or oral instruction (including an order received through an automated clearing house (ACH) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from the account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[5]

(ii) A deposit or account, such as an account commonly known as a "money market deposit account" ("MMDA"), that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks to another account (including a transaction account) of the depositor at the same institution or to a third party by means of the preauthorized or automatic transfer (see § 204.2(d)(2)(i)), or telephonic (including data transmission) agreement, order or instruction and no more than three of the six such transfers may be made by check, draft, debit card or similar order made by the depositor and payable to third parties. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.[6]

(3) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(4) "Savings deposit" does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are "transaction accounts."

(e) "Transaction account" means a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine ("ATM") or a remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in § 204.2(d)(2) even though such accounts permit third party transfers. "Transaction account" includes:

(1) Demand deposits;

(2) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or

[3] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[4] The designated entities are specified in 12 CFR 217.126.

[5] In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definitions in § 204.2(d)(2), a depository institution must either:

(a) prevent withdrawals or transfers of funds in this account that are in excess of the limits established by § 204.2(d)(2)(i) or (ii), or

(b) adopt procedures to monitor those transfers on an *ex post* basis and contact customers who exceed the limits established by § 204.2(d)(2)(i) or (ii) on more than an occasional basis.

For customers who continue to violate those limits after being contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the account's transfer and draft capacities.

An account that authorizes withdrawals or transfers in excess of the permitted number in a transaction account regardless of whether the authorized number of transactions are actually made.

[6] See footnote 5. For accounts described in § 204.2(d)(2)(ii), the institution at its option may use on a consistent basis either the date on the check, draft or similar item or the date the item is paid in applying the limits on such items.

transfer of any funds in the account and that are subject to check, draft, negotiable order of withdrawal, share draft, or other similar item, except accounts described in § 204.2(d)(2)(ii) (MMDAs), but including accounts authorized by 12 USC 1832(a) ("NOW accounts").

(3) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer or credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such accounts, except accounts described in § 204.2(d)(2), but including accounts authorized by 12 U.S.C. 371a (automatic transfer accounts or ATS accounts).

(4) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make more than three withdrawals per month or statement cycle (or similar period) of at least four weeks for purposes of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of preauthorized transfer, or telephonic (including data transmission) agreement, order or instruction, except accounts described in § 204.2(d)(2). An account that authorizes more than three such withdrawals in a calendar month, or statement cycle (or similar period) of at least four weeks, is a "transaction account" whether or not more than three such transfers are made during such period. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)), or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.

(5) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others or to a deposit account of the depositor.

(6) All deposits other than time and savings deposits.

(f)(l) "Nonpersonal time deposit" means:

(i) A time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person;

(ii) A time deposit, including an MMDA or any other savings deposit, that represents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

* * * * *

(v) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by:

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof,[7] engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.[8]

* * * * *

(3) Any nonpersonal time deposit with a stated maturity or notice period of one and one-half years or more that permits any early withdrawal must be subject to a minimum early withdrawal penalty equal to at least thirty days' simple interest on the amount withdrawn for any withdrawal that occurs more than six days but within one and one-half years after the date of deposit. Any such account not subject to this minimum early withdrawal penalty will be regarded as a nonpersonal time deposit with an original maturity or notice period of from seven days to less than one and one-half years from the date of the deposit.[9]

* * * * *

§ 204.2 [Amended]

3. Section 204.2 is amended as follows:

(a) By redesignating the first footnote 1 in paragraph (h)(1)(ii)(A) as footnote 10.

(b) By redesignating the second footnote 1 in paragraph (h)(2)(ii) as footnote 11 and revising the footnote to read, "See footnote 10."

(c) By redesignating footnote 2 in paragraph (t)(1) as footnote 12.

4. Section 204.3 is amended by revising paragraphs (a)(3)(i) and (h) to read:

§ 204.3 Computation and maintenance.

(a) * * *

(3) * * * (i) In determining the reserve requirements of a depository institution, the exemption provided for in section 204.9(a) shall apply in the following order of priorities:

(A) First, to net transaction accounts that are first authorized by federal law in any state after April 1, 1980;

(B) Second, to other net transaction accounts: and

(C) Third, to nonpersonal time deposits (including MMDAs and other savings deposits) and Eurocurrency liabilities starting with those with the highest reserve ratio under § 204.2(a) and then to succeeding lower reserve ratios.

* * * * *

(h) *Carryover of Excesses or Deficiencies.* Any excess or deficiency

[7] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[8] The designated entities are specified in 12 CFR 217.126.

[9] See Footnote 1 for treatment of accounts existing on March 31, 1986 and for exceptions to the imposition of the early withdrawal penalties imposed by this Part. The penalty required by this § 204.2(f)(3) and that required by § 204.2(c)(1) need not be aggregated.

in a required reserve balance for any maintenance period that does not exceed the greater of two percent of the institution's required reserves (including required clearing balances and net of the required clearing balance penalty free band where applicable) or $25,000, shall be carried forward to the next maintenance period. Any carryover not offset during the next period may not be carried forward to subsequent periods.

* * * * *

§204.4 [Amended]

5. Section 204.4 is amended as follows:

a. By amending the last sentence of paragraph (a) by removing the language after "1980" and replacing it with a period.

b. By removing paragraphs (b) and (c).

c. By redesignating paragraph (d) as paragraph (b) and removing the phrase "or (c), as applicable,".

d. By redesignating paragraph (e) as paragraph (c) and in new paragraph (c)(2)(ii) replacing "eight" with "seventeen".

e. By redesignating paragraph (f) as paragraph (d) and by removing from new paragraph (d)(2) the language", including deposits or accounts issued pursuant to 12 CFR 1204.122,".

f. By redesignating paragraph (g) as paragraph (e) and changing the references in paragraphs (e)(1) and (2) from "(a) through (f)" to "(a) through (d)" and the reference in paragraph (e)(2)(iii) from "(g)" to "(e)".

§ 204.8 [Amended]

6. Section 204.8 is amended as follows:

a. revising paragraph (a)(2)(i)(B)(5) to read: A foreign national government, or an agency or instrumentality thereof,[13] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board;[14] or

b. By revising paragraph (a)(3)(v) to read: A foreign national government, or an agency or instrumentality thereof,[15] engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board;[16] or

c. By amending paragraph (e) by removing the phrase "and to interest payment limitations that may be applicable under Regulation Q (12 CFR Part 217) on its IBF time deposits,".

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-6143 Filed 3-19-86; 8:45 am]

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[13] Other than states, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

[14] The designated entities are specified in 12 CFR 217.126.

[15] See footnote 13.

[16] See footnote 14.

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12 CFR Part 217

[Reg. Q; Docket No. R-0566]

Interest on Deposits; Definition of Deposit and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board is adopting a final rule amending 12 CFR Part 217 (Regulation Q—Interest on Deposits). Concurrently, the Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). The amendments are being adopted after consideration of public comment on proposed amendments to Regulation Q (51 FR 31) and Regulation D (51 FR 27).

The amendments are due to the expiration on March 31, 1986, of the statutory authority to set interest rate ceilings on time and savings deposits and to prescribe rules regarding early withdrawals from time deposits. All regulations of the Board issued under this authority and all regulations of the Depository Institutions Deregulation Committee ("DIDC") also expire on that date.

These amendments rely on the definitions of "deposit" and "demand deposit" in the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) for the purposes of Regulation Q. The amendments eliminate the sections of Regulation Q that govern withdrawals from time deposits and savings deposits, set early withdrawal penalties, and establish account characteristics and interest rate ceilings. Rules regarding early withdrawal penalties for reserve requirement purposes (rather than for enforcement of interest rate limitations) and definitions of the various categories of "deposit" now appear in Regulation D.

This final rule does not address advertising of deposits by member banks (§ 217.6 of Regulation Q) which the Board also published for comment (51 FR 1379) and which will be adopted at a later date.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Patrick J. McDivitt, Attorney, (202/452-3818), Legal Division, or Ernestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a), gives the Board the authority to issue rules defining terms used in section 19 in order to prevent evasions of that section. Section 19(i) of that Act (12 U.S.C. 371a) prohibits the payment of interest on a demand deposit by a member bank, and section 19(j) of that Act (12 U.S.C. 371b) gives the Board authority to issue rules governing the payment and advertising of interest on deposits.[1] Pursuant to this authority, the Board promulgated its current Regulation Q which regulates the payment of interest on deposits.

The Board's authority under section 19(j) to issue rules governing the payment of interest on deposits, other than demand deposits, and the comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board expire with the expiration of the Depository Institutions Deregulation Act of 1980 at the end of March 31, 1986.

The expiration of the rules of the DIDC and of the authorities transferred to the DIDC at the end of March 31, 1986, will not affect section 19(i) of the Federal Reserve Act which prohibits a member bank from paying interest on a demand deposit. Nor will these expirations affect the authority of member banks to offer accounts that permit automatic transfers to checking accounts ("ATS accounts") as authorized by the last sentence of section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) or to offer accounts subject to negotiable orders of

[1] The current advertising rule is codified in Regulation Q at 12 CFR 217.6—Advertising of Interest on Deposits. In a separate rulemaking proceeding, the Board requested comment on proposed revisions to its rules on member bank advertising of interest on deposits (51 FR 1379). The comment period for the separate rulemaking on advertising closed on March 6, 1986.

withdrawal ("NOW accounts") as authorized by section 2(a) of Pub. L. 93-100 (12 U.S.C. 1832(a)).

The amendments being adopted by the Board revise §§ 217.1-217.5 and 217.7 of Regulation Q by removing the rules relating to penalties for early withdrawals from time deposits (section 217.4) and the interest rate ceilings and account characteristics for time and savings deposits (primarily § 217.7).[2]

In order to prevent savings deposits from being used to evade the prohibition against the payment of interest on "demand deposits," the Board in the past prescribed rules regarding withdrawals from savings deposits. The Board is retaining the substance of these provisions but has incorporated them into Regulation D. Consequently, the rules governing withdrawals from savings deposits, currently contained in § 217.5, are unnecessary and are being rescinded.

The revised definition of "demand deposit" in Regulation D, which is being incorporated by reference in Regulation Q, defines the accounts subject to the prohibition against the payment of interest on demand deposits. Under the revised definition, the term "demand deposit" excludes NOW accounts and ATS accounts as well as ordinary savings deposits and money market deposit accounts ("MMDAs") if the applicable transfer limitations are adhered to. If the depositor is authorized to exceed the transfer limitations applicable to savings deposits and MMDAs, however, such accounts would be "transaction accounts" for the purpose of Regulation D but would not be "demand deposits" for the interest payment prohibition purposes of Regulation Q if the depositor is eligible to hold another type of account, such as a NOW account or an ATS account, that would permit the particular excess transfers. For other depositors, savings deposits and MMDAs authorized to exceed the withdrawal or transfer limitations would be considered to be demand deposits on which interest could not be paid.

The definition of "savings deposit" is also deleted from Regulation Q, and an amended definition of that term is contained in Regulation D. The Regulation D definition also removes the $150,000 limitation on business savings accounts but treats a business telephone transfer account authorizing more than three telephone transfers per month as "demand deposit."

The Board's rules regarding the payment of interest are also set forth in various Board interpretations and policy statements and in staff opinions and rulings. These amendments render many of these interpretations, policy statements, and staff opinions unnecessary, and the Board will be revising these positions accordingly. Unless a contrary intent is evidenced in the revised Regulations D and Q, until the technical revisions are promulgated, member banks may continue to rely upon existing interpretations and policies concerning the exceptions from early withdrawal penalties, the use of premiums, the payment of interest after maturity of a deposit, and the grace period for withdrawals without penalty from an automatically renewable time deposit after a rollover or maturity date. Further, certain disclosure requirements currently found in the related or revised sections of the current Regulation Q are retained in a new § 217.4.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the amendments will not impose any additional reporting or recordkeeping requirements. The purpose of this rule is to simplify Regulation Q and to remove obsolete terms and conditions that affect the payment of interest on deposits. The rule applies to banks that are members of the Federal Reserve System. It is anticipated that this rule will have little or no adverse effect on the ability of small depository institutions to attract deposits.

This rule removes existing regulatory provisions, the authority for which expires on March 31, 1986 and amends provisions to preserve current requirements in light of the expiration of other requirements. Consequently, the Board finds good cause for implementing this rule on April 1, 1986, which is within thirty days after the date of publication.

List of Subjects in 12 CFR Part 217

Banks, banking, Federal Reserve System, Interest on deposits.

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 et seq., 371a and 371b), the Board is amending Part 217 as follows:

PART 217—[AMENDED]

1. The Authority citation for 12 CFR Part 217 is revised to read.

Authority: 12 U.S.C. 248, 371, 371a, 371b, 461, 1828, and 3105, unless otherwise noted.

§§ 217.3, 217.4, 217.5, and 217.7 [Removed]

2. Current §§ 217.3, 217.4, 217.5, and 217.7 of this Part are removed.

3. Current §§ 217.0 through 217.2 are redesignated as §§ 217.1 through 217.3 and are revised to read:

§ 217.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued under the authority of section 19 of the Federal Reserve Act (12 U.S.C. 371, 371a, 371b, 461), section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), and section 11 of the Federal Reserve Act (12 U.S.C. 248), unless otherwise noted.

(b) *Purpose.* This regulation prohibits the payment of interest on demand deposits by member banks and other depository institutions within the scope of this regulation and sets forth requirements concerning the advertisement of interest on deposits by member banks and these other institutions.

(c) *Scope.* (1) This regulation applies to state chartered banks that are members of the Federal Reserve under section 9 of the Federal Reserve Act (12 U.S.C. 321, et seq.) and to all national banks. The regulation also applies to any Federal branch or agency of a foreign bank and to a State uninsured branch or agency of a foreign bank in the same manner and to the same extent as if the branch or agency were a member bank, except as may be otherwise provided by the Board, if:

(i) Its parent foreign bank has total worldwide consolidated bank assets in excess of $1 billion;

(ii) Its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion; or

(iii) Its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion.

(2) For deposits held by a member bank or a foreign bank, this regulation does not apply to "any deposit that is payable only at an office located outside of the United States" (*i.e.*, the States of the United States and the District of Columbia) as defined in § 204.2(t) of the Board's Regulation D— Reserve Requirements of Depository Institutions (12 CFR Part 20.4).

[2] Section 217.4 of this final rule retains the current requirement that a member bank disclose to the customer the effect of any early withdrawal penalty. That section also retains the current requirement that interest cannot be paid after a maturity date unless the contract provides otherwise.

§ 217.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

(a) "Demand deposit" means any deposit that is considered to be a "demand deposit" under § 204.2(b) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(b) "Deposit" means any liability of a member bank that is considered to be a "deposit" under § 204.2(a) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(c) "Foreign bank" means any bank that is considered to be a "foreign bank" under § 204.2(o) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(d) "Interest" means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A member bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a payment of interest.

§ 217.3 Interest on demand deposits.

No member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit.[1]

4. A new § 217.4 is added as follows:

§ 217.4 Miscellaneous.

(a) *Early withdrawal penalty.* At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of any early withdrawal penalty which shall (1) state clearly that the customer has contracted to keep the funds on deposit for the stated maturity, and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statement shall be expressly called to the attention of the customer.

(b) *Payment of interest.* On each automatically renewable certificate, passbook, or other document representing a time deposit, the bank shall have printed or stamped a conspicuous statement indicating that the contract will be renewed automatically upon maturity and indicating the terms of such renewal.

By order of the Board of Governors of the Federal Reserve System, March 17, 1986.

William W. Wiles,

Secretary of the Board.

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[1] A member bank may continue to pay interest on a time deposit for not more than ten calendar days: (1) Where the member bank has provided in the time deposit contract that, if the deposit or any portion thereof is withdrawn not more than ten calendar days after a maturity date (one business day for "IBF time deposits" as defined in § 204.8(a)(2) of Regulation D), interest will continue to be paid for such period; or (2) for a period between a maturity date and the date of renewal of the deposit, provided that such certificate is renewed within ten calendar days after maturity.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 352

Nondiscrimination on the Basis of Handicap

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This final regulation, which implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, defines the scope of the FDIC's obligation to ensure that, to the extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Ann Marie Kohlligian, Attorrney, Legal Division (202/898-3711) or Thomas W. Louden, Jr., Assistant to the Associate Director, Division of Accounting and Corporate Service (202/298-3615), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This regulation implements the spirit of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by various agencies. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, it has voluntarily chosen to promulgate this regulation pursuant to section 504.

On April 18, 1985 the FDIC published a Notice of Proposed Rulemaking ("NPRM") pursuant to its policy of voluntary compliance. The prohibitions against discrimination on the basis of handicap contained in the proposed regulation applied only to those FDIC programs or activities which are available to members of the general public. The proposed regulations also stated that the FDIC did not have to take any action to accommodate handicapped persons if such action would result in a fundamental alteration in the nature of the program or activity or in undue financial or administrative costs. The deadline for receiving comments on the proposed regulation was set for June 18, 1985. Five comments were received in response to the notice, two from organizations representing handicapped persons and three from other federal agencies, including the Department of Justice and the Equal Employment Opportunity Commission ("EEOC").

In general, the commenters objected to the limitation of the application of the proposed regulation to only those programs and activities in which the general public participates and to the use of the fundamental alteration and/or undue burdens defenses in areas which they argued are inappropriate, such as in the definition of qualified handicapped person or with respect to program accessibility in cases of new construction. The FDIC has discussed all the comments with the Justice Department and the EEOC. A complete analysis of these comments and of the changes made to the proposed regulation is provided below.

Section-by-Section Analysis and Response to Comments

Section 352.1 Purpose.

This section, as proposed, described the general purpose of the regulation and there is no change from the proposed regulation.

Section 352.2 Application.

In the proposed regulation, this section stated that Part 352 applies to those FDIC programs and activities which are available to members of the general public. The section has been modified in response to the comments received and now states that this rule applies to all activities and programs conducted by the FDIC. Since this rule will most likely apply to the programs and activities which are open to members of the general public, the final regulation retains the list of such programs and activities that was contained in the proposed rule to provide notice to interested persons. Also, in response to commenters, the FDIC has added a paragraph (b) which specifically states that FDIC personnel will comply with this part in their interaction with employees of insured