

## PART 105—SUSPENSION, REVOCATION, OR TERMINATION OF BIOLOGICAL LICENSES OR PERMITS

■ 1. The authority citation for part 105 continues to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 105.3 is amended by adding a new paragraph (c) and an OMB control number citation to read as follows:

### § 105.3 Notices re: worthless, contaminated, dangerous, or harmful biological products.

\* \* \* \* \*

(c) When notified to stop distribution and sale of a serial or subserial of a veterinary biological product under the provisions of paragraph (a) or (b) of this section, veterinary biologics licensees or permittees shall:

(1) Stop the preparation, distribution, sale, barter, exchange, shipment, or importation of the affected serial(s) or subserial(s) of any veterinary biological product pending further instructions from APHIS.

(2) Immediately, but no later than 2 days, send stop distribution and sale notifications to any wholesalers, jobbers, dealers, foreign consignees, or other persons known to have any such veterinary biological product in their possession, which instruct them to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any such veterinary biological product. All notifications shall be documented in writing by the licensee or permittee.

(3) Account for the remaining quantity of each serial(s) or subserial(s) of any such veterinary biological product at each location in the distribution channel known to the manufacturer (licensee) or importer (permittee).

(4) When required by the Administrator, submit complete and accurate reports of all notifications concerning stop distribution and sale actions to the Animal and Plant Health Inspection Service pursuant to § 116.5 of this subchapter.

(Approved by the Office of Management and Budget under control number 0579–0318.)

## PART 115—INSPECTIONS

■ 3. The authority citation for part 115 continues to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 115.2 is revised to read as follows:

### § 115.2 Inspections of biological products.

(a) Any biological product, the container of which bears a United States veterinary license number or a United States veterinary permit number or other mark required by these regulations, may be inspected at any time or place. If, as a result of such inspection, it appears that any such product is worthless, contaminated, dangerous, or harmful, the Secretary shall give notice to stop distribution and sale to the manufacturer (licensee) or importer (permittee) and may proceed against such product pursuant to the provisions of part 118 of this subchapter.

(b) When notified to stop distribution and sale of a serial or subserial of a veterinary biological product by the Secretary, veterinary biologics licensees or permittees shall:

(1) Stop the preparation, distribution, sale, barter, exchange, shipment, or importation of the affected serial(s) or subserial(s) of any such veterinary biological product pending further instructions from APHIS.

(2) Immediately, but no later than 2 days, send stop distribution and sale notifications to any jobbers, wholesalers, dealers, foreign consignees, or other persons known to have any such veterinary biological product in their possession, which instruct them to stop the preparation, distribution, sale, barter, exchange, shipment, or importation of any such veterinary biological product. All notifications shall be documented in writing by the licensee or permittee.

(3) Account for the remaining quantity of each serial(s) or subserial(s) of any such veterinary biological product at each location in the distribution channel known to the manufacturer (licensee) or importer (permittee).

(4) When required by the Administrator, submit complete and accurate reports of all notifications concerning stop distribution and sale actions to the Animal and Plant Health Inspection Service pursuant to § 116.5 of this subchapter.

(c) Unless and until the Secretary shall otherwise direct, no persons so notified shall thereafter sell, barter, or exchange any such product in any place under the jurisdiction of the United States or ship or deliver for shipment any such product in or from any State, Territory, or the District of Columbia. However, failure to receive such notice shall not excuse any person from compliance with the Virus-Serum-Toxin Act. (Approved by the Office of Management and Budget under control number 0579–0318).

Done in Washington, DC, this 4th day of April 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7–6700 Filed 4–9–07; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 4

[Docket ID OCC–2007–0007]

## FEDERAL RESERVE SYSTEM

#### 12 CFR Parts 208 and 211

[Docket No. R–1279]

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Parts 337 and 347

RIN 3064–AD17

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 563

[Docket ID OTS–2007–0006]

### Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks

**AGENCIES:** Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Interim rules with request for comment.

**SUMMARY:** The OCC, Board, FDIC, and OTS (collectively, the Agencies) are jointly issuing and requesting public comment on these interim rules to implement the Financial Services Regulatory Relief Act of 2006 (FSRRA) and related legislation (collectively the Examination Amendments). The Examination Amendments permit insured depository institutions (institutions) that have up to \$500 million in total assets, and that meet certain other criteria, to qualify for an 18-month (rather than 12-month) on-site examination cycle. Prior to enactment of FSRRA, only institutions with less than \$250 million in total assets were eligible for an 18-month on-site examination

cycle. The OCC, Board, and FDIC are making parallel changes to their regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks (foreign bank offices), consistent with the International Banking Act of 1978 (IBA). In addition to implementing the changes in the Examination Amendments, the Agencies are clarifying when a small insured depository institution is considered "well managed" for purposes of qualifying for an 18-month examination cycle.

**DATES:** These interim rules are effective on April 10, 2007. Comments on the rules must be received by May 10, 2007.

**ADDRESSES:** Comments should be directed to:

**OCC:** You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“Regulations.gov”:** Go to <http://www.regulations.gov>, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2007–0007” to submit or view public comments and to view supporting and related materials for this interim rule. The “User Tips” link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

- **Hand Delivery/Courier:** 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

**Instructions:** You must include “OCC” as the agency name and “Docket ID OCC–2007–0007” in your comment. In general, OCC will enter all comments received into the docket and publish them on Regulations.gov without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, select

Comptroller of the Currency from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2007–0007” to view public comments for this interim final rule.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

**Board:** You may submit comments, identified by Docket No. R–1279, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- **FAX:** 202–452–3819 or 202–452–3102.

- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board’s Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FDIC:** You may submit comments by any of the following methods:

- **Agency Web Site:** <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.

- **E-mail:** [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include “Expanded Examination Cycle” in the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Public Inspection:** All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

**OTS:** You may submit comments, identified by OTS–2007–0006, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select “Office of Thrift Supervision” from the agency drop-down menu, then click submit. Select Docket ID “OTS–2007–0006” to submit or view public comments and to view supporting and related materials for this interim rule. The “User Tips” link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **Mail:** Regulation Comments, Chief Counsel’s Office, Office Of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0006.

- **Hand Delivery/Courier:** Guard’s Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel’s Office, OTS–2007–0006.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**Viewing Comments Electronically:** Go to <http://www.regulations.gov>, select “Office of Thrift Supervision” from the agency drop-down menu, then click “Submit.” Select Docket ID “OTS–2007–0006” to view public comments for this notice of proposed rulemaking.

*View Comments On-Site:* You may inspect comments in the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090; Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874-5090; Fred Finke, Mid-size/Community Bank Supervision, (202) 874-4468; Patricia Roberts, Operational Risk Policy Analyst, (202) 874-5637.

*Board:* Barbara Bouchard, Deputy Associate Director, (202) 452-3072, Mary Frances Monroe, Manager, (202) 452-5231, or Stanley Rediger, Supervisory Financial Analyst, (202) 452-2629, Division of Banking Supervision and Regulation; or Pamela G. Nardolilli, Senior Counsel, (202) 452-3289, for the revisions to Regulation H, or Jon Stoloff, Senior Counsel, (202) 452-3269, for the revisions to Regulation K, Legal Division. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263-4869.

*FDIC:* Melinda West, Senior Examination Specialist, (202) 898-7221; Patricia A. Colohan, Senior Examination Specialist, (202) 898-7283; Division of Supervision and Consumer Protection; Rodney D. Ray, Counsel, (202) 898-3556, for the revisions to 12 CFR Part 347; Kimberly A. Stock, Attorney, (202) 898-3815, for the revisions to 12 CFR Part 337; Legal Division.

*OTS:* Robyn H. Dennis, Director, Operation Risk, (202) 906-5751, Examinations and Supervision Policy; or Barbara Shycoff, Special Counsel, Regulations and Legislation, (202) 906-6947, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 10(d) of the Federal Deposit Insurance Act (the FDI Act)<sup>1</sup> generally requires that the appropriate federal banking agency for an insured

depository institution conduct a full-scope, on-site examination of the institution at least once during each 12-month period. Prior to enactment of FSRRA, section 10(d) also authorized the appropriate federal banking agency to lengthen the on-site examination cycle for an institution to 18 months if the institution (1) had total assets of less than \$250 million; (2) was well capitalized (as defined in the prompt corrective action statute at 12 U.S.C. 1831o); (3) was found, at its most recent examination, to be well managed and to have a composite condition of outstanding or good;<sup>2</sup> (4) had not undergone a change in control during the previous 12-month period in which a full-scope, on-site examination otherwise would have been required; and (5) was not subject to a formal enforcement proceeding or order by its appropriate federal banking agency or the FDIC. The Board, the FDIC and the OTS, as the appropriate federal banking agencies for state-chartered insured banks and savings associations, are permitted to conduct on-site examinations of such institutions on alternating 12-month or 18-month schedules with the institution's State supervisor, if the Board, FDIC, or OTS, as appropriate, determines that the alternating examination conducted by the State carries out the purposes of section 10(d) of the FDI Act and the Home Owners' Loan Act.

In addition, section 7(c)(1)(C) of the IBA provides that a U.S. branch or agency of a foreign bank shall be subject to on-site examination by its appropriate federal banking agency as frequently as a national or state bank would be subject to such an examination by the agency. The agencies previously adopted regulations to implement the examination cycle requirements of section 10(d) of the FDI Act and section 7(c)(1)(C) of the IBA, including the extended 18-month examination cycle available to qualifying small institutions and foreign bank offices.<sup>3</sup>

Section 605 of FSRRA, which became effective on October 13, 2006, amended

<sup>2</sup> Under section 10(d) of the FDI Act, before enactment of the Examination Amendments, the Agencies had the authority to extend the 18-month examination cycle to institutions with composite CAMELS ratings of 2 and assets of up to \$250 million. Section 10(d) required that the Agencies determine that extending the 18-month cycle in this manner would be consistent with safety and soundness. See 12 U.S.C. 1820(d)(10). The Agencies exercised this discretion in 1997 and extended the 18-month examination cycle to 2-rated institutions with assets of \$250 million or less. See 62 FR 6449, February 12, 1997 (interim rule); see also 63 FR 16377, April 2, 1998 (final rule).

<sup>3</sup> See 12 CFR 4.6 and 4.7 (OCC), 12 CFR 208.64 and 211.26 (Board), 12 CFR 337.12 and 347.211 (FDIC), and 12 CFR 563.171 (OTS).

section 10(d) of the FDI Act to raise, from \$250 million to \$500 million, the total asset threshold below which an insured depository institution may qualify for an 18-month (rather than a 12-month) on-site examination cycle.<sup>4</sup> Public Law No. 109-473, which became effective on January 11, 2007, also amended section 10(d)(10) of the FDI Act to authorize the appropriate agency, if it determines the action would be consistent with principles of safety and soundness, to allow an insured depository institution that falls within this expanded total asset threshold to qualify for an 18-month examination cycle if the institution received a composite rating of outstanding or good at its most recent examination.<sup>5</sup>

The Examination Amendments will allow the Agencies to better focus their supervisory resources on those institutions that may present capital, managerial, or other issues of supervisory concern, while concomitantly reducing the regulatory burden on small, well capitalized and well managed institutions. The Agencies will continue to use off-site monitoring tools to identify potential problems in smaller, well capitalized and well managed institutions that present low levels of risk. Moreover, neither the statute nor the Agencies' regulations limit, and the Agencies therefore retain, the authority to examine an insured depository institution or foreign bank office more frequently than would be required by the FDI Act or IBA.

*Description of the Interim Rules*

The Agencies are adopting interim rules to implement the Examination Amendments. In particular, the Agencies are amending their respective rules to raise, from \$250 million to \$500 million, the total asset threshold below which an insured depository institution that meets the qualifying criteria in section 10(d) and the Agencies' rules may qualify for an 18-month on-site examination cycle. In addition, as authorized by the Examination Amendments, the Agencies have determined that it is consistent with safety and soundness to permit institutions with between \$250 million and \$500 million in total assets that received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS),<sup>6</sup> and that meet

<sup>4</sup> Pub. L. No. 109-351, 120 Stat. 1966 (2006).

<sup>5</sup> 120 Stat. 3561 (2007).

<sup>6</sup> CAMELS is an acronym that is drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality,

<sup>1</sup> Section 10(d) of the FDI Act was added by section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and is codified at 12 U.S.C. 1820(d).

the other qualifying criteria set forth in section 10(d) and the Agencies' rules, to qualify for an 18-month examination cycle. In this regard, data indicate that between 1985 and 2000, insured depository institutions with a composite CAMELS rating of 1 or 2 were more than three times less likely to fail over the next five-year period than institutions with a lower composite CAMELS rating. Furthermore, the Agencies note that, in order to qualify for an 18-month examination cycle, any insured depository institution with total assets of less than \$500 million—including one with a composite rating of 2—must meet the other capital, managerial and supervisory criteria set forth in section 10(d). These provisions, combined with the Agencies' off-site monitoring activities and ability to examine an institution more frequently as necessary or appropriate, have permitted the Agencies to effectively supervise and protect the safety and soundness of institutions with total assets of \$250 million or less since 1997.

Consistent with section 7(c)(1)(C) of the IBA, the OCC, Board and FDIC also are making conforming changes to their regulations governing the on-site examination cycle for the U.S. branches and agencies of foreign banks. The Agencies' amended rules permit a foreign bank office with total assets of less than \$500 million to qualify for an 18-month examination cycle if the office received a composite ROCA rating of 1 or 2 at its most recent examination.<sup>7</sup>

The Agencies estimate that these interim rules will increase the number of insured depository institutions that may qualify for an extended 18-month examination cycle by approximately 1,089 institutions, for a total of 6,670 insured depository institutions. Approximately 126 foreign branches and agencies would be eligible for the extended examination cycle based on the interim rules, for an increase of 31 offices.<sup>8</sup>

In connection with these changes, the Agencies also have modified their rules to specify, consistent with current practice, that a small institution meets the statutory "well managed" criteria for an 18-month cycle if the institution, besides having a CAMELS composite rating of 1 or 2, also received a rating of 1 or 2 for the management component

Management, Earnings, Liquidity, and Sensitivity to market risk.

<sup>7</sup> The four components of the ROCA supervisory rating system for foreign bank offices are: Risk management, Operational controls, Compliance, and Asset quality.

<sup>8</sup> Data are as of June 30, 2006, and reflect the number of institutions and foreign bank offices with total assets of less than \$500 million.

of the CAMELS rating at its most recent examination. The Agencies believe this amendment will provide additional transparency to their rules and clarify for institutions how the "well managed" requirement in section 10(d) is interpreted and applied by the Agencies.<sup>9</sup> This interpretation is consistent with definitions of "well managed" that the Agencies currently apply in other circumstances.<sup>10</sup>

The FDI Act and the IBA set the outside limits within which an on-site safety and soundness examination of an institution or foreign bank office must commence, and permit the appropriate Agency for an institution or foreign bank to conduct an on-site examination more frequently than required. The Agencies' rules continue to expressly recognize that the appropriate Agency may examine an institution or foreign bank office as frequently as the Agency deems necessary.

#### Effective Date/Request for Comment

The Agencies are issuing these interim rules without advance notice and comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* ("APA"). The interim rules implement the provisions of section 605 of the FSRRA, which became effective on October 13, 2006, and Public Law No. 109-473, which became effective on January 11, 2007. The interim rules adopt without change the statutory increase in the asset ceiling for 18-month examination of CAMELS-1 rated institutions and the statutory availability of the 18-month examination cycle for CAMELS-2 institutions. The interim rules also explain how the Agencies apply the "well managed" requirement in the underlying statute and thus, provide greater clarity to institutions consistent with the agencies' current practices. For these reasons, the Agencies find there is good cause to issue the rules without advance notice and comment. 5 U.S.C. 553(b)(3)(A), (B). The rules explain how the Agencies generally exercise the discretion given them by the statute to examine qualifying institutions less frequently than once every 12 months.

<sup>9</sup> The Agencies' rules relating to the examination cycle for foreign bank offices already permit the appropriate Agency to consider, among other things, whether the office received a "3" or lower rating for any of the individual ROCA components (including risk management) in determining whether the office should qualify for an 18-month exam cycle. See 12 CFR 4.7(b)(2)(i) (OCC), 211.26(c)(2)(ii) (Board), and 347.211(b)(2)(i) (FDIC).

<sup>10</sup> See, e.g., 12 CFR 362.17(c)(1) (FDIC); 12 CFR 5.34(d)(3) (OCC); 12 CFR 225.2(5) and 12 CFR 208.11(h) (Board); OTS Examination Handbook, Sec. 060 (2004) (OTS).

The Agencies retain the discretion to examine individual institutions more frequently; the interim rules do not bind the Agencies to examine qualifying institutions on an 18-month basis, nor do they create a right for institutions to be examined on an 18-month cycle. With respect to the delayed effective date, the Agencies conclude that, because the rules recognize an exemption, the interim rules are exempt from the APA's delayed effective date requirement. 5 U.S.C. 553(d)(1). The Agencies are nevertheless interested in the views of the public and request comment on all aspects of these interim rules.

#### Regulatory Flexibility Act

The interim rules do not impose any new obligations, restrictions or burdens on banking organizations, including small banking organizations, and, indeed, reduce regulatory burden associated with on-site examinations for qualifying small institutions and foreign bank offices. For these reasons, the Agencies certify that the interim rules will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.* The objective and legal basis for the interim rules are discussed in the **SUPPLEMENTARY INFORMATION**.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,<sup>11</sup> the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in these interim rules.

#### OCC and OTS Executive Order 12866 Statement

The OCC and OTS have each independently determined that the interim rules with request for comment are not significant regulatory actions under Executive Order 12866.

#### OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995<sup>12</sup> requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded

<sup>11</sup> 44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1.

<sup>12</sup> Pub. L. 104-4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act).

Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC and the OTS have each independently determined that the interim rules will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year, the OCC and the OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the interim rules will have the effect of reducing regulatory burden on certain institutions and foreign bank offices.

#### Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use "plain language" in all proposed and final rules published after January 1, 2000. The Agencies believe the interim rules are presented in a clear and straightforward manner and solicit comments on ways to make the rules easier to understand.

#### List of Subjects

##### 12 CFR Part 4

Administrative practice and procedure, Availability and release of information, Confidential business information, Contracting outreach program, Freedom of information, National banks, Organization and functions (government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

##### 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

##### 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

##### 12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, United States investments abroad.

##### 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

#### Office of the Comptroller of the Currency

##### 12 CFR Chapter I

#### Authority and Issuance

■ For the reasons set forth in the joint preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

#### PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 1. The authority citation for part 4 continues to read as follows:

**Authority:** 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR, 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

■ 2. In Subpart A, § 4.6(b) is revised to read as follows:

#### § 4.6 Frequency of examination of national banks.

\* \* \* \* \*

(b) *18-month rule for certain small institutions.* The OCC may conduct a full-scope, on-site examination of a national bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of less than \$500 million;

(2) The bank is well capitalized as defined in part 6 of this chapter;

(3) At the most recent examination, the OCC:

(i) Assigned the bank a rating of 1 or 2 for management as part of the bank's rating under the Uniform Financial Institutions Rating System; and

(ii) Assigned the bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(4) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC or the Federal Reserve System; and

(5) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

\* \* \* \* \*

■ 3. In § 4.7, paragraph (b)(1) introductory text is republished and paragraph (b)(1)(i) is revised to read as follows:

#### § 4.7 Frequency of examination of Federal agencies and branches.

\* \* \* \* \*

(b) *18-month rule for certain small institutions.* (1) *Mandatory standards.* The OCC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the Federal branch or agency:

(i) Has total assets of less than \$500 million;

\* \* \* \* \*

#### Federal Reserve System

##### 12 CFR Chapter II

#### Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board amends 12 CFR parts 208 and 211 of chapter II of title 12 of the Code of Federal Regulations as follows:

#### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831(o), 1831p-1, 1831r-1, 1831(w), 1831(x), 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 1681S, 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 2. Section 208.64(b) is revised to read as follows:

#### § 208.64 Frequency of examination.

\* \* \* \* \*

(b) *18-month rule for certain small institutions.* The Federal Reserve may conduct a full-scope, on-site examination of an insured member bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of less than \$500 million;

(2) The bank is well capitalized as defined in subpart D of this part (§ 208.43);

(3) At the most recent examination conducted by either the Federal Reserve or applicable State banking agency, the Federal Reserve—

(i) Assigned the bank a rating of 1 or 2 for management as part of the bank's rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS); and

(ii) Assigned the bank a composite CAMELS rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(4) The bank currently is not subject to a formal enforcement proceeding or order by the Federal Reserve or the FDIC; and

(5) No person acquired control of the bank during the preceding 12-month period in which a full-scope examination would have been required but for this paragraph (b).

\* \* \* \* \*

**PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)**

■ 1. The authority citation for part 211 continues to read as follows:

**Authority:** 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

■ 2. In § 211.26 paragraph (c)(2)(i) introductory text is republished and paragraph (c)(2)(i)(A) is revised to read as follows:

**§ 211.26 Examinations of offices and affiliates of foreign banks.**

\* \* \* \* \*

(c) *Frequency of on-site examination*

\* \* \*

(2) *18-month cycle for certain small institutions—(i) Mandatory standards.* The Board may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as required in paragraph (c)(1) of this section, if the branch or agency:

(A) Has total assets of less than \$500 million;

\* \* \* \* \*

**Federal Deposit Insurance Corporation  
12 CFR Chapter III  
Authority and Issuance**

■ For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends parts 337 and 347 of chapter III of title 12 of the Code of Federal Regulations as follows:

**PART 337—UNSAFE AND UNSOUND BANK PRACTICES**

■ 1. The authority citation for part 337 is revised to read as follows:

**Authority:** 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831.

■ 2. Section 337.12(b) is revised to read as follows:

**§ 337.12 Frequency of examination.**

\* \* \* \* \*

(b) *18-month rule for certain small institutions.* The FDIC may conduct a full-scope, on-site examination of an insured state nonmember bank at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank has total assets of less than \$500 million;

(2) The bank is well capitalized as defined in § 325.103(b)(1) of this chapter;

(3) At the most recent FDIC or applicable State banking agency examination, the FDIC—

(i) Assigned the bank a rating of 1 or 2 for management as part of the bank's composite rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS); and

(ii) Assigned the bank a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies of which are available at the addresses specified in § 309.4 of this chapter);

(4) The bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC or the Federal Reserve and

(5) No person acquired control of the bank during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

\* \* \* \* \*

**PART 347—INTERNATIONAL BANKING**

■ 1. The authority citation for part 347 continues to read as follows:

**Authority:** 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Pub. L. 98-181, 97 Stat. 1153.

■ 2. In § 347.211, paragraph (b)(1) introductory text is republished and paragraph (b)(1)(i) is revised to read as follows:

**§ 347.211 Examination of branches of foreign banks.**

\* \* \* \* \*

(b) *18-month cycle for certain small institutions.* (1) *Mandatory standards.*

The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the insured branch:

(i) Has total assets of less than \$500 million;

\* \* \* \* \*

**Office of Thrift Supervision  
12 CFR Chapter V**

**Authority and Issuance**

■ For the reasons set forth in the joint preamble, the OTS amends part 563 of Chapter V of title 12 of the Code of Federal Regulations as follows:

**PART 563—SAVINGS ASSOCIATIONS—OPERATIONS**

■ 1. The authority citation for part 563 continues to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 2. Section 563.171(b) is revised to read as follows:

**§ 563.171 Frequency of safety and soundness examination.**

\* \* \* \* \*

(b) *18-month rule for certain small institutions.* The OTS may conduct a full-scope, on-site examination of a savings association at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The savings association has total assets of less than \$500 million;

(2) The savings association is well capitalized as defined in § 565.4 of this chapter;

(3) At its most recent examination, the OTS—

(i) Assigned the savings association a rating of 1 or 2 for management as part of the savings association's composite rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS), and

(ii) Determined that the savings association was in outstanding or good condition, that is, it received a composite rating, as defined in § 516.5(c) of this chapter, of 1 or 2;

(4) The savings association currently is not subject to a formal enforcement proceeding or order by the OTS or the FDIC; and

(5) No person acquired control of the savings association during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

\* \* \* \* \*

Dated: March 29, 2007.

**John C. Dugan,**

*Comptroller of the Currency, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, April 3, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 20th day of March, 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: April 2, 2007.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

[FR Doc. 07-1716 Filed 4-9-07; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P; 6720-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2006-24826; Airspace Docket No. 06-ANM-3]

#### Establishment of Class E Airspace; Nucla, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects an error in the northwest boundary description of a final rule that was published in the *Federal Register* on February 23, 2007 (72 FR 8100) Federal Register Docket No. FAA-2006-24826, Airspace Docket No. 06-ANM-3.

**DATES:** *Effective Date:* 0901 UTC, May 10, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Ed Haeseker, Federal Aviation Administration, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone: (425) 917-6714.

#### SUPPLEMENTARY INFORMATION:

#### History

*Federal Register* Docket FAA-2006-24826, Airspace Docket No. 06-ANM-3, published on February 23, 2007 (72 FR 8100), establishes Class E Airspace at Hopkins Field, Nucla, CO, effective May 10, 2007. An error was discovered in the northwest geographic boundary of the

Class E airspace. This action corrects this error.

#### Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the *Federal Register* February 23, 2007 (72 FR 8100), Federal Register Docket No. FAA-2006-24826, Airspace Docket No. 06-ANM-3, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

#### PART 71—[AMENDED]

##### § 71.1 [Amended]

\* \* \* \* \*

##### ANM CO E5 Nucla, CO [Corrected]

Hopkins Field, CO

(Lat. 38°14'20" N., long. 108°33'48" W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Hopkins Field and within 4 miles each side of the 317° bearing from Hopkins Field extending from the 6.0-mile radius of Hopkins Field northwest to 12.0 miles from Hopkins Field; that airspace extending upward from 1,200 feet above the surface beginning at lat. 38°45'00" N., long. 109°00'00" W.; to lat. 38°30'00" N., long. 108°30'00" W.; to CONES VOR/DME; to DOVE CREEK VORTAC; to lat. 38°30'00" N., long. 109°10'00" W.; to point of beginning.

\* \* \* \* \*

Issued in Seattle, Washington, on March 30, 2007.

**Steven M. Osterdahl,**

*Director of Operations, En Route and Oceanic, Western Service Area.*

[FR Doc. E7-6649 Filed 4-9-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9322]

RIN 1545-BG26

#### Anti-Avoidance and Anti-Loss Reimportation Rules Applicable Following a Loss on Disposition of Stock of Consolidated Subsidiaries

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under section 1502 of the Internal Revenue Code (Code). These regulations provide guidance to corporations filing consolidated returns. These regulations apply an anti-avoidance rule and revise

an anti-loss reimportation rule that applies following a disposition of stock of a subsidiary at a loss. The text of the temporary regulations also serves as the text of the proposed regulations (REG-156420-06) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the *Federal Register*.

**DATES:** *Effective Date:* These regulations are effective April 10, 2007.

*Applicability Date:* For dates of applicability, see §§ 1.1502-32T(k) and 1.1502-35T(j)(2).

#### FOR FURTHER INFORMATION CONTACT:

Theresa Abell, (202) 622-7700 or Phoebe Bennett, (202) 622-7770 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Section 1.1502-35 currently addresses loss duplication. The rule generally applies whenever there is a disposition of loss shares of subsidiary stock or a subsidiary is deconsolidated. The regulation includes several specific anti-abuse rules, including a rule intended to prevent a group from getting the benefit of a loss on the stock of one of its subsidiaries and then reimporting the same economic loss back to into the group (or its successor) in order to claim a duplicative benefit from the one loss.

The current anti-loss reimportation rule generally disallows reimported losses that duplicate a loss recognized and allowed with respect to the disposition of subsidiary stock. The term "subsidiary" is defined in § 1.1502-1(c) to mean a corporation that is a member of a consolidated group but is not the common parent of the group. Taxpayers have attempted to avoid the anti-loss reimportation rule by first deconsolidating a subsidiary and then selling loss shares of the subsidiary's stock. The loss on the stock is one that was reflected in the subsidiary's attributes at the time of the deconsolidation and is thus one that the anti-loss reimportation rule is intended to address. But because the sale occurs after the subsidiary ceases to be a member of the group, taxpayers take the position that the loss recognized is not with respect to "subsidiary" stock and therefore is not subject to the anti-loss reimportation rule. Thus, after obtaining the tax benefit of its economic loss (on the disposition of the stock), the group would be free to reimport the loss and then (directly or through a successor group) claim a second tax benefit for its one economic loss.

The IRS and Treasury Department believe that the duplication of a group