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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to comply with a recent decision of the U.S. Court of Appeals for the Federal Circuit concerning the computation of overtime pay for Federal employees under the Fair Labor Standards Act of 1938, as amended.

DATES: This interim rule is effective retroactively to the first day of the first full biweekly pay period beginning on or after July 21, 1987. Comments must be received on or before February 16, 1988.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James E. Matteson, (202) 632-5056.

SUPPLEMENTARY INFORMATION: On May 14, 1987, the U.S. Court of Appeals for the Federal Circuit rendered its decision in the matter of *Chester Lanehart, et al. v. Constance Horner, et al.*, 818 F.2d 1574 (Fed. Cir. 1987). At issue was the quantum of "pay" to which appellants, Federal firefighters subject to the Fair Labor Standards Act (FLSA), were and are entitled during authorized absences from work under the "leave with pay" provisions of 5 U.S.C. 6303 (annual leave), section 6307 (sick leave), section 6233 (court leave), and section 6323

(military leave). The Court of Appeals held that the "leave with pay" statutes prevent any reduction in the "customary and regular pay" of the appellants, including overtime pay under the FLSA. The U.S. Solicitor General decided not to request a rehearing of *Lanehart* before the U.S. Court of Appeals for the Federal Circuit or to appeal the decision to the U.S. Supreme Court, and the decision on the merits of the case became final on July 21, 1987.

The Court of Appeals' decision overturns a longstanding principle upon which much of the Federal Government's FLSA pay administration policy was based—namely, that the administration of pay under the FLSA is entirely separate from pay administration under Title 5, United States Code. The Court specifically concluded that the Title 5 "leave with pay" statutes must be construed as covering compensation under a different statute—i.e., the Fair Labor Standards Act (title 29).

The Office of Personnel Management has determined that the Court of Appeals' decision applies to any employee who receives additional compensation for overtime work on a "customary and regular" basis, including (1) annual premium pay for standby duty under 5 U.S.C. 5545(c) (1); (2) annual premium pay for administratively uncontrollable overtime (AUO) work under 5 U.S.C. 5545(c)(2); and (3) overtime pay for "regularly scheduled" overtime work, as defined in 5 CFR 550.103(p) and 610.102(g)—e.g., six 8-hour days each week or four 10-hour days each week (not under an Alternative Work Schedule).

While the Court of Appeals' decision specifically addressed the "leave with pay" statutes under sections 6303, 6307, 6322, and 6323 of Title 5, United States Code, the interim rule also encompasses "paid absences" under section 6305 (home leave and shore leave) and section 6326 (funeral leave), holidays under section 6102 of Title 5, United States Code, and excused absences. Therefore, if an employee in any of the situations described above receives pay for periods of nonwork (leave, holidays, or excused absences), the paid absence must be counted as if it were "hours of work" for the purpose of determining the employee's FLSA overtime pay entitlement. Additional guidance concerning implementation of this

decision will be provided through the Federal Personnel Manual system.

Pursuant to section 553 (b)(3)(B) and (d)(3) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and 30-day delay in the effective date are being waived because of the need to implement the Court of Appeals' decision, which became final on July 21, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 551 of Title 5, Code of Federal Regulations, as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority citation for Part 551 continues to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act, as amended by Pub. L. 93-259, enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

2. In § 551.401, paragraph (b) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 551.401 Basic principles.

(b) Except as provided in paragraph (c) of this section, paid periods of nonwork (e.g., leave, holidays, or excused absences) are not hours of work for the purpose of this part.

(c) Paid periods of nonwork (e.g., leave, holidays, or excused absences) are counted as hours of work for the purpose of this part for an employee who receives—

(1) Annual premium pay for standby duty under 5 CFR 550.141;

(2) Annual premium pay for administratively uncontrollable overtime work under 5 CFR 550.151; or

(3) Overtime pay for regularly scheduled overtime work, as defined in 5 CFR 550.103(p) and 610.102(g).

3. In § 551.511, (b) introductory text is republished for the convenience of the reader, paragraph (b)(2) is revised, paragraphs (b)(3) through (b)(7) are redesignated as paragraphs (b)(4) through (b)(8), respectively, and a new paragraph (b)(3) is added to read as follows:

§ 551.511 Hourly regular rate of pay.

(b) "Total remuneration" includes all remuneration for employment paid to, or on behalf of, an employee except:

(2) Payments for periods during which no work is performed (e.g., leave, holidays, or excused absences) for all employees except those in receipt of—

(i) Annual premium pay for standby duty under 5 CFR 550.141;

(ii) Annual premium pay for administratively uncontrollable overtime work under 5 CFR 550.151; or

(iii) Overtime pay for regularly scheduled overtime work, as defined in 5 CFR 550.103(p) and 610.102(g);

(3) Reimbursements for travel expenses, or other similar expenses, incurred by an employee in furtherance of an agency's interest, which are not related to hours of work;

[FR Doc. 87-28816 Filed 12-15-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-149]

7 CFR Part 301

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the list of suppressive areas under the

witchweed quarantine and regulations by adding to, and deleting from, the list of areas in counties in North Carolina and South Carolina.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the *Federal Register* on July 8, 1987 (52 FR 25579-25585, Docket Number 87-011), we amended the regulations at 7 CFR Part 301 by adding areas in Columbus, Cumberland, Harnett, Hoke, Lenoir, Richmond, and Wayne Counties in North Carolina, and Florence County in South Carolina, to the list of suppressive areas in § 301.80-2a.

We also deleted areas in Beaufort, Columbus, Cumberland, Duplin, Greene, Harnett, Hoke, Johnston, Lenoir, Pender, Pitt, Richmond, Sampson, Scotland, and Wayne Counties in North Carolina and Florence, Horry, and Marlboro Counties in South Carolina from the list of suppressive areas in § 301.80-2a.

We did not receive any comments, which were required to be postmarked or received on or before September 8, 1987. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have

determined that, although there are approximately 290,000 small entities that move these articles interstate from the nonregulated areas in the United States, only about 5 small entities move them interstate from these areas in North Carolina and South Carolina. Further, we have estimated the overall economic impact from this action to be less than \$80.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published in the *Federal Register* on July 8, 1987 (52 FR 25579-25585).

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 10th day of December, 1987.

Donald Houston,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-28791 Filed 12-15-87; 8:45 am]
BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Part 1956

Debt Settlement for Farmer Programs and Single Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation on debt settlement for Farmers Programs (FP) and Single Family Housing (SFH) loans. This action is taken for more efficient administration of the program. The intended effect is to permit the use of an existing short internal use form to debt settle its Single Family Housing cases.

EFFECTIVE DATE: December 16, 1987.

FOR FURTHER INFORMATION CONTACT:

Betty Throne, Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules.

This action, however, is not published for proposed rulemaking since it involves only matters involving internal agency management, making publication for comment unnecessary and impractical.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants.

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—
Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for Part 1956 continues to read as follows:

Authority 7 U.S.C. 1989; U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Single Family Housing

2. Section 1956.57(j)(3) is revised to read as follows:

§ 1956.57 General provisions.

(j) * * *

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA 456-1 or Form FmHA 456-2 will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor. For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA 456-1 or Form FmHA 456-2.

3. Section 1956.58(b)(1) is amended by adding "or Form FmHA 456-2" after the words "Form FmHA 456-1."

4. Section 1956.58 paragraph (d) is amended by revising paragraphs (d)(1), (d)(2) and (d)(3) to read as follows:

§ 1956.58 Approval or rejection.

(d) * * *

(1) Insert the reasons for rejection on the form.

(2) Execute and retain the original form in the State Office.

(3) Return case files and copies of the form to the employee in charge of the account.

5. Section 1956.70(b)(2) is amended in the last sentence by removing the period and adding the following: "or Form

FmHA 456-2 for Single Family Housing loans."

6. Section 1956.70(b)(3) is revised to read as follows:

§ 1956.70 Cancellation.

(b) * * *

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA 456-1, or Form FmHA 456-2 for Single Family Housing loans, with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC the debt is not discharged.

7. Section 1956.75, the introductory text of paragraph (a) is revised to read as follows:

§ 1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA 456-1 or Form FmHA 456-2 for single family housing loans upon a report and favorable recommendation of the employee in charge of the account provided:

8. In § 1956.75, the introductory text of paragraph (b) is amended by adding after the words, "charged off" the words "using Form FmHA 456-2."

Dated: November 5, 1987.

Vance L. Clark,
Administrator, Farmers Home
Administration.

[FR Doc. 87-28853 Filed 12-15-87; 8:45 am]

BILLING CODE 3410-01-M

FEDERAL RESERVE SYSTEM**12 CFR Parts 204 and 217**

[Regulations D and Q; Docket No. R-0624]

Reserve Requirements of Depository Institutions Interest on Deposits; Amendments to Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Recission and revision of interpretations; technical amendments of regulation.

SUMMARY: The Board is amending 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions) and Part 217 (Regulation Q—Interest on Deposits) by rescinding obsolete published interpretations of Regulation Q and by revising others to reflect the expiration, on March 31, 1986, of the Depository Institutions Deregulation Act of 1980 ("DIDA"), as well as to clarify and simplify them. The Board is preserving some of the revised interpretations by reclassifying them as interpretations of Regulation D. The Board is also making technical corrections to Regulation D and to several interpretations in Regulation D by removing unnecessary references or by incorporating clarifications that have been published elsewhere.

Effective March 31, 1986, the Board amended its Regulation D and Q to reflect the expiration of the DIDA. The expiration of the DIDA and the amendments to Regulation D and Q eliminated rate ceilings on the payment of interest on deposits and rendered many of the Regulation Q interpretations obsolete. The amendments to the interpretations of Regulations D and Q adopted today are technical and conform the surviving interpretations to the current Regulations D and Q. All amendments will be effective December 31, 1987, but interested parties are encouraged to contact staff prior to that date if further information is desired.

EFFECTIVE DATE: December 31, 1987.

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

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221) ("DIDA") expired on March 31, 1986, and eliminated the authority of the Board and other federal agencies regulating federally insured depository institutions to set ceilings on the rates of interest paid on classes of deposits (other than demand deposits, on which no interest may be paid). Prior to the expiration of the DIDA, the Board used provisions (such as early withdrawal penalties) in Regulation Q to enforce interest rate ceilings and to distinguish between classes of deposits for purposes of Regulation D. When the DIDA expired, the Board amended its

Regulation Q to reflect the removal of the authority to set ceilings on the rates of interest paid on deposits and to enforce these ceilings (51 FR 9636, March 20, 1986) and concurrently amended its Regulation D to preserve provisions (such as early withdrawal penalties and descriptions of particular deposit accounts) that it used to distinguish between classes of deposits for the purposes of Regulation D (51 FR 9629; March 20, 1986).

The Board is amending its Regulation Q by rescinding interpretations of Regulation Q that were made obsolete by the expiration of the DIDA, by revising the remaining interpretations to reflect the removal of the authority to set rate ceilings on deposits, and by clarifying and consolidating these interpretations. Where appropriate, the Board is retaining and revising interpretations concerning regulatory provisions used to distinguish between classes of deposits and, in some cases, moving them to Regulation D. Similarly, the Board is amending its interpretation on secondary market time deposit purchases to reflect the changes in the early withdrawal penalties now appearing in Regulation D and is moving the interpretation to Regulation D. Two interpretations of Regulation D are being amended to remove obsolete references to Regulation Q, and one interpretation of Regulation D is being revised to incorporate a clarification published elsewhere. Finally, the Board is amending two provisions in Regulation D to remove obsolete terms dependent upon interest rate ceiling provisions, which were removed in March of 1986.

Table 1 presents the interpretations the Board is rescinding and the reasons for rescission. Table 2 presents the interpretations the Board is revising and retaining, a description of any changes, an indication of whether the interpretation will remain an interpretation of Regulation Q or will be reclassified as an interpretation of Regulation D, and the regulatory provision related to the retained interpretations. Table 3 lists Regulation Q interpretations that are being retained in their current forms (either in Regulation Q or after their move to Regulation D) and the reasons for their retention even though portions of some of the interpretations relate to rate ceilings and thus are obsolete. Table 4 lists the Regulation D interpretations that are being amended and the reasons for the amendments.

TABLE 1—REGULATION Q INTERPRETATIONS BEING RESCINDED

A. Interest Rate Ceilings

The following interpretations address issues concerning compliance with interest rate ceilings. Because these interpretations were rendered obsolete in their entirety by the expiration of the DIDA and the consequent removal of interest rate ceilings effective April 1, 1986, the Board believes the interpretations serve no purpose and is rescinding them.

Section 217.105—Time certificate with alternate maturities. (18 FR 4005, Jul. 9, 1953)

This interpretation provides that, if a time deposit contract permits withdrawal either at a specified maturity or prior to the stated maturity after a specified period of written notice, the allowable maximum rate of interest would depend upon which of these withdrawal privileges the depositor elects and the rate applicable to the elected maturity.

Section 217.106—Rate of interest on loan secured by time deposit. (18 FR 5505, Sep. 15, 1953)

This interpretation addresses the permissible rate of interest on a loan by a member bank to its depositor "upon the security of" a multiple maturity time deposit.

Section 217.107—Time deposit, open account ["TDOA"], with alternate maturities. (18 FR 6206, Sep. 29, 1953)

This interpretation provides that the interpretation in § 217.105 should apply to multiple maturity TDOAs.

Section 217.112—Interest on time deposits with alternate maturities. (21 FR 6269, Aug. 21, 1956)

This interpretation applies fixed interest rate ceilings to these deposits.

Section 217.114—Grace period for receipt of savings deposits ending on holiday. (24 FR 8371, Oct. 15, 1959, Fed. Res. Reg. Serv. ¶ 2-448.

This interpretation disallows the use of more than the ten calendar days of grace previously specified by the regulation when computing the maximum rate payable on savings deposits in order to prevent evasion of interest rate ceilings.

Section 217.115—Time of receipt of savings deposit for grace period purposes. (25 FR 3395, Apr. 20, 1960. Fed. Res. Reg. Serv. ¶ 2-449)

This interpretation specifies the method of determining time of receipt of certain deposits for the purposes of setting the grace period when computing interest.

Section 217.116—Monthly payment by check of interest on deposits. (25 FR 5923, Jun. 28, 1960)

This interpretation provides that the monthly payment of interest would permit a depositor to redeposit the interest and thus earn an effective return in excess of the regulatory maximum of 3 percent, compounded quarterly, which would violate a then-applicable rate ceiling.

Section 217.124—Rate of interest on interest compounded quarterly at maximum rate 27 FR 2763, Mar. 24, 1962)

This interpretation provides that interest credited quarterly to an account can be compounded at the contract rate (which is based on the original maturity) on a calculation date rather than at the lower maximum ceiling based on the time the previously credited interest had been on deposit.

Section 217.131—Exchange of 12-month certificate of deposit for 90-day certificate. (28 FR 8282, Aug. 13, 1963)

This interpretation provides that a member bank may permit a depositor to exchange a one-year certificate with time remaining to maturity for a certificate paying the same rate if the original maturity on the new certificate is less than the time remaining to maturity on the old but only if an early withdrawal penalty is imposed.

Section 217.136—Deposit contract providing for three months' maturity with option to withdraw on ninety days' notice. (29 FR 8003, Jun. 24, 1964. Fed. Res. Reg. Serv. ¶ 2-454)

This interpretation states that a deposit contract providing for a fixed maturity date on each of several additional deposits with an option to withdraw the entire amount on 90 days' notice shall be treated as having a maturity equal to the shorter of the fixed date or the time to withdrawal after notice.

Section 217.139—Explanatory statement regarding maximum interest rates on deposits. (29 FR 16317, Dec. 5, 1964)

This interpretation summarizes the terms applicable to time deposits in 1964.

Section 217.141—Maximum rates on multiple maturity time deposits. (31 FR 10315, Jul. 30, 1966. Fed. Res. Reg. Serv. ¶ 2-455)

This interpretation summarizes the terms applicable to multiple maturity time deposits in 1966.

Section 217.144—5 percent multiple maturity time deposits. (33 FR 9015, Jun. 18, 1968. Fed. Res. Reg. Serv. ¶ 2-456)

This interpretation describes the limitations applicable to time deposits payable at intervals of 90 days.

Section 217.150—Rate payable when higher rate is payable only on short-term deposits. (35 FR 11780, Jul. 23, 1970)

This interpretation summarizes the terms applicable to time deposits of \$100,000 or more in 1970.

Section 217.155—Pooling of funds to obtain higher interest rates. (44 FR 32353, Jun. 6, 1979. Fed. Res. Reg. Serv. ¶ 2-458)

This interpretation prohibits a member bank from promoting the pooling of deposits by customers in order to evade minimum denomination requirements for certain time deposits.

Section 217.156—Application of Regulation Q to fixed rate obligations issued by the parent holding company of a member bank. (45 FR 72630, Nov. 3, 1980. Fed. Res. Reg. Serv. ¶ 2-460)

This interpretation clarifies how former § 217.1(h) applied Regulation Q interest rate limitations to such obligations.

Section 217.160—Loan upon the security of a time deposit. (47 FR 47231, Oct. 25, 1982. Fed. Res. Reg. Serv. ¶ 2-462.1)

This interpretation clarifies the application of the one percent spread between the rate charged on a loan and the rate paid on a time deposit securing the loan. The spread, which is no longer required, was necessary to prevent the evasion of early withdrawal penalties, particularly on longer term time deposits.

B. Definitions

The following interpretations address definitional issues in addition to issues concerning compliance with interest rate ceilings. The Board is rescinding these interpretations for the reasons stated.

(1) Definition of "deposit" generally.

Section 217.101—Time deposit of trust funds in member bank's own banking department. (14 FR 7727, Dec. 28, 1949. Fed. Res. Reg. Serv. ¶ 2-491)

This interpretation is now addressed by § 204.2(a)(2)(i) of Regulation D.

Section 217.158—Sales of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions. (47 FR 8988, Mar. 3, 1982. Fed. Res. Reg. Serv. ¶ 2-419.1)

This interpretation refers to a current interpretation of Regulation D (204.123) and therefore is unnecessary.

(2) Definition of "savings deposit" and "transaction account" specifically.

The following interpretations are unnecessary because the definitions of savings deposits and transaction accounts are now fully addressed by the definitions of "savings deposit" and "transaction account" in §§ 204.2(d)(2) and 204.2(e) of Regulation D, respectively.

Section 217.103—Presentation of savings accounts passbooks. (16 FR 580, Jan. 23, 1951)

This interpretation provides that deposits to and withdrawals from a savings account could be made by mail, even though the passbook did not accompany the customer's order or directive, without affecting the account's status as a "savings deposit."

Section 217.108—Payroll deduction savings plan. (19 FR 2716, May 12, 1954)

This interpretation provides that a member bank could not offer a company an automatic savings deposit plan for company employees under which automatic payroll deductions would be posted to the credit of individual employees. The plan provided for evidence of deposits by "savings account cards" which would be replaced weekly by a new card. The Board determined that the cards were not sufficiently like a traditional passbook.

Section 217.110—Withdrawal from "savings deposit" not evidenced by a passbook. (20 FR 4209, Jun. 16, 1955)

This interpretation provides that a member bank is not permitted to pay a draft drawn on a savings deposit and payable to a third party even if the member bank and the third party agree that the draft is subject to the right of the institution to require 30 days' advance written notice prior to of withdrawal.

Section 217.111—Savings deposits without passbook. (20 FR 7355, Oct. 4, 1955)

See discussion at section 217.103 above.

Section 217.121—Savings deposits not evidenced by passbook. (26 FR 2219, Mar. 16, 1961, as amended 34 FR 7899, May 20, 1969)

This interpretation provides that allowing withdrawals only on the presentation of a passbook (or a deposit receipt) by a depositor was necessary to prevent the depositor from paying third parties by giving them withdrawal slips.

Section 217.152—Withdrawals of savings deposits by telephone. (40 FR 16831, Apr. 15, 1975. Fed. Res. Reg. Serv. ¶ 2-494)

This interpretation provides that withdrawals can be made by telephone from a savings deposit without affecting the status of the deposit for the purposes of Regulations D and Q. The status of a savings account subject to telephone withdrawals or transfers is now addressed in the definition of "savings deposit" in § 204.2(d)(2) of Regulation D.

C. Payment of Interest on Demand Deposits

The Board is rescinding the following interpretations of § 217.2(d) of Regulation Q. That section defines "interest" for purposes of that regulation, and § 217.3 prohibits the payment of interest on demand deposits. The Board's amended definition of "interest" now covers the issue addressed by these interpretations that the absorption of expenses or the forbearance from charging a fee will not constitute a payment of interest. Even though these interpretations are being rescinded, the Board's staff will still address individual cases for consistency with the regulation.

Section 217.109—Adjustment of interest on loans as payment of interest on deposit. (19 FR 3006, May 25, 1954. Fed. Res. Reg. Serv. ¶ 2-442)

This interpretation discusses two cases involving an adjustment of interest rates on loans. One case did not constitute the payment of interest on a demand deposit because the adjustment amounted to forbearance of a future charge while the other did because the adjustment amounted to a rebate of a charge already due.

Section 217.117—Absorption of exchange charged as payment of interest. (25 FR 7620, Aug. 11, 1960)

This interpretation provides that the payment of interest includes any direct or indirect payment or absorption of exchange charges by any device whatsoever, regardless of whether such payment or absorption is made directly by a member bank or indirectly through

any other bank for a member bank or a depositor of such member bank.

Section 217.118—Absorption of intangible personal property tax on bank deposits. (25 FR 9845, Oct. 14, 1960. Fed. Res. Reg. Serv. ¶ 2-434)

This interpretation provides that absorption of taxes on demand deposits does not constitute a payment of interest on a demand deposit regardless of whether the tax is levied on the bank or the depositor.

Section 217.120—Authority for absorption of certain normal exchange charges. (25 FR 10866, Nov. 16, 1960)

This interpretation provides that normal exchange charges could be absorbed without constituting a payment of interest.

D. Business Savings Accounts

Because the Board removed the \$150,000 limitation on business savings accounts effective April 1, 1986, the following interpretations concerning business saving accounts no longer serve a purpose. Business eligibility to maintain a NOW account is determined by federal law (12 U.S.C. 1832) and by the Board's interpretation regarding NOW account eligibility (12 CFR 217.157; Fed. Res. Reg. Serv. ¶ 2-462.5) discussed below.

Section 217.119—Associated Hospital Service ineligible to maintain savings account. (25 FR 9845, Oct. 14, 1960. Fed. Res. Reg. Serv. ¶ 2-482)

This interpretation provides that a hospital association is ineligible to maintain a savings account because it is operated as a mutual insurance company and is not operated for a charitable purpose. Thus, the interpretation is inconsistent with current law and regulations.

Section 217.132—Deposits of trustees in bankruptcy as "savings deposits." (28 FR 9384, Aug. 27, 1963. Fed. Res. Reg. Serv. ¶ 2-488)

This interpretation provides that the nature of the beneficial owners of such deposits rather than the nature of the named account holder trustee will determine whether the funds may be placed in a "savings deposit." The concept of looking to the beneficial owner of fiduciary accounts to determine the character of the account is now fully addressed in the definition of "nonpersonal time deposit" in § 204.2(f) of Regulation D.

Section 217.135—Savings accounts by corporations operated for profit prohibited. (29 FR 398, Jan. 16, 1964)

This interpretation states the Board's position that member banks, including national banks, were prohibited from opening savings deposits for corporations. Thus, the interpretation is inconsistent with current law and regulations.

E. Miscellaneous

Section 217.133—Withdrawal of uninsured portion of deposit after bank merger. (28 FR 12360, Nov. 22, 1983)

This interpretation provides that a member bank may permit the immediate withdrawal of time or savings deposits when the bank has absorbed another bank by merger and depositors common to both banks have such accounts in the resulting bank in excess of the amount covered by deposit insurance. This interpretation is now incorporated in footnote 1 to § 204.2(c)(1)(i) of Regulations D; therefore, it is unnecessary and is being rescinded.

Section 217.140—Reduction in rate of interest on time deposit during period of loan made on security of such deposit. (30 FR 5574, Apr. 20, 1965. Fed. Res. Reg. Serv. ¶ 2-461)

This interpretation provides that reduction of the rate of interests on the time deposit to maintain the required 2 percent spread between the rate on a loan secured by a time deposit did not amount to an evasion of the early withdrawal penalties in Regulation Q. The spread is no longer required and the interpretation is being rescinded.

TABLE 2—REGULATIONS Q INTERPRETATIONS (UNRELATED TO ADVERTISING) BEING REVISED AND RETAINED EITHER IN REGULATION Q OR IN REGULATION D

A. Revised and retained in Regulation Q

Section 217.134—Interest on time certifications falling due on holiday. (28 FR 12360, Nov. 22, 1963. Fed. Res. Reg. Serv. ¶ 2-453)

This interpretation is being retained but is being changed to reflect revised Regulation Q requirements. The revised interpretation clarifies that, although matured time deposits which have not been renewed or placed in another account upon maturity are reported as demand deposits for the purposes of Regulation D (reserves on deposits), the continued payment of interest until the next business day will not be regarded as a violation of Regulation Q.

Section 217.147—Premiums, finders fees, prepayment of interests, and payment of interest in merchandise. (48 FR 45757, Oct. 7, 1983)

This interpretation is being revised to clarify when premiums will not constitute a payment of interest on a demand deposit under § 217.3 of Regulation Q. Rules regarding finders fees, prepayment of interest, and payment of interest in merchandise are being rescinded.

B. Revised and Moved to Regulation D

Section 217.126—Foreign, international, and supranational entities exempt from interest rate limitations. 35 FR 1156, Jan. 29, 1970; 35 FR 2953, Feb. 13, 1970. Fed. Res. Reg. Serv. ¶ 2-457

This interpretation is moved to Regulation D as an interpretation of §§ 204.2(c)(1)(iv)(E) and 204.2(f)(1)(v)(E) of that regulation because it affects reserves on liabilities held for supranational entities.

Section 217.137—Member bank participation in "Federal funds" market. (35 FR 528, Jan. 15, 1970; as amended 44 FR 60076, Oct. 18, 1979. Fed. Res. Reg. Serv. ¶ 2-414)

Section 217.138—Nonbank participation in "Federal funds" market. (38 FR 35231, Dec. 26, 1973. Fed. Res. Reg. Serv. ¶ 2-418)

These interpretations are being retained but are being moved to Regulation D as interpretations of §§ 204.2(a)(1)(vii)(A)(1) and 204.2(a)(1)(vii)(D) of that regulation.

Section 217.146—Deposits at foreign branches guaranteed by domestic office of member bank. (35 FR 2768, Feb. 10, 1970. Fed. Res. Reg. Serv. ¶ 2-415)

This interpretation refers to a contemporaneously published interpretation of Regulation D (§ 204.112), but the text of the Regulation D interpretation has not appeared in the Code of Federal Regulations since 1980. The interpretation explains §§ 204.1(c)(5) and 204.2(t) of Regulation D. The Board is endorsing the text of the original interpretation (amended to clarify that it applies to "depository institutions" and not just to "member banks"), and it will now appear in section 204.128.

Section 217.153—Serial, sinking fund redemption, and amortized issues as capital. (41 FR 26201, Jun. 25, 1976. Fed. Res. Reg. Serv. ¶ 2-419)

This interpretation was previously incorporated at former § 217.1(f)(3) of Regulation Q and refers to a contemporaneous interpretation of

Regulation D (12 CFR 204.119) which is now codified at § 204.2(a)(1)(vii)(C) of Regulation D. It establishes criteria for concluding that certain subordinated notes do not constitute deposits. The substance of the interpretation is being retained but is being revised and moved to Regulation D as an interpretation of § 204.2(a)(1)(vii)(C) of that regulation.

Section 217.157—Eligibility for NOW Accounts. (46 FR 46899, Sept. 23, 1981, as amended at 47 FR 54759, Dec. 6, 1982. Fed. Res. Reg. Serv. ¶ 2-462.5)

This interpretation is being moved to Regulation D as an interpretation of § 204.2(e) of that regulation and is being revised to clarify that sole proprietors and individuals doing business under a trade or nominal business title are eligible to maintain a NOW account. Further, section 109 of Title I of the Competitive Equality Banking Act (Pub. L. No. 100-86) amended the statutory description of NOW accounts to make non-profit political organizations eligible to maintain NOW accounts, and this interpretation is being amended to reflect the statutory change. Finally, some historical detail on the origins of NOW accounts which was used to clarify the classification of NOW accounts for the purposes of Regulations D and Q is being deleted as the account is now clearly included in the definition of "transaction account" in § 204.2(e) of Regulation D.

Section 217.159—Member bank participation in the secondary market for its own time deposits. (47 FR 37878, Aug. 27, 1982. Fed. Res. Reg. Serv. ¶ 2-425.11)

This interpretation clarifies when a member bank's purchase of its time deposits in the secondary market is considered an early withdrawal of the deposits for interest rate determination purposes. This interpretation is being retained but is being revised to apply the early withdrawal penalties for reserve requirement purposes and moved to Regulation D as an interpretation of §§ 204.2(c)(1)(i) and 204.2(f)(3) of that regulation. As a matter of policy, the Board regards the maturity of a time deposit for reserve requirement purposes to be the soonest the liability may be removed from the depository institution's banks without penalty. This and related policies concerning the application of early withdrawal penalties may be affected by a pending proposed rulemaking (51 FR 16855; May 7, 1986). That rulemaking includes a determination as to the appropriate treatment of certain transactions (including asset sales with recourse) that may give rise to deposits and to the

maturity of such deposits when acceleration clauses or puts or calls are present.

C. Miscellaneous

Section 217.161—Repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities. (50 FR 13012, Apr. 2, 1985. Fed. Res. Reg. Serv. ¶ 2-419.2)

Such a repurchase agreement is not a "deposit" for purposes of Regulations D and Q. Further, shares in such MMMFs are permissible investments for state member banks.

This interpretation is being retained, but the text is being replaced with a cross reference to the corresponding published interpretation under Regulation D at 12 CFR 204.124. A related interpretation also appears in Regulation H—Membership of State Banking Institutions in the Federal Reserve System at 12 CFR 208.123 (Fed. Res. Reg. Serv. ¶ 3-416.14).

TABLE 3—REGULATION Q INTERPRETATIONS BEING RETAINED UNCHANGED

The Board believes that the portions of these interpretations concerning rate ceilings were rendered obsolete by the removal of interest rate ceilings effective April 1, 1986. The remaining portions of the interpretations concern advertising of interest on deposits. The Board's rules regarding advertising are currently under review (51 FR 1379; January 13, 1986), and these interpretations are being retained now and will be addressed when the Board completes that rulemaking.

Section 217.113—Time certificate of deposit with automatic renewal. (22 FR 2533, Apr. 13, 1957)

This interpretation summarizes the basic regulatory requirements applicable to automatically renewable time deposits.

Section 217.148—Information regarding computation of interest on deposits.—(35 FR 3751, Feb. 26, 1970. Fed. Res. Reg. Serv. ¶ 2-420)

This interpretation provides that each member bank should inform its customer as to the method that will be used to compute interest on the customer's interest-bearing deposit. It also provides that notice of changes to the account should be mailed to the depositor.

Section 217.151—Payment and computation of interest on time and savings deposits. (35 FR 19663, Dec. 29, 1970. Fed. Res. Reg. Serv. ¶ 2-412)

This interpretation sets out formulae which should be used when computing interest paid on deposits.

TABLE 4—REGULATION D INTERPRETATIONS BEING REVISED

Section 204.122—Secondary market activities of International Banking Facilities. (46 FR 62812, Dec. 29, 1982. Fed. Res. Reg. Serv. ¶ 2-263)

This interpretation concerns the extent to which IBFs may purchase IBF-eligible assets from or sell such assets to third parties under Regulation D. The interpretation was approved by the Board December 16, 1981, and was effective December 22, 1981. The Board concurrently approved a letter to the Reserve Banks (letter S-2455, December 16, 1981) which contained the text of this interpretation. The S-letter was revised January 12, 1982, to clarify how Regulation D applies such purchases and sales involving an IBF of an Edge or Agreement corporation. The amendment conforms the published interpretation to letter S-2455 as revised January 12, 1982, and ratifies that revision. Fed. Res. Reg. Serv. ¶ 2-263 already reflects the revision.

Section 204.123.—Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions. (47 FR 8987, Mar. 3, 1982; Fed. Res. Reg. Serv. ¶ 2-419.1)

Section 204.124—Repurchase agreement involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities. (50 FR 13011, Apr. 2, 1985; Fed. Res. Reg. Serv. ¶ 2-419.2)

These two interpretations provide that the described transactions do not create "deposits" for the purposes of Regulation D. They are being amended to remove a sentence from each that refers to a parallel provision in former 217.1(f)(2) of Regulation Q. This section was removed from Regulation Q effective March 31, 1986. Because Regulation Q now incorporates and relies upon the definitions of "deposit" in Regulation D. This cross reference is unnecessary.

Notice and Public Comment

The Board finds good cause for not asking for public comment prior to the adoption of these amendments. The amendments affect interpretations of regulations and, thus, are exempt from

the public notice provisions of the Administrative Procedure Act (5 U.S.C. 553(b) and (c)(2)) so long as they are interpretative rather than substantive in nature. The Board believes these amendments fall within this exemption. The amendments are technical in nature because they rescind obsolete interpretations and clarify or simplify remaining interpretations or conform them to current regulations. Accordingly, the Board believes that notice and public participation is impracticable, unnecessary, and contrary to the public interest. Nevertheless, the Board encourages interested parties to contact Board staff directly if they wish to express their views on the rescissions and revisions.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 60.1 *et seq.*), the Board certifies that these amendments will not have a significant economic impact on a substantial number of small entities. The amendments simplify the regulatory scheme of Regulation Q, and, other than simplifying and clarifying Regulations D and Q, will have no effect on regulatory burdens for all depository institutions generally or such burdens for small depository institutions, particularly, and have no particular effect on other small entities.

List of Subjects

12 CFR Part 204

Banks, Banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

12 CFR Part 217

Advertising of deposits, Interest on demand deposits, Banks, Banking, Federal Reserve System.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*, 371a, and 371b) the Board is amending 12 CFR Part 204 and Part 217 as follows:

1. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

1a. The authority citation for Part 217 continues to read as follows:

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

PART 204—[AMENDED]

§ 204.2 [Amended]

1b. Section 204.2(a)(1)(v) is amended by removing "four" and replacing it with "one and one-half" where it refers to years.

2. Section 204.2(a)(1)(vii)(C) is amended by removing "is not subject to federal interest rate limitations,".

3. Section 204.122(b) is revised as follows:

§ 204.122 Secondary market activities of International Banking Facilities.

* * * * *

(b) Consistent with the Board's intent, IBFs may purchase IBF-eligible assets¹ from, or sell such assets to, any domestic or foreign customer provided that the transactions are at arm's length without recourse. However, an IBF of a U.S. depository institution may not purchase assets from, or sell such assets to, any U.S. affiliate of the institution establishing the IBF; an IBF of an Edge or Agreement corporation may not purchase assets from, or sell assets to, any U.S. affiliate of the Edge or Agreement corporation or to U.S. branches of the Edge or Agreement corporation or to U.S. branches of the Edge or Agreement corporation other than the branch² establishing the IBF; and an IBF of a U.S. branch or agency of a foreign bank may not purchase assets from, or sell assets to any U.S. affiliates of the foreign bank or to any other U.S. branch or agency of the same foreign bank.² (This would not prevent an IBF from purchasing (or selling) assets directly from (or to) any IBF, including an IBF of an affiliate, or to the institution establishing the IBF; such purchases from the institution establishing the IBF would continue to be subject to Eurocurrency reserve requirements except during the initial four-week transition period.) Since repurchase agreements are regarded as loans, transactions involving repurchase agreements are permitted only with customers who are otherwise eligible to deal with IBFs, as specified in Regulation D.

* * * * *

¹ In order for an asset to be eligible to be held by an IBF, the obligor or issuer of the instrument, or in the case of bankers' acceptances, the customer and any endorser or acceptor, must be an IBF-eligible customer.

² Branches of Edge or Agreement corporations and agencies and branches of foreign banks that file a consolidated report for reserve requirements purposes (FR 2900) are considered to be the establishing entity of an IBF.

§ 204.123 [Amended]

4. Section 204.123 is amended by removing from its first paragraph the sentence, "A parallel exemption in Regulation Q * * * (12 CFR 217.1(f)(1))."

§ 204.124 [Amended]

5. Section 204.124(a) is amended by removing the sentence, "A parallel exemption in Regulation Q * * * (12 CFR 217.1(f)(2))."

§ 204.2 [Amended]**§ 217.126 [Redesignated as § 204.125]**

6. Footnote 4 of § 204.2(c)(1)(iv)(E) is amended by removing "217.126" and replacing it with "204.125" and § 217.126 is redesignated as § 204.125, and revised to read as follows:

§ 204.125 Foreign, international, and supranational entities whose deposits are exempt from reserves.

The entities referred to in section 204.2(c)(1)(iv)(E) are:

Europe

Bank for International Settlements.
European Atomic Energy Community.
European Coal and Steel Community.
The European Communities.
European Development Fund.
European Economic Community.
European Free Trade Association.
European Fund.
European Investment Bank.

Latin America

Andean Development Corporation.
Andean Subregional Group.
Caribbean Development Bank.
Caribbean Free Trade Association.
Caribbean Regional Development Agency.
Central American Bank for Economic Integration.
The Central American Institute for Industrial Research and Technology.
Central American Monetary Stabilization Fund.
East Caribbean Common Market.
Latin American Free Trade Association.
Organization for Central American States.
Permanent Secretariat of the Central American General Treaty of Economic Integration.
River Plate Basin Commission.

Africa

African Development Bank.
Banque Centrale des Etats de l'Afrique Equatoriale et du Cameroun.
Banque Centrale des Etats d'Afrique de l'Ouest.
Conseil de l'Entente.
East African Community.
Organisation Commune Africaine et Malagache.
Organization of African Unity.
Union des Etats de l'Afrique Centrale.
Union Douaniere et Economique de l'Afrique Centrale.
Union Douaniere des Etats de l'Afrique de l'Ouest.

Asia

and Pacific Council.
Association of Southeast Asian Nations.
Bank of Taiwan.
Korea Exchange Bank.

Middle East

Central Treaty Organization.
Regional Cooperation for Development.

§ 217.137 [Redesignated as § 204.126]

7. Section 217.137 is redesignated as § 204.126, and revised to read as follows:

§ 204.126 Depository institution participation in "Federal funds" market.

(a) Under § 204.2(a)(1)(vii)(A), there is an exemption from Regulation D for member bank obligations in nondeposit form to another bank. To assure the effectiveness of the limitations on persons who sell Federal funds to depository institutions, Regulation D applies to nondocumentary obligations undertaken by a depository institution to obtain funds for use in its banking business, as well as to documentary obligations. Under § 204.2(a)(1)(vii) of Regulation D, a depository institution's liability under informal arrangements as well as those formally embodied in a document are within the coverage of Regulation D.

(b) The exemption in § 204.2(a)(1)(vii)(A) applies to obligations owed by a depository institution to a domestic office of any entity listed in that section (the "exempt institutions"). The "exempt institutions" explicitly include another depository institution, foreign bank, Edge or agreement corporation, New York Investment (article XII) Company, the Export-Import Bank of the United States, Minbanc Capital Corp., and certain other credit sources. The term "exempt institutions" also includes subsidiaries of depository institutions:

(1) That engage in businesses in which their parents are authorized to engage; or

(2) The stock of which by statute is explicitly eligible for purchase by national banks.

(c) To assure that this exemption for liabilities to exempt institutions is not used as a means by which nondepository institutions may arrange through an exempt institution to "sell" Federal funds to a depository institution, obligations within the exemption must be issued to an exempt institution for its own account. In view of this requirement, a depository institution that "purchases" Federal funds should ascertain the character (not necessarily the identity) of the actual "seller" in order to justify classification of its liability on the transaction as "Federal

funds purchased" rather than as a deposit. Any exempt institution that has given general assurance to the purchasing depository institution that sales by it of Federal funds ordinarily will be for its own account and thereafter executes such transactions for the account of others, should disclose the nature of the actual lender with respect to each such transaction. If it fails to do so, the depository institution would be deemed by the Board as indirectly violating section 19 of the Federal Reserve Act and Regulation D.

§ 217.138 [Redesignated as § 204.127]

8. Section 217.138 is redesignated as § 204.127, and revised to read as follows:

§ 204.127 Nondepository participation in "Federal funds" market.

(a) The Board has considered whether the use of "interdepository institution loan participations" ("IDLs") which involve participation by third parties other than depository institutions in Federal funds transactions, comes within the exemption from "deposit" classification for certain obligations owed by a depository institution to an institution exempt in § 204.2(a)(1)(vii)(A) of Regulation D. An IDLP transaction is one through which an institution that has sold Federal funds to a depository institution, subsequently "sells" or participates out that obligation to a nondepository third party without notifying the obligated institution.

(b) The Board's interpretation regarding Federal funds transactions (12 CFR 204.126) clarified that a depository institution's liability must be issued to an exempt institution described in § 204.2(a)(1)(vii)(A) of Regulation D for its own account in order to come within the nondeposit exemption for interdepository liabilities. The Board regards transactions which result in third parties gaining access to the Federal funds market as contrary to the exemption contained in § 204.2(a)(1)(vii)(A) of Regulation D regardless of whether the nondepository institution third party is a party to the initial transaction or thereafter becomes a participant in the transaction through purchase of all or part of the obligation held by the "selling" depository institution.

(c) The Board regards the notice requirements set out in 12 CFR 204.126 as applicable to IDLP-type transactions as described herein so that a depository institution "selling" Federal funds must provide to the purchaser—

(1) Notice of its intention, at the time of the initial transaction, to sell or

participate out its loan contract to a nondepository third party, and

(2) Full and prompt notice whenever it (the "selling" depository institution) subsequently sells or participates out its loan contract to a non-depository third party.

§ 217.146 [Redesignated as § 204.128]

9. Section 217.146 is redesignated as § 204.128, and revised to read as follows:

§ 204.128 Deposits at foreign branches guaranteed by domestic office of a depository institution.

(a) In accepting deposits at branches abroad, some depository institutions may enter into agreements from time to time with depositors that in effect guarantee payment of such deposits in the United States if the foreign branch is precluded from making payment. The question has arisen whether such deposits are subject to Regulation D, and this interpretation is intended as clarification.

(b) Section 19 of the Federal Reserve Act which establishes reserve requirements does not apply to deposits of a depository institution "payable only at an office thereof located outside of the States of the United States and the District of Columbia" (12 USC 371a; 12 CFR 204.1(c)(5)). The Board rule in 1918 that the requirements of section 19 as to reserves to be carried by member banks do not apply to foreign branches (1918 *Fed. Res. Bull.* 1123). The Board has also defined the phrase "Any deposit that is payable only at an office located outside the United States," in § 204.2(t) of Regulation D, 12 CFR 204.2(t).

(c) The Board believes that this exemption from reserve requirements should be limited to deposits in foreign branches as to which the depositor is entitled, under his agreement with the depository institution, to demand payment only outside the United States, regardless of special circumstances. The exemption is intended principally to enable foreign branches of U.S. depository institutions to compete on a more nearly equal basis with banks in foreign countries in accordance with the laws and regulations of those countries. A customer who makes a deposit that is payable solely at a foreign branch of the depository institution assumes whatever risk may exist that the foreign country in which a branch is located might impose restrictions on withdrawals. When payment of a deposit in a foreign branch is guaranteed by a promise of payment at an office in the United States if not paid at the foreign office, the depositor no longer assumes this risk but enjoys substantially the same rights as if the

deposit had been made in a U.S. office of the depository institution. To assure the effectiveness of Regulation D and to prevent evasions thereof, the Board considers that such guaranteed foreign-branch deposits must be subject to that regulation.

(d) Accordingly, a deposit in a foreign branch of a depository institution that is guaranteed by a domestic office is subject to the reserve requirements of Regulation D the same as if the deposit had been made in the domestic office. This interpretation is not designed in any respect to prevent the head office of a U.S. bank from repaying borrowings from, making advances to, or supplying capital funds to its foreign branches, subject to Eurocurrency liability reserve requirements.

§ 217.153 [Redesignated as § 204.129]

10. Section 217.153 is redesignated as § 204.129, and revised to read as follows:

§ 204.129 Serial, sinking fund redemption, and amortized issues as capital.

(a) Section 204.2(a)(1)(vii) contains several exceptions which exclude certain liabilities from the definition of "deposit." For a member bank, the exception in § 204.2(a)(1)(vii)(C) means any liability that:

(1) Bears on its face, in boldface type, the following:

"This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.";

(2) Is subordinated to the claims of the depositors;

(3) Is unsecured and is ineligible as collateral for a loan by the issuing bank and expressly states so on its face;

(4) (i) Has an original maturity of at least seven years or, in the case of a liability that provides for any type of scheduled repayments of principal, has an average maturity¹ of at least seven years² and

(ii) Provides that once any such repayment of principal begins, all scheduled repayments shall be made at least annually and the amount repaid in each year is no less than in the prior year;

(5) Is issued subject to a requirement that no repayment (other than a regularly scheduled repayment already approved by the appropriate Federal bank regulatory agency), including but not limited to a payment pursuant to acceleration of maturity, may be made

¹ The "average maturity" of an obligation or issue repayable in scheduled periodic payments shall be the weighted average of the maturities of all such scheduled repayments.

² In a serial issue, the member bank may offer no note with a maturity of less than five years.

without the prior written approval of the appropriate Federal bank regulatory agency;³ and

(6) Is in an amount of at least \$500.

(b) The appropriate Federal bank regulatory agency may approve the issuance of an obligation that is less than \$500 if such lesser amount is necessary:

(1) To satisfy the preemptive rights of shareholders in the case of a convertible debt obligation;

(2) To maintain a ratable unit offering to holders of preemptive rights in the case of an obligation issued exclusively as part of a unit including shares of stock which are subject to such preemptive rights; or

(3) To satisfy shareholders' ratable claims in the case of an obligation issued wholly or partially in exchange for shares of voting stock or assets pursuant to a plan of merger, consolidation, reorganization, or other transaction where the issuer will acquire either a majority of such shares of voting stock or all or substantially all of the assets of the entity whose assets are being acquired; and has been approved by the appropriate Federal bank regulatory agency as an addition to the capital structure of the issuing bank.

(c) The appropriate Federal bank regulatory agency may approve the issuance of an obligation that is less than \$500 if such lesser amount is necessary to meet all of the requirements in the preceding clause except the maturity requirement or the requirement that scheduled repayments shall be in amounts at least equal to those made in a previous year; and with respect to which the appropriate Federal bank regulatory agency has determined that exigent circumstances require the issuance of such obligations without regard to the provisions of this part; or was issued or publicly offered before June 30, 1970, with an original maturity of more than two years.

(d) Total outstanding capital notes should not exceed 50 percent of a State member bank's equity capital.

(e) The issuance must be consistent with the Board's capital adequacy guidelines (Appendix A to Regulation Y, 12 CFR Part 225).

§ 217.157 [Redesignated as § 204.130]

11. Section 217.157 is redesignated as § 204.130, and revised to read as follows:

³ For the purposes of this part, the "appropriate Federal bank regulatory agency" is the Comptroller of the Currency in the case of national bank and the Board of Governors in the case of a State member bank.

§ 204.130 Eligibility for NOW Accounts.

(a) *Summary.* In response to many requests for rulings, the Board has determined to clarify the types of entities that may maintain NOW accounts at member banks.

(b) *Individuals.* (1) Any individual may maintain a NOW account regardless of the purposes that the funds will serve. Thus, deposits of an individual used in his or her business including a sole proprietor or an individual doing business under a trade name is eligible to maintain a NOW account in the individual's name or in the "DBA" name. However, other entities organized or operated to make a profit such as corporations, partnerships, associations, business trusts, or other organizations may not maintain NOW accounts.

(2) Pension funds, escrow accounts, security deposits, and other funds held under various agency agreements may also be classified as NOW accounts if the entire beneficial interest is held by individuals or other entities eligible to maintain NOW accounts directly. The Board believes that these accounts are similar in nature to trust accounts and should be accorded identical treatment. Therefore, such funds may be regarded as eligible for classification as NOW accounts.

(c) *Nonprofit organizations.* (1) A nonprofit organization that is operated primarily for religious, philanthropic, charitable, educational, political or other similar purposes may maintain a NOW account. The Board regards the following kinds of organizations as eligible for NOW accounts under this standard if they are not operated for profit:

(i) Organizations described in section 501(c)(3) through (13), and (19) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(3) through (13) and (19));

(ii) Political organizations described in section 527 of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 527); and

(iii) Homeowners and condominium owners associations described in section 528 of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 528), including housing cooperative associations that perform similar functions.

(2) All organizations that are operated for profit are not eligible to maintain NOW accounts at depository institutions.

(3) The following types of organizations described in the cited provisions of the Internal Revenue Code are among those not eligible to maintain NOW accounts:

(i) Credit unions and other mutual depository institutions described in section 501(c)(14) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(14));

(ii) Mutual insurance companies described in section 501(c)(15) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(15));

(iii) Crop financing organizations described in section 501(c)(16) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(16));

(iv) Organizations created to function as part of a qualified group legal services plan described in section 501(c)(20) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(20)); or

(v) Farmers' cooperatives described in section 521 of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 521).

(d) *Governmental units.*

Governmental units are generally eligible to maintain NOW accounts at member banks. NOW accounts may consist of funds in which the entire beneficial interest is held by the United States, any State of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(e) *Funds held by a fiduciary.* Under current provisions, funds held in a fiduciary capacity (either by an individual fiduciary or by a corporate fiduciary such as a bank trust department or a trustee in bankruptcy), including those awaiting distribution or investment, may be held in the form of NOW accounts if all of the beneficiaries are otherwise eligible to maintain NOW accounts. The Board believes that such a classification should continue since fiduciaries are required to invest even temporarily idle balances to the greatest extent feasible in order to responsibly carry out their fiduciary duties. The availability of NOW accounts provides a convenient vehicle for providing a short-term return on temporarily idle trust funds of beneficiaries eligible to maintain accounts in their own names.

(f) *Grandfather provision.* In order to avoid unduly disrupting account relationships, a NOW account established at a member bank on or before August 31, 1981, that represents funds of a nonqualifying entity that previously qualified to maintain a NOW account may continue to be maintained in a NOW account.

§ 217.159 [Redesignated as § 204.131]

12. Section 217.159 is redesignated as § 204.131, and revised to read as follows:

§ 204.131 Participation by a depository institution in the secondary market for its own time deposits.

(a) *Background.* In 1982, the Board issued an interpretation concerning the effect of a member bank's purchase of its own time deposits in the secondary market in order to ensure compliance with regulatory restrictions on the payment of interest on time deposits, with the prohibition against payment of interest on demand deposits, and with regulatory requirements designed to distinguish between time deposits and demand deposits for federal reserve requirement purposes (47 FR 37878, Aug. 27, 1982). The interpretation was designed to ensure that the regulatory early withdrawal penalties in Regulation Q used to achieve these three purposes were not evaded through the purchase by a member bank or its affiliate of a time deposit of the member bank prior to the maturity of the deposit.

(b) Because the expiration of the Depository Institutions Deregulation Act (Title II of Pub. L. 96-221) on April 1, 1986, removed the authority to set interest rate ceilings on deposits, one of the purposes for adopting the interpretation was eliminated. The removal of the authority to set interest rate ceilings on deposits required the Board to revise the early withdrawal penalties which were also used to distinguish between types of deposits for reserve requirement purposes. Effective April 1, 1986, the Board amended its Regulation D to incorporate early withdrawal penalties applicable to all depository institutions for this purpose (51 FR 9629, Mar. 20, 1986). Although the new early withdrawal penalties differ from the penalties used to enforce interest rate ceilings, secondary market purchases still effectively shorten the maturities of deposits and may be used to evade reserve requirements. This interpretation replaces the prior interpretation and states the application of the new early withdrawal penalties to purchases by depository institutions and their affiliates of the depository institution's time deposits. The interpretation applies only to situations in which the Board's regulatory penalties apply.

(c) *Secondary market purchases under the rule.* The Board has determined that a depository institution purchasing a time deposit it has issued should be regarded as having paid the

time deposit prior to maturity. The effect of the transaction is that the depository institution has cancelled a liability as opposed to having acquired an asset for its portfolio. Thus, the depository institution is required to impose any early withdrawal penalty required by Regulation D on the party from whom it purchases the instrument by deducting the amount of the penalty from the purchase price. The Board recognizes, however, that secondary market sales of time deposits are often done without regard to the identity of the original owner of the deposit. Such sales typically involve a pool of time deposits with the price based on the aggregate face value and average rate of return on the deposits. A depository institution purchasing time deposits from persons other than the person to whom the deposit was originally issued should be aware of the parties named on each of the deposits it is purchasing but through failure to inspect the deposits prior to the purchase may not be aware at the time it purchases a pool of time deposits that it originally issued one or more of the deposits in the pool. In such cases, if a purchasing depository institution does not wish to assess an applicable early withdrawal penalty, the deposit may be sold immediately in the secondary market as an alternative to imposing the early withdrawal penalty.

(d) *Purchases by affiliates.* On a consolidated basis, if an affiliate (as defined in § 204.2(q) of Regulation D) of a depository institution purchases a CD issued by the depository institution, the purchase does not reduce their consolidated liabilities and could be accomplished primarily to assist the depository institution in avoiding the requirements of the Board's Regulation D. Because the effect of the early withdrawal penalty rule could be easily circumvented by purchases of time deposits by affiliates, such purchases are also regarded as an early withdrawal of the time deposit, and the purchase should be treated as if the depository institution made the purchase directly. Thus, the regulatory requirements for early withdrawal penalties apply to affiliates of a depository institution as well as to the institution itself.

(e) *Depository institution acting as broker.* The Board believes that it is permissible for a depository institution to facilitate the secondary market for its own time deposits by finding a purchaser for a time deposit that a customer is trying to sell. In such instances, the depository institution will not be paying out any of its own funds, and the depositor does not have a

guarantee that the depository institution will actually be able to find a buyer.

(f) *Third-party market-makers.* A depository institution may also establish and advertise arrangements whereby an unaffiliated third party agrees in advance to purchase time deposits issued by the institution. The Board would not regard these transactions as inconsistent with the purposes that the early withdrawal penalty is intended to serve unless a depository institution pays a fee to the third party purchaser as compensation for making the purchases or to remove the risk from purchasing the deposits. In this regard, any interim financing provided to such a third party by a depository institution in connection with the institution's secondary market activity involving the institution's time deposits must be made substantially on the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other similarly situated persons and may not involve more than the normal risk of repayment.

(g) *Reciprocal arrangements.* Finally, while a depository institution may enter into an arrangement with an unaffiliated third party wherein the third party agrees to stand ready to purchase time deposits held by the depository institution's customers, the Board will regard a reciprocal arrangement with another depository institution for purchase of each other's time deposits as a circumvention of the early withdrawal penalty rule and the purposes it is designed to serve.

§§ 217.101, 217.103, 217.105, 217.106 through 217.112, 217.114 through 217.121, 217.124, 217.131 through 217.133, 217.135, 217.136, 217.139 through 217.141, 217.144, 217.150, 217.152, 217.155, 217.156, 217.158, and 217.160. [Removed]

13. Sections 217.101, 217.103, 217.105, 217.106, 217.107, 217.108, 217.109, 217.110, 217.111, 217.112, 217.114, 217.115, 217.116, 217.117, 217.118, 217.119, 217.120, 217.121, 217.124, 217.131, 217.132, 217.133, 217.135, 217.136, 217.139, 217.140, 217.141, 217.144, 217.150, 217.152, 217.155, 217.156, 217.158, and 217.160 are removed.

§§ 217.113, 217.148, 217.151 [Redesignated as §§ 217.601 through 217.603]

14. Sections 217.113, 217.148, and 217.151 are redesignated as §§ 217.601, 217.602, and 217.603, respectively.

§ 217.134 [Redesignated as 217.301]

15. Section 217.134 is redesignated, and revised as § 217.301 as follows:

§ 217.301 Interest on time deposit falling due on holiday.

(a) After the date of "maturity" of any time deposit, such deposit is a demand deposit, and no interest may be paid thereon for any period subsequent to the date of maturity unless the contract provides for an extension of up to 10 calendar days as per footnote 1 to Regulation Q.

(b) The date on which an obligation is due and payable is, of course, determined by the terms of the contract subject to State law, and in most jurisdictions an obligation falling due on a Saturday, Sunday or a holiday comes due on the next succeeding business day. Under Regulation Q, the "maturity" of a time certificate is the day it is legally due and payable; and the funds represented thereby do not become a demand deposit until after that date. Accordingly, where a certificate by its terms falls due on a Saturday, Sunday or a holiday and under State law is due and payable on the next succeeding business day, this Part 217 would not preclude payment of interest on the deposit until and including the day on which it is so payable.

§ 217.147 [Redesignated as § 217.302]

16. Section 217.147 is redesignated and revised as § 217.302 as follows:

§ 217.302 Premiums on deposits.

(a) Section 19(i) of the Federal Reserve Act and § 217.3 of Regulation Q prohibits a member bank from paying interest on a demand deposit. Premiums, whether in the form of merchandise, credit, or cash, given by a member bank to a depositor will be regarded as an advertising or promotional expense rather than a payment of interest if:

(1) The premium is given to a depositor only at the time of the opening of a new account or an addition to, or renewal of, an existing account;

(2) No more than two premiums per account are given within a 12-month period; and

(3) The value of the premium or, in the case, of articles of merchandise, the total cost (including taxes, shipping, warehousing, packaging, and handling costs) does not exceed \$10 for deposits of less than \$5,000 or \$20 for deposits of \$5,000 or more.

The costs of premiums may not be averaged. The member bank should retain sufficient supporting documentation showing that the total cost of a premium, including shipping, warehousing, packaging, and handling costs, does not exceed the applicable \$10/\$20 limitations and that no portion of the total cost of any premium has

been attributed to development, advertising, promotional, or other expenses. A member bank is not permitted directly or indirectly to solicit or promote deposits from customers on the basis that the funds will be divided into more than one account by the institution for the purpose of providing more than two premiums per deposit within a 12-month period.

§ 217.161 [Redesignated as § 217.201]

17. Section 217.161 is redesignated and revised as § 217.201 as follows:

§ 217.201 Repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities.

Such a repurchase agreement is not a "deposit" for purposes of Regulations D and Q. For the text of this interpretation, see the interpretations of the Board's Regulation D at 12 CFR 204.124. A related interpretation also appears in Regulation H—Membership of State Banking Institutions in the Federal Reserve System at 12 CFR 208.123.

By order of the Board of Governors,
December 9, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87-28694 Filed 12-15-87; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

Disclosure of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final regulation implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). The effect of this final rule is to provide the public the method by which SBA would charge and waive fees in connection with requests made under the Freedom of Information Act.

EFFECTIVE DATE: These regulations are effective December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Inquiries and comments should be directed to C. Nicholas Kalcounos, Director, Freedom of Information/Privacy Acts, 2100 K Street, NW., Room 303, Washington, DC 20416, (202) 653-6460.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines pursuant to notice and comment. That Act also required agencies to publish their own regulations for those same purposes based upon the OMB guidelines. These regulations represent SBA's response to that requirement. They are based upon the OMB guidelines and a review of public comments received in response to a Notice of Proposed Rulemaking (52 FR 18570, May 18, 1987).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this rule because it will not have a significant economic impact on a substantial number of small entities. The rule will not impose, or otherwise cause, a significant increase in the reporting recordkeeping or other compliance burdens on a substantial number of small entities. It is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, SBA has determined that this rule is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule will not result in any implications pursuant to the Paperwork Reduction Act.

List of Subjects in 13 CFR Part 102

Disclosure of information, Privacy Act of 1974.

Accordingly, 13 CFR Part 102 is amended as follows:

PART 102—[AMENDED]

1. The authority citation for Part 102, Subpart A is revised to read as follows:

Authority: The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et seq.*).

2. Section 102.6 is revised to read as follows:

§ 102.6 Fees.

(a) **Definitions.** For the purpose of these regulations all the terms defined in the Freedom of Information Act apply.

(1) The term "direct costs" means those expenditures which SBA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk) among others. The copy provided must be in a form that is reasonably usable by the requester.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, SBA will determine the use to which a requester will put the documents requested. Moreover, where SBA has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, SBA will seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but SBA may also look to

the past publication record of a requester in making this determination.

(b) *Basis upon which fees are to be charged.* SBA will charge fees that recoup the full allowable direct costs it incurs. SBA will use the most efficient and least costly methods to comply with requests for documents made under the FOIA.

(1) Manual searches for records. SBA will charge \$9 per hour for clerical personnel and where the identification of records pertinent to a request necessitates the use of professional personnel the search charge shall be \$18 per hour.

(2) Computer searches for records. SBA will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(3) Review of records. Only requesters who are seeking documents for commercial use may be charged for time SBA spends reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the initial review; i.e., the review undertaken the first time SBA analyzes the applicability of a specific exemption to a particular record or portion of a record. SBA may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable, especially where that review is necessary due to a change in circumstances. SBA will charge \$18 per hour for professional review of a requested record for possible disclosure.

(4) Duplication of records. SBA has established an agency-wide, per page charge for paper copy reproduction of documents of ten cents per page. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, SBA shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, SBA will charge the actual

direct costs of producing the document(s).

(5) Other charges. It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of SBA. Neither the FOIA nor its fees structure cover these kinds of services. SBA will recover the full costs of providing services such as those enumerated below to the extent that SBA elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(6) Restrictions on assessing fees. With the exception of requesters seeking documents for a commercial use, section 4(A)(iv) of the Freedom of Information Act, as amended, requires SBA to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits SBA from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, SBA would not begin to assess fees until after it had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, SBA would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result. SBA's Freedom of Information/Appellate Office will be the entity within SBA which determines if the cost to the agency of billing the requester and processing the fee collected will be equal to or greater than the cost to be recovered.

(i) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the agency's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and should not be considered in the agency's determination.

(ii) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A

microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(iii) Similarly, the term "search time" in this context has as its basis, *manual search*. To apply this term to searches made by computer, SBA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, SBA will begin assessing charges for computer search.

(7) In practice, if SBA estimates that fees are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost. If a requester avails himself or herself of the opportunity to reformulate the request, SBA will require that the requester provide a declaration to SBA agreeing to pay up to a specified amount of charges before SBA will satisfy the request.

(c) *Fees to be charged.* Categories of Requesters. There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees will be charged for each of these categories.

(1) Commercial use requesters. When SBA receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 pages of reproduction of documents.

(2) Educational and non-commercial scientific institution requesters. SBA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational

institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) Requesters who are representatives of the news media. SBA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in section (a)(8) above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(4) All other requesters. SBA shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(d) *Methods of assessing charges.* (1) Charging interest—notice and rate. SBA shall begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(2) Charges for unsuccessful search. SBA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if the agency estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with SBA personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Aggregating requests. Except for requests that are for a commercial use, SBA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents solely in

order to avoid payment of fees. When SBA reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly.

(4) Advance payments. SBA may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, SBA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), SBA may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the SBA begins to process a new request or a pending request from that requester.

(iii) When SBA acts under paragraphs (d) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

(5) Payment of fees. The requester should make all checks or money orders payable to the U.S. Small Business Administration. All checks or money orders should be forwarded by the responsible SBA employee along with a completed SBA Form 772 to the Cashier's Office, SBA Central Office, 1441 L Street, NW., Washington, DC 20416.

(e) *Fee waivers.* SBA may furnish documents under these regulations without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. All

requests for a waiver or reduction of fees should be addressed to SBA's Freedom of Information Appellate Office, 2100 K Street, NW., Room 303, Washington, DC 20416. That office will render all determinations on such requests.

Date: December 7, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-28820 Filed 12-15-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-42-AD; Amdt. 39-5810]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211-535C or -535E4 engines, which requires modifications to the electromagnetic protection shielding of the engine electrical/electronic control unit wires. This amendment is prompted by a review of the wiring installation between the engine and fuselage pressure seal, which has shown that not all essential engine electronic control unit wires requiring electromagnetic protection shielding are shielded. This condition, if not corrected, could lead to an electrical transient from a lightning strike to one engine, causing damage or malfunction to the unstruck engine's essential control unit; this may affect the thrust of the unstruck engine, as well as that of the struck engine.

DATE: Effective February 16, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain

Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring modifications to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211-535C or -535E4 engines to improve the electromagnetic protection shielding of the engine electrical/electronic control unit wires, was published in the *Federal Register* on June 30, 1987 (52 FR 24304).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Four comments were received requesting that the initial compliance time of 60 days be increased. Commenters stated that the total work package is significant, involving 2+ days of work for crews of two people working continuously with no disruptions. Airplane wiring changes are involved, as is the incorporation of the engine manufacturer's service bulletins. The commenters indicated that incorporation times of up to 30 months were desired, and that a 60-day compliance time would cause significant economic and scheduling impact for those airlines with large fleets.

The FAA agrees that initial compliance with the AD can be extended somewhat. The FAA's objective in establishing the initial compliance time is to have the modifications accomplished in a reasonably short timespan based on the potential for adverse effects on both engine in the event of a severe lightning strike. The FAA has determined that the initial compliance time can be extended to one year without significantly compromising safety, and has revised the final rule accordingly.

One commenter requested that a wording change be made to the summary and supplementary information sections to delete reference to Rolls Royce engine wiring since the modification specifically addresses the airplane installation wiring. The FAA agrees and has deleted from the final rule all references to Rolls Royce engine wiring.

Since the date of publication of the NPRM, the manufacturer has revised Service Bulletin 757-71A0026 to clarify the wire coding information, circuit breaker nomenclature, various wire number callouts, and interval for lockstitch installation. The final rule has been revised to reflect this latest revision to the service bulletin. The FAA

has determined that this change is clarifying in nature and does not increase the economic burden on any operator or the scope of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest requires the adoption of the rule with the changes previously noted.

It is estimated that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 93 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Cost of parts is \$193 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$121,303.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes equipped with Rolls Royce RB 211-535C or -535E4 engines, specified in Boeing Alert Service Bulletin 757-71A0026, Revision 1, dated September 24, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.