introductory text of paragraph (b) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(b) * * * FmHA Instruction 2024–A must be followed for payment to be charged to the borrower's account as recoverable costs. Advances are authorized for:

* * * * *

(c) * * *

(1) * * *

(ii) * * * If payment by voucher is not acceptable, the procedures outlined in FmHA Instruction 2024–A (available in any FmHA Office) must be followed and the applicable forms prepared and submitted in time to receive a check before the sale date.

* * * * *

Dated: July 8, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–19250 Filed 8–13–92; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0744; Regulation CC]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form, with minor modifications, its interim rule amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments allow banks to extend holds, on an exception basis, to "next-day" and "second-day" availability checks and allow one-time notices of exception holds in certain cases. The amendments should benefit and reduce costs for all banks that choose to take advantage of the rule changes.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System. For information regarding modifications to Model Forms or appendix C, contact Jane E. Ahrens, Staff Attorney (202/452–3667), or Dale I. Nishimura, Staff Attorney (202/452–2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, section 225, 105 stat. 2236 (1991)) amended the provisions in section 604 of the Expedited Funds Availability Act (Act) (12 U.S.C. 4003) regarding safeguard exceptions to the availability schedules, effective December 19, 1991. The Board adopted interim amendments to Regulation CC (12 CFR part 229), effective January 15, 1992, to conform the regulation to the amendments to the Act (57 FR 3277, January 29, 1992). The Board has adopted the interim amendments, with technical and clarifying modifications, in final form.[1]

Background

Regulation CC implements the Act and was effective September 1, 1988. Among other things, the regulation establishes availability schedules to limit the holds banks [2] can place on deposits in transaction accounts and requires banks to disclose their funds availability policies to their customers.

As a general matter, the availability of a deposit is linked to the degree of risk associated with the deposit and the amount of time necessary for a bank to learn whether a deposited check will be returned unpaid. Accordingly, nonlocal [3] checks generally must be made available for withdrawal on the fifth business day after deposit, local checks on the second business day, and certain "low-risk" checks, such as government, cashier's, certified, and teller's checks, on the next business day. (Most "next-day" checks, if not deposited in person at a staffed teller facility, must be made available for withdrawal on the second business day after deposit.)

The Act (section 604) and the regulation (§ 229.13) provide for certain safeguard exceptions to the availability schedules. Under these exceptions, the depositary bank may extend the hold on a deposit for a reasonable period of time. The exception holds apply to deposits to new accounts, daily aggregate check deposits in excess of $5,000, checks that have returned unpaid and redeposited, checks deposited into an account that has been repeatedly overdrawn, checks the depositary bank may reasonably expect to be uncollectible, and checks deposited during emergency conditions, such as a computer failure, natural disaster, or other emergency beyond the bank's control.

Applicability of Exception Holds to "Next-Day" and "Second-Day" Checks

Prior to the enactment of the FDICIA, most of the exception holds did not apply to checks that must be accorded next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of the regulation, such as government, cashier's, certified, and teller's checks. In three reports to Congress on the implementation of the Act, the Board expressed concern that the inapplicability of the exception holds to next-day and second-day checks exposed depositary banks to substantial risk that such checks would be returned after the proceeds had been made available for withdrawal.[4] The Board noted that fraud loss reduction would benefit banks as well as their customers, who otherwise may face increased service fees or decreased service levels.

Section 225 of the FDICIA amended section 604 of the Act to authorize the Board to prescribe regulations to apply most of the safeguard exception holds to checks that otherwise would receive next-day or second-day availability. The Board's interim rule allowed banks to apply the exceptions for large deposits (§ 229.13(b)), redeposited checks (§ 229.13(c)), accounts with repeated overdrafts (§ 229.13(d)), and emergency conditions (§ 229.13(f)) to checks otherwise covered by § 229.10(c). In addition, the interim rule made the reasonable cause exception (§ 229.13(e)), which previously had applied to local and nonlocal checks

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[1] Section 227 of the FDICIA amends section 603(e) of the Act to eliminate the shorter availability schedules for deposits at nonproprietary ATMs that were to become effective November 28, 1992. Section 212(h) of the FDICIA amends the administrative enforcement provisions in section 610(a) of the Act. The Board proposed amendments to Regulation CC regarding these provisions separately from the interim rule (57 FR 3365, January 29, 1992). The Board has adopted final amendments to Regulation CC to implement these changes (see Docket No. R–0745, elsewhere in today's **Federal Register**).

[2] For purposes of Regulation CC, the term "bank" includes commercial banks, savings institutions, and credit unions.

[3] A check generally is "local" if the bank by which it is payable and to which it is sent for collection ("paying bank") is in the same Federal Reserve check processing region as the bank that receives the check for deposit ("depositary bank").

[4] See, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991, March 1990, and June 1989.

and only certain next-day or second-day checks (i.e., checks drawn on Federal Reserve Banks or Federal Home Loan Banks and cashier's, certified, and teller's checks), available for all checks covered by § 229.10(c).[5] The Board adopted Commentary to the interim rule to reflect the broader scope of the exception holds.

The Board's interim rule also amended § 229.13(h), which governs the availability of deposits subject to the exception holds. The interim rule provided that, with respect to most checks subject to the next-day (or second-day) availability requirement (i.e., Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's checks), the depositary bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period. The reasonable period is presumed to be five business days for local checks and six business days for nonlocal checks, unless the depositary bank establishes otherwise. This reasonable period may be added to the availability schedule that would have applied had the checks not been subject to the next-day (or second-day) availability requirement. In other words, the additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank. (Treasury checks and U.S. Postal Service money orders would be considered drawn on local paying banks.) For on us checks that must be afforded next-day availability under § 229.10(c)(1)(vi), the reasonable additional hold is presumed to be one business day, which is added to the next-day requirement.

The Board received 57 comments on the interim rule. Forty-nine of the commenters supported the rule, four opposed its adoption, and four expressed no opinion. The distribution by type of commenter is shown below:

Type	Number
Commercial banks/bank holding companies	26
Savings institutions	8
Credit unions	6
Clearing houses	1
Trade associations	8
Federal Reserve Banks	4
Other	4
Total	57

Thirty-six commenters addressed the applicability of the safeguard exception holds to checks that otherwise would be granted next-day or second-day availability. All but one of these commenters supported the change, generally because of the reduction in risk to depositary banks. Eleven commenters believed that the change would reduce the potential for fraud loss due to the withdrawal of funds made available to depositors before the depositary bank receives notification from the paying bank that checks are being returned. One commenter noted that banks would be able to conserve valuable resources because of the reduction in fraud, and that the customers might benefit if banks no longer needed to increase service fees or reduce service levels to cover fraud-related costs. Another commenter, however, believed the amendment still exposed banks to a certain amount of risk. One commenter believed that banks should not be permitted to impose an exception hold based on "reasonable cause" to doubt the collectibility of the check.

The Board agrees with the majority of the commenters that the interim rule reduces risk for depositary banks. The Board has adopted the interim rule and Commentary applying the safeguard exceptions to next-day and second-day checks as a final rule, with minor technical and clarifying amendments.

One commenter, a mortgage lender, believed that the interim rule calls into question the acceptance of cashier's checks in real estate transactions in states that have "good funds" laws because of the possibility that a large deposit hold could be placed on those checks. (Generally, state "good funds" laws prohibit escrow holders from disbursing funds from an escrow account until the funds are available for withdrawal as a matter of right.) The commenter believed this problem could be avoided if banks were allowed to apply all exception holds except the large deposit exception hold to checks normally afforded next-day or second-day availability. In contrast, a commercial bank commented that the ability to use the large deposit exception would reduce losses to depositary banks associated with the acceptance of cashier's, certified, and teller's checks.

The Board recognizes that the ability of a bank to place an exception hold on the portion of a cashier's or teller's check in excess of $5,000 may delay disbursement of funds from or require earlier prefunding of escrow accounts, unless an alternative form of payment, such as an electronic payment, is used. However, should the check be returned for forgery or another reason, such holds may reduce the risk of loss for the depositary bank and for other parties to the transaction such as the seller, escrow holder, or title insurance company. Despite the possibility that a bank could place holds on cashier's or teller's checks, those types of checks likely would continue to be desirable payment instruments for many types of transactions because (1) it is difficult to stop payment of such checks and (2) when cashier's or teller's checks are taken in payment for an obligation, the obligation is discharged under UCC 3-310(a).[6]

One commenter stated that large deposit exception holds on next-day checks should not apply to U.S. Treasury checks, because the primary risk associated with government checks is the risk of forged indorsements. The depositary bank generally would not learn of the forgery until after the expiration of the exception hold period.

The Board recognizes that the Treasury may return checks with forged indorsements long after the exception hold period has elapsed. However, Treasury checks could be returned for other reasons within a much shorter time frame. For example, stale-dated Treasury checks generally are returned within seven business days of presentment. Thus, the Board believes it is appropriate to retain the exception holds for Treasury checks, as authorized by the Act.

One commenter noted that the interim rule did not apply to new accounts, which are governed by § 229.13(a). Under § 229.13(a), the first $5,000 of most "next-day" and "second-day" checks must be made available on the next or second day after deposit as

[5] The new account exception was not affected by the amendments. The next-day (or second-day, for those checks not deposited at a staffed teller station) availability requirements for Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks continue to apply for the first $5,000 deposited in a new account on any one banking day, with the remainder available on the ninth business day after deposit, as provided in § 229.13(a). The amendments to the Act do not allow extended holds for these types of checks when deposited in new accounts.

[6] In addition, the Board has proposed amendments to its Regulation D (12 CFR part 204), governing reserve requirements, that would classify teller's checks as reservable liabilities. If adopted, the Regulation D amendment could prompt teller's check providers to move to other types of instruments that would not be accorded next-day availability, even for the first $5,000. Thus, use of checks that are neither cashier's nor teller's checks in real estate and other types of transactions could become more prevalent, despite the lack of next-day availability for those checks.

provided in § 229.10(c), and the remainder may be held until the ninth business day after the day of deposit. (This nine-day maximum hold period is mandated by the Act.) The commenter noted that this provision could result, in certain cases, in deposits of "next-day" checks to new accounts becoming available faster than deposits of similar checks to established accounts (assuming a seven or eleven-day hold was placed on a "next-day" check deposited into an established account). The Board acknowledges this inconsistency between the statutory hold period for "next-day" checks deposited in new accounts and the regulatory hold period for "next-day" checks deposited in established accounts. The Board does not have the statutory authority, however, to increase the hold periods for new accounts or to apply the exception holds described in § 229.13 (b) through (f) to new accounts.

One commenter asked whether the reasonable hold period may be added to the calculated availability schedule, which banks may compute for nonconsumer accounts in accordance with § 229.19(d). A bank may add the reasonable hold period to its calculated availability schedule, but should reflect that practice in its disclosures.

One-Time Hold Notices

Prior to the enactment of the FDICIA, section 604(f) of the Act and § 229.13(g) of the regulation provided that each time a depositary bank invoked an exception to the availability schedules under § 229.13 (b) through (f) (the large deposit, redeposited check, repeated overdraft, reasonable cause, and emergency conditions exceptions, respectively), it had to notify the customer of the exception hold. Section 229.13(g) required that the exception hold notice be given at the time of the deposit or by the first business day following the day the facts upon which the exception hold was based became known to the depositary bank.

Although individual notices may be appropriate in the case of the reasonable cause or emergency conditions exceptions, which must be invoked on a case-by-case basis, they are less appropriate for the large deposit, redeposited check, or repeated overdraft exceptions. In these latter cases, it would be more efficient and less costly to depositary banks if the notice requirement could be tailored to the exception invoked. Customers, as well, would benefit from receiving advance notice of any exception holds that the bank would invoke under certain conditions or for a certain period of time, rather than receiving on-the-spot or after-the-fact notices upon each deposit. In its three reports to Congress regarding implementation of the Act, cited above, the Board recommended that the Act be amended to provide banks with greater flexibility in giving notices of exception holds.

Section 225 of the FDICIA amends section 604(f) of the Act to authorize the Board to prescribe regulations to allow the depositary bank, in certain cases, to send one notice of an exception hold applicable to a customer's future deposits rather than sending a separate notice for each deposit. The amendments to section 604(f) set out two types of one-time notices and the circumstances under which they apply, as follows:

1. Large Deposit and Redeposited Check Exception Hold Notices

Sections 229.13 (b) and (c) of the regulation provide that a depositary bank may apply exception holds to aggregate daily deposits of checks in excess of $5,000 and to deposits of checks that have been returned unpaid and redeposited. Under the amendments to section 604(f) of the Act, if a depositary bank applies the large deposit or redeposited check exception to nonconsumer accounts, it may give its nonconsumer customers a single notice at or prior to the time notice otherwise must be given. The Board's interim amendments to § 229.13(g) and revisions to the Commentary implemented these amendments to the Act.

As provided in the interim amendments to § 229.13(g)(2), the one-time notice for the large deposit and redeposited check exceptions must explain the reason the exception(s) may be invoked and the time period within which deposits subject to the exception(s) would be available for withdrawal. The notice should reflect the bank's priorities in placing exception holds on deposits consisting of different types of checks, such as next-day, local, and nonlocal checks.

A depositary bank may provide a one-time notice to a nonconsumer customer under § 229.13(g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. The Board adopted Model Notice C–13B, which may be used by those banks that want to provide a one-time notice of these exception holds to their nonconsumer customers. Alternatively, a depositary bank may choose to send hold notices for each individual deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

2. Repeated Overdraft Exception Hold Notice

Section 229.13(d) of the regulation provides that a depositary bank may, for a six-month period, apply longer holds to deposits to an account that has been repeatedly overdrawn. Under § 229.13(d), an account is repeatedly overdrawn if it is overdrawn on six or more banking days, or is overdrawn by $5,000 or more on two or more banking days, within the preceding six months.

Section 229.13(g) of the regulation originally provided that, when invoking the repeated overdraft exception, a depositary bank must provide a notice to the customer upon each deposit. Act, if an account (either consumer or nonconsumer) is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply, rather than giving a notice upon each deposit during that time period. The Board adopted interim amendments to § 229.13(g) and revisions to the Commentary to implement the amendments to the Act.

Section 229.13(g)(3) of the interim amendment provides that the one-time repeated overdraft notice must state the customer's account number, the fact that the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply. A depositary bank may provide a one-time notice to a customer under § 229.13(g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account. A depositary bank may send a notice, such as that contained in Model Notice C–13C, to its customer at the start of each period for which the repeated overdraft exception will be in effect.

Twenty-four commenters addressed the concept of one-time notices. Fourteen commenters supported the amendments as a means to improve the efficiency of and reduce costs to banks. Three of these commenters stated that customers would also benefit by receiving advance notice of exception holds, rather than receiving notification at the time of deposit, or later. Several other commenters stated that, although one-time notices would not necessarily be more cost effective than an individual notice of each hold or be useful to their own operations, they supported the option as a means of providing flexibility to banks. Other

commenters noted that the proposed procedure was onerous and that some clarification was necessary. One commenter suggested that banks that give customers individual notice of each hold should receive consideration in the form of simplified hold criteria. One other commenter opposed the option of one-time notices because it would not reduce losses.

The Board believes that the one-time notices provide flexibility to banks and may reduce the cost of providing hold notices in certain cases. The Board has adopted the interim rule and Commentary provisions relating to one-time notices, with minor technical and clarifying amendments.

One commenter suggested that the Board revise § 229.16(c) of Regulation CC to clarify the applicability of the one-time exception hold notice for banks with a case-by-case hold policy. The Board has amended the Commentary to § 229.16(c) (1) and (3) to clarify that depository banks that use case-by-case disclosure policies may use the one-time notice provisions of § 229.13(g) (2) and (3) and that the provisions of § 229.16(c)(3) regarding overdraft and returned check fees apply only to case-by-case notices provided pursuant to § 229.16(c)(2).

Twenty commenters discussed the amendment allowing one-time notices to nonconsumer customers of exception holds on large deposits and redeposited checks. One commenter favored these one-time notices because the notice could be incorporated into the bank's initial disclosure provided to the customer when an account is opened. Another commenter stated that the option would not be of use to community banks, but that larger banks might find the option useful. A commercial bank commenter indicated that it would continue to apply exception holds using individual notices, as it does not invoke the holds on most deposits. Further, this commenter noted that most of the holds invoked for large deposits and redeposited checks were on consumer accounts, rather than nonconsumer accounts. Another commercial bank commenter stated that larger business customers that routinely make aggregate daily deposits in excess of $5,000 and retailers that redeposit a significant number of checks usually have well-established relationships with their banks and generally do not have exception holds placed on their accounts.

One commenter suggested that the § 229.13(g)(2) one-time notice should include the account number of the depositor. This commenter noted that businesses may have multiple accounts and this information would help the bank to identify the account to which the hold applies. Banks may include the account number in the one-time notice, but the Board has not required that they do so. Requiring the customer's account number on each notice would force banks to individualize each notice, thereby precluding such a notice from being part of an initial policy disclosure given to all customers.

Several commenters believed that the interim rule needed additional clarification. For example, a commenter recommended that the rule state clearly that a one-time notice may be sent out on an individual account basis. Several commenters requested further clarification of the terms "most check deposits," "generally available," "consumer account," and "nonconsumer account." The Board believes that the § 229.13(g) regulatory and Commentary language clearly indicates that the one-time notice may be applied on an account-by-account basis. The Board also believes that banks may rely on the plain meaning of the terms "most check deposits" and "generally available" and that further detail is unnecessary. The Board has amended the Commentary to the definition of "consumer account" to clarify that any account that does not meet the consumer account definition is a nonconsumer account and to add cross-references.

One commenter believed that a bank may have difficulty issuing one-time notices if the bank aggregates deposits to multiple accounts as permitted by § 229.13(b). The commenter noted that the depositing customer may not be the sole holder of the accounts and the other holders of the accounts may not all be the same. The commenter recommended that the final regulation specify that a bank may place applicable holds on all accounts after giving the one-time notice to one of the account holders. Although a bank may aggregate deposits to different accounts for purposes of meeting the $5,000 large deposit threshold, under § 229.13(g)(2) one-time notices must be provided for each nonconsumer account on which large deposit holds will be placed. Thus, banks should send one-time notices to the address associated with each nonconsumer account on which a hold will be placed, rather than to a single common account-holder.

The same commenter noted that redeposits by the bank are easier to track operationally than redeposits by the customer. Therefore, the requirement that "the exception hold be invoked for most check deposits to which the exception could apply" should apply separately to redeposits by the depositary bank and redeposits by the customer. The commenter did not believe that this would require any change to the wording of Model Notice C–13B. Although a bank is free to apply the one-time exception notice to a specific subset of redeposited checks, such as those automatically redeposited by the bank under an agreement with its customer, the specific subset of checks should be described in the one-time notice. For example, Model Form 13–B describes only "checks that have been returned unpaid;" a bank that wishes to use the one-time notice for only a subset of returned checks should elaborate on that description.

One commenter asked whether the one-time notice for large deposits and redeposited checks is valid for the entire life of the account. Neither the statute nor the regulation specify an expiration period for the one-time notice described in § 229.13(g)(2).

Fourteen commenters discussed the provision for a one-time repeated overdraft exception notice. Twelve commenters supported the provision, citing cost savings, reduced notification burden, and reduced exposure to loss from accounts with repeated overdrafts. Three of these commenters supported the option, although they did not believe they would use one-time notices. Another commenter indicated that the change would be of no benefit to banks that are not capable of invoking holds on a widespread, automated basis.

Several commenters suggested technical or editorial changes regarding the interim rule and the model notice. For example, commenters noted that the language in Model Notices 13–B and 13–C referring to local and nonlocal checks could be confusing for customers of banks that normally do not distinguish between local and nonlocal checks. The model notices may be tailored to a bank's availability policy, and the references to local and nonlocal checks may be eliminated where appropriate. Another commenter believed that the statement regarding the applicability of exception holds to local and nonlocal checks, as well as to next-day checks, as repeated unnecessarily throughout the Commentary to § 229.13. The Board has retained the statements in the separate paragraphs of the Commentary to § 229.13 for purposes of clarity. Another commenter made a number of suggestions intended to make the amendments more clear and precise, some of which have been adopted by the Board (i.e., the Board has removed references in § 229.13 to the temporary schedule, which is no longer in effect, added an example of the exception hold

period calculation in § 229.13(h), and made other minor wording changes throughout § 229.13.) The Board also has made a technical change to § 229.1 (amending the statutory authority citations).

Suggestions of further changes to Regulation CC were also received, such as extending the safeguard exception holds to new accounts, extending the definition of a new account beyond the current thirty days, extending the allowable hold on a local check to three days, adding new safeguard exceptions, expanding the notice of nonpayment requirement to include checks greater than $500 returned because of a closed account, making the reasonable exception hold period the same for local and nonlocal checks, and clarifying the applicability of Regulation CC to "paper debits," those items that have all the features of checks except the account holders signature. These matters were not subject to public comment, and some would require a statutory amendment. The Board may consider further regulatory changes at a later date.

Questions on Consumer Account Classifications

The Board's interim amendment did not relieve banks from the requirement of providing consumer account-holders with large deposit and redeposited check exception hold notices upon each deposit to which the exception is applied. The amendment to § 604(f) of the Act authorized the Board to apply the one-time notice provision for the large deposit and redeposited check exceptions to classes of consumer accounts that generally have a large number of such deposits. The Board requested comment on whether the one-time notice provision for these types of exceptions should be extended to certain classes of consumer accounts, and if so, how those classes of accounts should be categorized. Specifically, the Board requested comment on the following questions:

i. Are there classes of consumer accounts, such as high balance accounts, that would generally have a large number of daily aggregate deposits of checks in excess of $5,000?

ii. What is a proper measurement of a "large number" of large deposits or redeposited checks, and over what period of time should such a measurement be taken?

iii. Would it be operationally feasible for depositary banks to monitor deposits to consumer accounts to determine which accounts have a large number of daily aggregate deposits of checks in excess of $5,000 or a large number of deposits of redeposited checks?

Twenty-nine commenters responded to the questions posed by the Board. Generally, commenters indicated that while the designation of certain classes of consumer accounts to receive one-time notices was possible, it would not be feasible operationally because the size of any such classes would probably be very small.

Fourteen commenters believed that the exception holds should be extended to consumer accounts as well as nonconsumer accounts, with three commenters citing losses from consumer accounts and the large number of holds placed on consumer accounts as reasons for the extension. Generally, the commenters believed that it would not be feasible to monitor one class of consumer accounts and provide one-time notices to these customers, while providing individual notices to other consumer customers. They noted that a uniform policy would eliminate the possibility of teller confusion associated with invoking such exceptions, and consequently there would be less risk of error. These commenters suggested that the information regarding the availability of deposits in excess of $5,000 could be incorporated in the funds availability policy disclosure given to all customers, reducing confusion. One of these commenters stated that it appeared that the language contained in FDICIA section 225 was sufficiently general to support this interpretation. In addition, one commenter believed that banks were as likely to experience fraud in low-balance accounts as in high-balance ones.

Question (i)

Nine commenters stated they were unable to identify a specific class of consumer accounts that have a high incidence of aggregate daily deposits greater than $5,000, or have a large number of redeposited checks. Two of these commenters added that even if such accounts could be identified, they would likely be accounts on which the bank generally does not place exception holds.

Other commenters attempted to identify specific classes of consumer accounts that might be eligible for one-time notices. One commenter believed an appropriate class might be composed of persons that do not consider themselves to be commercial customers or do not pay commercial checking service charges, such as doctors, lawyers, small merchants, or real estate trusts. Another commenter stated that certain high-balance consumer accounts should be subject to the one-time notice, with the definition of "high balance" to be determined by each bank. Another commenter suggested that the class of accounts be determined by account history. Two commenters stated that the Federal Reserve should conduct research to determine such classes. One commenter recommended that, for simplicity, one-time notices be allowed only on nonconsumer accounts.

Question (ii)

Thirteen commenters addressed the question of how to define "large number" and what time period would be appropriate to use as a measurement. Six commenters provided specific numbers, ranging from two deposits to as many as eight deposits during a one-month time period. Four other commenters recommended a threshold that could vary from bank to bank. One commenter suggested that marketers of check kiting software be consulted regarding their experience.

Question (iii)

Eighteen commenters discussed whether it would be operationally feasible to monitor consumer accounts to determine which accounts have a large number of large deposits or redeposited checks. Although most of these commenters agreed that the capability existed to monitor consumer accounts, it generally was not considered feasible because of its cost. Seven commenters indicated that consumer accounts normally do not have aggregate daily deposits in excess of $5,000 or a large number of redeposited checks, therefore monitoring would not be cost effective. One commenter was concerned that monitoring would be burdensome to banks and not in keeping with the President's moratorium on regulatory initiatives that could hinder growth and profitability. Another commenter believed that monitoring the number of redeposited checks deposited to consumer accounts would require those checks to be encoded, necessitating a change in industry standards. Two commenters cited the expense of systems development. One other commenter believed that monitoring accounts would be more onerous than the current notification system. Two commenters indicated that monitoring might be feasible if done on all accounts, not just specific classes.

The Board has not expanded the applicability of the one-time exception hold notice for large deposits and redeposited checks. The Act specifically limits the applicability of the one-time

hold notice to consumer accounts "that generally have a large number of such deposits." The Board does not believe there is an easily-identifiable subset of consumer accounts that meets this requirement, nor would it be practicable for banks to monitor consumer accounts to verify that they meet any criteria the Board established.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule applies to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depositary banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases. Because the rule should benefit and reduce costs for all institutions that choose to take advantage of the rule change, it is not necessary to consider alternatives to minimize the economic impact.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the interim rule amending Regulation CC, 12 CFR part 229, which was published at 57 FR 3277–3282 on January 29, 1992, is adopted as a final rule with the following changes:

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.1, paragraph (a) is revised to read as follows:

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR part 229) is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (Act) (title VI of Pub. L. 100–86, 101 Stat. 552, 635), as amended by section 1001 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625, 104 Stat. 4079, 4424) and sections 212(h), 225, and 227 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236, 2303, 2307).

* * * * *

3. In § 229.13, the term ", 229.11" is removed in paragraphs (b), (c) introductory text, (d) introductory text, (e)(1), (f) introductory text, (h)(1), and (h)(3); the phrase "§ 229.11 or" is removed in paragraph (h)(2); the word "in" is removed after the first occurrence of the word "under" in paragraph (h)(4); and paragraphs (g)(2)(ii) and (g)(3)(iii) are revised as follows:

§ 229.13 Exceptions.

* * * * *

(g) *Notice of exception.* * * *

(2) * * *

(ii) The time period within which deposits subject to the exception generally will be available for withdrawal.

* * * * *

(3) * * *

(iii) The time period within which deposits subject to the exception generally will be available for withdrawal; and

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

a. In the Commentary under section 229.2(n), a new sentence is added after the first sentence and the last sentence is revised;

b. In the Commentary under section 229.13, the term ", 229.11" is removed in the first paragraph of paragraph (g) and the fifth paragraph of paragraph (h); in paragraph (b), the last sentence of the second paragraph is revised; in paragraph (d), the last paragraph is revised; in paragraph (e), the third sentence of the first paragraph is revised; in paragraph (f), the fifth sentence is revised; in paragraph (g), the second sentence of the sixth paragraph, the first and last sentences of the seventh paragraph, and the second sentence of the ninth paragraph are revised and two new sentences are added before the last sentence of the seventh paragraph; and in paragraph (h), a new sentence is added to the end of the fourth paragraph;

c. In the Commentary under section 229.16(c), the last paragraph of paragraph (c)(1) is revised and a new sentence is added to the end of paragraph (c)(3) as follows:

Appendix E—Commentary

* * * * *

Section 229.2 Definitions

* * * * *

(n) * * * An account that does not meet the definition of "consumer account" is a nonconsumer account. * * * Section 229.13(g)(2) (one-time exception notice) and § 229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

* * * * *

Section 229.13 Exceptions

* * * * *

(b) *Large deposits.*

* * * * *

* * * An additional $4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining $4,000 may be held for an additional period of time under the large deposit exception.

* * * * *

(d) *Repeated overdrafts.*

* * * * *

This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii).

(e) *Reasonable cause to doubt collectibility.* * * * When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). * * *

* * * * *

(f) *Emergency conditions.* * * * When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). * * *

(g) *Notice of exception.*

* * * * *

* * * When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when on us, local, and nonlocal checks will be available for withdrawal if an exception is invoked. * * *

Under paragraph (g)(2), if a nonconsumer account (see Commentary to 229.2(n)) is subject to the large deposit or redeposited check exception, the depositary bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). * * * A one-time notice may state that the depositary bank will apply exception holds to certain subsets of deposits

to which the large deposit or redeposited check exception may apply, and the notice should identify such subsets. For example, the depositary bank may apply the redeposited check exception only to checks that were redeposited automatically by the depositary bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary bank may send individual hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

* * * * *

* * * Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see Model Form C–13C). * * *

* * * * *

(h) *Availability of deposits subject to exceptions.* * * *

* * * * *

* * * For example, if a customer deposits a $7,000 cashier's check drawn on a nonlocal bank, and the depositary bank applies the large deposit exception to that check, $5,000 must be available for withdrawal on the next business day after the day of deposit and the remaining $2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depositary bank establishes that a longer hold is reasonable.

* * * * *

Section 229.16 Specific Availability Policy Disclosure

* * * * *

(c) *Longer delays on a case-by-case basis*—(1) * * *

* * * * *

A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by § 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under § 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements. A bank that imposes delay on a case-by-case basis may avail itself of the one-time notice provisions in § 229.13(g)(2) and (3) for deposits to which those provisions apply.

* * * * *

(3) * * * Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception hold notice in accordance with § 229.13.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–19076 Filed 8–13–92; 8:45 am]

BILING CODE 6210–01–F

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12 CFR Part 229

[Docket No. R–0745; Regulation CC]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments make permanent the current availability schedules for deposits at nonproprietary automated teller machines and reaffirm the administrative enforcement authority of federal regulatory agencies over U.S. offices and branches of foreign banks.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associated General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Pub. L. No. 102–242, 105 Stat. 2236 (1991)) amended the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001–4010), effective December 19, 1991. Section 227 of the FDICIA amended section 603(e) of the Act regarding deposits at nonproprietary automated teller machines ("ATMs"). Section 212(h) of the FDICIA amended section 610(a) of the Act to reaffirm the administrative enforcement authority of federal regulatory agencies over U.S. branches and agencies of foreign banks. The Board requested comment on proposed amendments to Regulation CC (12 CFR part 229) and revisions to the Commentary to implement the amendments to the Act (57 FR 3277, January 29, 1992). The Board is adopting the proposed amendments in final form.[1]

The Board received 38 comments on the proposed amendments, all of which discussed the availability schedules for deposits at nonproprietary ATMs. Six commenters also discussed the proposed amendment regarding administrative enforcement powers over U.S. offices and branches of foreign banks. The distribution by type of commenter is shown below:

Type	Number
Commercial banks/bank holding companies	16
Credit unions	6
Savings institutions	3
Clearing houses	1
Trade associations	6
Federal Reserve Banks	4
Other	2
Total	38

Deposits at Nonproprietary ATMs

Currently, under § 229.12(f)(1) of Regulation CC, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM [2] as though the deposits were nonlocal checks, i.e., make them available by the fifth business day after the day of deposit. This special treatment was accorded deposits made at nonproprietary ATMs because the depositary bank cannot ascertain the composition of these deposits (i.e., whether the deposit consists of cash, checks generally subject to next-day availability, or local or nonlocal checks). As of November 28, 1992, § 229.12(f)(2) would have required nonproprietary ATM deposits of cash, "next-day" checks (as described in § 229.10(c)(1)(i) through (v) and (vii)), and local and other checks (as described in § 229.12(b)) to be made available by the second business day following the banking day of deposit. Depositary banks could have continued to make nonlocal checks deposited at a nonproprietary ATM available by the fifth business day following the banking day of deposit.[3]

---

[1] Section 225 of the FDICIA amended section 605 of the Act regarding exception holds for "next-day" and "second-day" availability checks and one-time exception hold notices. To allow banks to avail themselves of these changes immediately, the Board adopted interim amendments to Regulation CC (57 FR 3385, January 29, 1992) and has adopted the interim rule, with technical and clarifying changes, in final form. See Docket R–0744, elsewhere in today's **Federal Register**.

[2] A nonproprietary ATM generally is an ATM that is not owned or operated by the depositary bank.

[3] The effective date for the shorter schedules for nonproprietary ATM deposits was extended from

Continued

Banks and ATM operators raised concerns with Congress and the Board about the operational problems and potential for fraud under the shorter schedules for nonproprietary ATM deposits. In two reports to Congress on the implementation of the Act and two reports specifically discussing deposits to nonproprietary ATMs,* the Board summarized these concerns and recommended that Congress amend the Act to provide fifth-day availability for all deposits at nonproprietary ATMs on a permanent basis.

The FDICIA amendments to section 603(e) of the Act eliminated the shorter holds for deposits at nonproprietary ATMs that were scheduled to take effect in November 1992 and extended the current 5-day hold permanently. The Board proposed amendments to §§ 229.12(a) and (f) of the regulation and revisions to the Commentary to reflect these changes.

Thirty-four commenters supported the proposed amendments. Fourteen commenters believed that banks would be exposed to increased risk of fraud and loss of the availability scheduled for deposits made at nonproprietary ATMs were the same as the availability schedule for deposits made at proprietary ATMs or teller's stations. Seven commenters stated that because banks lack the technology to ascertain the composition of deposits made at nonproprietary ATMs, the current availability schedule should be made permanent.

Six commenters stated that, although they did not allow their customers to make deposits at nonproprietary ATMs, they supported the amendment because it would give banks increased flexibility and protection. Several of these commenters stated that they might begin providing nonproprietary ATM deposit services, given the reduced risk provided by the amendment. Five commenters believed that the amendment would ensure that nonproprietary ATM deposit services would continue to be offered to customers, as some banks were considering discontinuing the service because of the shorter schedule that would have taken effect in November 1992.

One commenter that currently does not accept deposits at nonproprietary ATMs believed that individual ATM networks should have the right to require participating banks to provide prompter availability if supporting agreements are executed between the participants. The Board notes that depositary banks are free to provide faster availability for any type of deposit than is required by the regulation.

Another commenter stated his understanding that Hawaiian banks could extend the five-day hold of deposits at nonproprietary ATMs by an additional day. Section 229.12(e) provides that a one-day extension is permissible for deposits in Hawaii, as well as deposits in Alaska, Puerto Rico, and the U.S. Virgin Islands. However, this one-day extension applies only to checks for which the paying bank is not located in the same state as the depositary bank. Therefore, the one-day extension may not be helpful to a depositary bank that can not ascertain the composition of a deposit to a nonproprietary ATM.

One commenter indicated that the amendment was unclear as to whether deposits at nonproprietary ATMs were subject to the $100 next-day availability requirement. Under the Act and the regulation, the next-day availability provisions (including the $100 provision) do not apply to deposits at nonproprietary ATMs. The Commentary to § 229.12(f) adopted by the Board clearly explains that § 229.10(c)(1)(vii), which requires a depositary bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit, does not apply to deposits to a nonproprietary ATM.

The Board is adopting the proposed amendments to §§ 229.12 (a) and (f) and the corresponding Commentary, with minor technical changes.

Administrative Enforcement

Title II, Subtitle A of the FDICIA affirmed the supervisory responsibilities of U.S. banking regulatory agencies over U.S. offices and branches of foreign banks. Section 212(h) of the FDICIA made conforming changes to the administrative enforcement provisions in section 610(a) of the Act. These amendments were effective December 19, 1991. The Board proposed conforming amendments to § 229.3(a) of Regulation CC. (U.S. branches and agencies of foreign banks are already subject to the substantive requirements of the Act and Regulation CC.) Six commenters supported the proposed amendments without specific comment. The Board is adopting the conforming amendments as proposed.

Final Regulatory Flexibility Analysis

Two of the three requirements of final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost of all depositary banks by eliminating the requirement for shorter holds on deposits made to nonproprietary ATMs after November 27, 1992. In addition, small institutions should not be effected by the clarification of U.S. banking regulatory agencies' administrative enforcement authority over U.S. offices and branches of foreign banks. Because the rule should benefit and reduce costs for all institutions that choose to take advantage of the rule change, it is not necessary to consider alternatives to minimize the economic impact.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.3, paragraph (a)(1) is revised and concluding text to paragraph (a) is added after paragraph (a)(3) to read as follows:

§ 229.3 Administrative enforcement.

(a) * * *

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

September 1, 1990, to November 28, 1992, by the Cranston-Gonzales National Affordable Housing Act of 1990 (Pub. L. No. 101-625; § 1001). The Board adopted conforming amendments to Regulation CC at that time. *See* 55 FR 50816, December 11, 1990, (interim rule) and 56 FR 7799, February 26, 1991 (final rule).

* *See*, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991 and March 1990, and Deposits at Nonproprietary Automated Teller Machines: Report to Congress Pursuant to the Expedited Funds Availability Act, October 1989 and July 1990.

(i) National banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

* * * * *

The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

3. In § 229.12, paragraph (a) is revised, paragraphs (f)(1)(ii) and (f)(2) are removed, and the designation "(1)(i)" in paragraph (f) is removed to read as follows:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E to part 229 is amended, in the Commentary under section 229.12, by removing the second and third sentences of paragraph (a) and revising paragraph (f) to read as follows:

Appendix E—Commentary

* * * * *

Section 229.12 Permanent Availability Schedule

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of § 229.10(c)(1)(vii) requiring a depository bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-19077 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-21]

Amendment to VOR Federal Airway V-235; WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters a portion of the description of VOR Federal Airway V-235 in the vicinity of Rock Springs, WY. A step-down approach fix, which this action provides, is necessary to facilitate aircraft arriving and descending into the Rock Springs terminal area. This action increases safety.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend a portion of VOR Federal Airway V-235 in the vicinity of Rock Springs, WY (57 FR 10848). A step-down approach fix, which this action provides, is necessary to facilitate aircraft arriving and descending into the Rock Springs terminal area. This action increases safety. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of Federal Airway V-235 by establishing an approach fix northeast of Rock Springs, WY, VOR. This fix allows lowering of the minimum en route altitude for a segment of that airway from 9,500 feet mean sea level (MSL) to 9,200 feet MSL, thereby improving the approach angle into the Rock Springs terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-235 [Revised]

From Peach Springs, AZ; Mormon Mesa, NV, via INT Mormon Mesa 059° and Cedar City, UT, 197° radials; Cedar City; Milford, UT; Delta, UT; Fairfield, UT; 10 miles, 15 miles, 135 MSL, 46 miles, 125 MSL, Fort Bridger, WY. From Rock Springs, WY, 20 miles, 41 miles, 92 MSL, 37 miles, 107 MSL, Muddy Mountain, WY, to Newcastle, WY.

* * * * *

Issued in Washington, DC, on August 5, 1992.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-19382 Filed 8-13-92; 8:45 am]

BILLING CODE 4910-13-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning September 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1992, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant general Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the method for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since August 1, 1992. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6 percent to 5¾ percent.

Concurrently with the first publication of prospective interest rates and factors, the PBGC issued a rate book containing tables of actuarial factors to assist persons working with the interest rates. See, Notice of proposed change in the method for setting the interest rate and factors, 45 FR 38415, 38417 (June 9, 1980). The tables in the PBGC's rate book are based on interest rate assumptions from 6 percent to 11 percent, and do not apply to interest rates above or below those percentages. Accordingly, the rate book cannot be used in connection with the 5¾ rate now being published. The PBGC believes, however, that the advent and widespread use of the microcomputer as a business tool since 1980 and the consequent automation of actuarial functions have essentially eliminated the need for such tables by plan administrators and plan actuaries who are valuing benefits.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after September 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Rate Set 99 of appendix B is revised and Rate Set 100 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.