

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71. [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

\* \* \* \* \*

*Paragraph 6002 Class E airspace designated as surface areas.*

\* \* \* \* \*

**AGL OH E2 Findlay, OH [Revoked]**

\* \* \* \* \*

Issued in Des Plaines, Illinois, On September 9, 2004.

**Keith A. Thompson,**

*Area Staff Manager, Central Terminal Operations.*

[FR Doc. 04–21394 Filed 9–22–04; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF THE TREASURY**

**17 CFR Part 450**

**RIN 1505–AB06**

**[Docket No. BPD GSRS 04–02]**

**Government Securities Act Regulations: Custodial Holdings of Government Securities**

**AGENCY:** Office of the Assistant Secretary for Financial Markets, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury (“Treasury,” “We,” or “Us”) is issuing this proposed rule to solicit comments on a proposed amendment to the regulations issued under the Government Securities Act of 1986, as amended (“GSA”), that are applicable to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of customers. The provisions of the GSA regulations for custodial holding of government securities held by depository institutions generally

provide an exemption from these rules for a depository institution’s holdings of such government securities that are subject to fiduciary standards of the Board of Governors of the Federal Reserve System (“the Board”), the Federal Deposit Insurance Corporation (“FDIC”), or the Office of the Comptroller of the Currency (“OCC”). This proposed amendment would modify the exemption to include savings associations subject to the fiduciary standards of the Office of Thrift Supervision (“OTS”).

**DATES:** Submit comments on or before October 25, 2004.

**ADDRESSES:** You may send comments to: Bureau of the Public Debt, Government Securities Regulations Staff, 799 9th Street NW., Washington, DC 20239–0001. You also may e-mail us comments at either [govsecreg@bpd.treas.gov](mailto:govsecreg@bpd.treas.gov), or through the Federal eRulemaking portal at <http://www.regulations.gov> and follow the instructions for submitting comments. When sending comments by e-mail, please provide your full name, mailing address, and docket number BPD GSRS 04–02 or RIN 1505–AB06. You may download this proposed amendment from <http://www.regulations.gov> or the Bureau of the Public Debt’s Web site at <http://www.publicdebt.treas.gov>. The comments we receive will be available on Public Debt’s web site. The proposed amendment and comments received will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Deidere Brewer (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632 or e-mail us at [govsecreg@bpd.treas.gov](mailto:govsecreg@bpd.treas.gov).

**I. Background**

**A. GSA Regulations**

Title II of the GSA<sup>1</sup> requires Treasury to prescribe, by regulation, standards for the safeguarding and use of government securities. The standards apply to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer. The regulations are to provide for the adequate segregation of government securities, including government securities subject to

repurchase transactions. Prior to the adoption of regulations, Treasury is required to determine with respect to each appropriate regulatory agency, whether its “rules and standards adequately meet the purposes of the regulations”<sup>2</sup> to be issued, and if Treasury so determines, it must exempt any depository institution subject to those rules or standards from the regulations.

Treasury issued regulations under Title II of the GSA in 1987 at 17 CFR Part 450.<sup>3</sup> Based on the information provided by the appropriate regulatory agencies<sup>4</sup> and Treasury’s own analysis, Treasury determined in 1987 that the rules and standards of the OCC, the FDIC, and the Board adequately met the purposes of the regulations.<sup>5</sup> Consequently, Treasury provided an exemption in § 450.3 for depository institutions<sup>6</sup> subject to these standards with respect to their holdings in a fiduciary capacity. The exemption also extends to government securities held in a custodial capacity, provided the institutions have adopted policies and procedures that would apply to such custodial holdings all of the requirements imposed by their appropriate regulatory agency on government securities held in a fiduciary capacity, and the custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

Whether or not they are exempt under 450.3, however, depository institutions that retain custody of government securities subject to a repurchase agreement are required to comply with the confirmation requirements for hold-in-custody repurchase agreements in the regulations under Title I of the GSA at 403.5(d).<sup>7</sup> Although Treasury initially provided an exception from the hold-in-custody repurchase agreement requirements for financial institutions that held customer securities in safekeeping and that did not retain the right to substitute securities, Treasury

<sup>2</sup> 31 U.S.C. 3121(h)(4) & 9110(d).

<sup>3</sup> The GSA implementing regulations were published as a final rule on July 24, 1987 (52 FR 27901). The regulations, as amended, are codified at 17 CFR Chapter IV. The requirements for depository institutions that hold government securities as a fiduciary, custodian, or otherwise are set out in Subchapter B (17 CFR Part 450).

<sup>4</sup> See 17 CFR 450.2(a).

<sup>5</sup> 52 FR 5677 (February 25, 1987).

<sup>6</sup> See 17 CFR 450.2(c). The GSA regulations at § 450.2(c) define “depository institution” as having the meaning stated in clauses (i) through (vi) of § 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i)–(vi)). Savings associations are included in the definition of depository institutions at 12 U.S.C. 461(b)(1)(A)(vi).

<sup>7</sup> See 17 CFR 403.5(a)(2) & 401.4(b)(1)(ii).

<sup>1</sup> Pub. L. 99–571, 100 Stat. 3208 (1986).

rescinded that exception in August 1988.<sup>8</sup>

### B. OTS Request

On October 6, 2003, the OTS submitted a written request that the exemption at § 450.3 be extended to include OTS-regulated savings associations that meet its conditions.<sup>9</sup> In 1987, when Treasury developed the GSA regulations, savings associations were not eligible for the exemption because the Federal Home Loan Bank Board, OTS' predecessor, had not completed its examination procedures or guidance related to the GSA regulations. Savings associations are not included in the exemption, therefore they must comply with the requirements contained in Part 450 with respect to all government securities held for the account of customers in a capacity as a fiduciary or a custodian, as well as the requirements under applicable fiduciary law, including OTS fiduciary regulations at 12 CFR part 550.

The OTS request states that when Congress gave federal savings associations trust powers in 1980, the intent was to provide them with the ability to offer trust services on the same basis as national banks.<sup>10</sup> Without this same ability, the OTS states that savings associations are at a competitive disadvantage and subject to duplicative rules.

The OTS further states in its request that it now has examination procedures for the GSA regulations in place, and that OTS' regulation of fiduciary, custodial and other holdings of government securities adequately protects customer accounts. Further, the OTS states that the regulatory oversight of fiduciary activities of savings associations is the same as other federal banking agencies, and its trust regulations, policies and procedures are similarly aligned with those of the OCC.

## II. Analysis

Based on the information provided by the OTS and our analysis, we are proposing to amend the GSA regulations to add savings associations regulated by the OTS to the exemption in § 450.3

<sup>8</sup> 53 FR 28981 (August 1, 1988). Treasury stated that securities transactions should be confirmed promptly and that such treatment is particularly appropriate for hold-in-custody repurchase transactions, even when the subject securities are delivered to a separate safekeeping department within the financial institution.

<sup>9</sup> See Letter from Scott M. Albinson, Managing Director, Office of Thrift Supervision, Department of the Treasury, to Van Zeck, Commissioner of the Public Debt, Bureau of the Public Debt, Department of the Treasury (October 6, 2003).

<sup>10</sup> See § 5(n) of Home Owners' Loan Act (HOLA) 12 U.S.C. 1464(n) for thrifts and 12 U.S.C. 92a for banks.

under the same conditions that currently apply to depository institutions regulated by the OCC, the FDIC and the Board. We are not proposing any other changes to the current rule.

The OTS is responsible for ensuring that fiduciary powers are exercised by savings associations in a manner consistent with the best interests of fiduciary beneficiaries and other parties at interest through conformity with applicable federal and state law and sound fiduciary principles. The OTS also is responsible for ensuring that the safekeeping of fiduciary assets are kept separate from the savings association's assets.<sup>11</sup> Savings associations regulated by the OTS are also subject to examination procedures that require a review of the institution's systems and procedures to ensure that assets are adequately protected; review of applicable laws, regulations and fiduciary principles governing the safekeeping of assets; review of the institution's accounting system to insure that records are accurate and reliable; and review of the adequacy of the institution's audit program. Additionally, the OTS has confirmation requirements that are consistent with those of the other bank regulators. All savings associations must comply with 12 CFR part 551, subpart A, which established recordkeeping and confirmation requirements for securities transactions.<sup>12</sup> Accordingly, based on the information provided by the OTS and Treasury's own analysis, we have determined that the rules and standards of the OTS adequately meet the purposes of part 450.

We welcome comments on this proposed rule amendment and in particular whether it meets the intent of protecting custodial holdings of government securities for customers by depository institutions. We believe the proposed change would ensure that savings associations subject to the jurisdiction of the OTS are not subject to duplicative requirements. In developing this proposed amendment, we have consulted with the staffs of the bank regulatory agencies and also the staff of the Securities and Exchange Commission.

While the Treasury does not anticipate that subsequent modifications of the applicable OTS rules and standards will make this exemption inappropriate, we expect (as provided in § 450.3(b)) that the OTS would inform us of any material revisions to such rules and standards.

<sup>11</sup> See 12 U.S.C. 1464(n)(2), also 12 CFR part 550.

<sup>12</sup> 67 FR 76293 (December 12, 2002).

## III. Special Analysis

This proposed rule would make a technical amendment to the GSA regulations that would expand the exemption from the part 450 requirements, thus making OTS regulated savings associations eligible for the exemption. This proposed rule amendment does not meet the criteria for a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act,<sup>13</sup> we certify that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule is deregulatory in that it provides a basis for exempting OTS regulated savings associations from the requirements of part 450. Accordingly, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in proposed rules be submitted to the Office of Management and Budget for review and approval.<sup>14</sup> Collections of information contained in the GSA regulations have been previously reviewed and approved by the Office of Management and Budget under Control Number 1535-0089. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collections of information related to this proposed rule are contained in part 450 of the GSA regulations. This proposed rule would expand the exemption at § 450.3 to include savings associations regulated by the OTS that meet the conditions of the exemption. The OTS estimates that 132 savings associations would qualify for the exemption, thus making them no longer subject to part 450.

### List of Subjects in 17 CFR Part 450

Banks, banking, Depository institutions, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, we propose that 17 CFR part 450.3 be amended as follows:

### PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

1. The authority citation for part 450 continues to read as follows:

<sup>13</sup> 5 U.S.C. 601, *et seq.*

<sup>14</sup> 44 U.S.C. 3507(d).

**Authority:** Sec. 201, Pub. L. 99-571, 100 Stat. 3222-23 (31 U.S.C. 3121, 9110); Sec. 101, Pub. L. 99-571, 100 Stat. 3208 (15 U.S.C. 780-5(b)(1)(A), (b)(4), (b)(5)(B)).

2. Section 450.3 is amended by revising paragraph (a) to read as follows:

**§ 450.3 Exemption for holdings subject to fiduciary standards.**

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this Part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity provided that:

(1) Such institution has adopted policies and procedures that would apply to such custodial holdings all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and

(2) Such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

\* \* \* \* \*

Dated: September 8, 2004.

**Timothy S. Bitsberger,**

*Acting Assistant Secretary for Financial Markets.*

[FR Doc. 04-21334 Filed 9-22-04; 8:45 am]

**BILLING CODE 4810-39-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-7817-7]

**National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 41**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list

of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes 14 new sites to the NPL; all to the General Superfund Section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 22, 2004.

**ADDRESSES:** By electronic access: Go directly to EPA Dockets at <http://www.epa.gov/edocket> and follow the online instructions for submitting comments. Once in the system, select "search", and then key Docket ID No. SFUND-2004-0012. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office (Mail Code 5305T); 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. SFUND-2004-0012.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND-2004-0012. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

By e-Mail: Comments in ASCII format only may be mailed directly to [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov). Cite the Docket ID No. SFUND-2004-0012 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets and made available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the Supplementary Information portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:**

Yolanda Singer, phone (703) 603-8835, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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