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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 610

Pay Administration (General) and Hours of Duty

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is revising the regulations pertaining to an agency's responsibility to establish regularly scheduled workweeks for its employees and the regulations pertaining to an employee's entitlement to premium pay for regularly scheduled work at night, on Sunday, or on a holiday, or for overtime work outside his or her regularly scheduled basic workweek. Over the years, the Comptroller General and the courts have greatly expanded the original meaning of the term "regularly scheduled" as it is used in the regulations. This revision will clarify the definition of the term "regularly scheduled" and will clarify the relationship originally intended between an agency's requirement to establish workweeks for its employees and an employee's entitlement to premium pay for that work.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Dwight W. Brown, (202)-632-4634.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the Federal Register on January 8, 1982 (47 FR 958), for a public comment period of 60 days. The Office of Personnel Management (OPM) received written comments from 12 Federal agencies, three labor organizations, and five individuals. No substantive changes are required in the proposed regulations. However, OPM has modified the

proposed regulations slightly to incorporate comments as explained below.

Employees Excluded From Coverage

The listing of employees to whom subpart A of Title 5, Code of Federal Regulations does not apply (5 CFR 550.101(b)) has been revised to reflect recent amendments to section 5541(2) of title 5, United States Code. This technical amendment was not in the proposed rule; however, it is necessary to bring this subsection in line with current law. The applicability of Subpart A of Part 550 and Subpart A of Part 610 is based on § 550.101 of Title 5, Code of Federal Regulations.

Authority to Regulate

One labor organization questioned OPM's authority to issue regulations conflicting with statutory construction and one individual questioned whether OPM can legitimately limit the interpretations of the Comptroller General.

The Comptroller General, when faced with the term "regularly scheduled," has defined it in the absence of any rule by OPM, which is the administrator. In turn, the courts have given different and conflicting interpretations to the use of the term "regularly scheduled." However, in *Anderson, et al. v. United States*, 201 Ct. Cl. 660 (1973), the Court of Claims has supported the proposition that regularly scheduled work is work that has been scheduled as part of the employee's regularly scheduled administrative workweek. This is OPM's definition of this term.

The authorities for OPM to regulate concerning premium pay and hours of duty are contained at 5 U.S.C. 5548 and 6101(c). OPM, as the administrator, is clarifying the definition of the term "regularly scheduled" based on its use within the statute—the Federal Employees Pay Act of 1945, as amended (and codified in subchapter V of chapter 55 and chapter 61 of title 5, United States Code). The General Accounting Office (GAO) in its comments on the proposed rule has acknowledged OPM's authority to issue regulations under these authorities. Further, in the same comments GAO concluded "that it is within OPM's authority to so define an employee's [regularly scheduled] administrative workweek and thus limit

an employee's entitlement to overtime and night differential."

Definition of the Term "Regularly Scheduled"

GAO commented that OPM's definition of the term "regularly scheduled" would impact on prior decisions of that office in two major areas: (1) Those decisions holding that a General Schedule employee who works occasional overtime at night during a regularly scheduled tour of duty, but not his tour of duty, is entitled to night differential (see 59 Comp. Gen. 101 (1979)); and (2) those decisions defining "regularly scheduled work" to mean work that is scheduled at least 1 day in advance and scheduled to recur on successive days or after specified intervals so as to fall within a predictable and discernible pattern (see 59 Comp. Gen. 101, supra).

OPM agrees. Under OPM's definition of the term "regularly scheduled," it is the employee who must be scheduled to perform the work, including nightwork, and the work must be scheduled in advance of the administrative workweek as part of the employee's regularly scheduled administrative workweek to be considered "regularly scheduled." Accordingly, these prior decisions would no longer be controlling.

Premium Pay

(1) Definitions

The definitions of Sunday and holiday work in § 550.103 and the authorization for night pay differential in § 550.121 have been modified to clarify that the work must be performed by the employee to be payable at premium rates (except for absences on a holiday or periods of leave of less than 8 hours for entitlement to night pay differential under 5 U.S.C. 5545 (a)).

The definitions of Sunday and holiday work have been modified to include the term "nonovertime work." By definition, Sunday work and holiday work are mutually exclusive of overtime work. If a full-time employee performs work on Sunday, he or she is entitled to Sunday pay if the Sunday work was scheduled as a part of his or her basic 40-hour workweek; otherwise, he or she is entitled to overtime pay for such work. The same is true for holiday work. If a full-time employee performs work during

the regularly scheduled hours of his or her daily tour of duty on a holiday, he or she is entitled to premium pay for holiday work; otherwise work on a holiday outside the hours of the employee's daily tour of duty is overtime work and entitles the employee to overtime pay.

On the other hand, nightwork is not mutually exclusive of overtime work. While nightwork must be scheduled as part of the employee's regularly scheduled administrative workweek to be compensable at night premium rates, an employee may be entitled to overtime pay and night pay differential for the same hour—a period of regular overtime work during night hours. For example, a General Schedule employee with a regularly scheduled administrative workweek of 48 hours; Monday through Saturday, 6 p.m. to 2 a.m., is entitled to 8 hours overtime pay and 48 hours night pay differential. If the employee performs additional irregular or occasional overtime work at night during the administrative workweek, he or she is entitled to overtime pay for such work, but he or she is not entitled to night pay differential for the additional period of overtime work.

(2) Temporary Duty at Night

There were numerous comments concerning the language and the intent of § 550.122(d). These comments indicated confusion concerning what is meant by a "temporary assignment" and what is the time frame in which a temporary assignment must be made to qualify an employee for night pay.

This section has been rewritten to clarify its intended purpose. It authorizes the payment of night pay when an employee is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in the daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek. In the first case, the employee is entitled to night pay differential for work performed as part of his or her regularly scheduled tour of duty, and in the latter case the employee is not entitled to night pay differential for the additional period of irregular or occasional overtime work.

(3) First 40-Hour Tours of Duty Under Special Situations

Two agencies recommended that the final regulations address the concept of "regularly scheduled" work in relation to first 40-hour tours of duty.

This recommendation has been incorporated. Section 610.111(b) has been modified to clarify (1) That a first 40-hour tour of duty is a basic workweek without the requirement for specific days and hours, and (2) that all work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes.

Hours of Duty

(1) Failure to Schedule Work

GAO stated the view that unless agencies strictly comply with the scheduling requirements in § 610.121 (b), there will be claims for overtime pay and night pay for "regularly scheduled" work. They recommended that the following guidance which appeared in the "Supplementary Information" of the proposed regulations be contained in the final regulations:

If an agency fails to schedule its employees in a manner that realistically reflects the agency's actual work requirements, the failure to schedule will constitute a violation of regulations warranting payment of premium pay for "regularly scheduled" work.

GAO further noted that the proposed regulations would not change the holding in their decision in 59 Comp. Gen. 101, *supra*, with respect to employees who habitually and recurrently perform overtime work at night due to the inherent nature of their duties. It follows that if an agency failed to properly schedule overtime or nightwork, employees in this situation would be entitled to overtime or night differential for "regularly scheduled" work.

This recommendation has been incorporated. A modified version of the above statement has been added in § 610.121(b). We note that in addition to Anderson, wherein the Court of Claims supported the principle that "regularly scheduled" work means work that has been scheduled as part of the employee's regularly scheduled administrative workweek, the Court of Claims in *Aviles, et al. v. United States*, 151 Ct. Cl. 1 (1960), had previously expressed another principle that:

[T]he mere fact of omitting regular overtime from the scheduled tours of duty does not make such overtime occasional or irregular.

Under the Aviles principle, this overtime work could have been scheduled under the regulations; therefore, it should have been scheduled. This principle is the basis for GAO's position in 59 Comp. Gen. 101, *supra*, with respect to employees who habitually and recurrently perform overtime work at night. OPM concurs and we have

included this requirement in § 610.121 (b) to fill a gap in the proposed regulations. Thus, "regularly scheduled" work will include: (1) Any work that is scheduled as part of an employee's regularly scheduled administrative workweek (Anderson), and (2) any work that should have been scheduled as part of an employee's regularly scheduled administrative workweek (Aviles).

(2) Change in Tour of Duty

One agency recommended that the language in § 610.121(b) that refers to a change in an "employee's work requirements" be modified to refer to a change in the "specific days and hours of work" of an employee's tour of duty for the administrative workweek. This recommendation has been incorporated. This section requires the head of an agency to reschedule an employee's tour of duty when the specific days and hours required of the employee in the ensuing workweek are known in advance and can be scheduled. The key to this requirement is that the official who is responsible for scheduling the work of employees: (1) Has knowledge of the different work requirement before the administrative workweek begins, and (2) has the capability of determining which employee should have the specific days and hours of his or her tour of duty rescheduled to meet this work requirement. Having this knowledge, the official is responsible for scheduling the work as part of the employee's regularly scheduled tour of duty and such work is "regularly scheduled" work. However, if the official does not know of the requirement for additional work until after commencement of the administrative workweek, he or she has no recourse but to order an employee to perform such work in addition to his or her regularly scheduled tour of duty. This additional work would be irregular or occasional overtime work. The same would apply if the need for the additional overtime work is known in advance of the administrative workweek but the official does not know which days or hours the work will be required or does not know which employee will be required to perform the work. In this case, when the official orders the additional overtime work during the administrative workweek, such work is irregular or occasional overtime work.

Numerous comments indicated concern that the paperwork for changing tours of duty of employees may be burdensome unless temporary changes may be made by agency supervisors on time cards or other documents. Section 610.121(b) has been modified to include

the requirement that the head of the agency notify the employee of the change in tour of duty and annotate the employee's time card or document the change on other internal agency forms for recording work. The change of an employee's regularly scheduled administrative workweek to meet a different work requirement in an ensuing workweek need not be documented on an SF-50 (unless, of course, the employee's work schedule is changed from part-time to full-time, or vice versa, or the total number of hours that a part-time employee will work is changing).

One agency recommended that OPM prescribe the test or the circumstances when worktime that is not properly scheduled by the head of an agency shall become "regularly scheduled" work. One labor organization recommended a review mechanism be established to hold managers accountable to prevent manipulating schedules to purposely avoid premium pay. One individual stated that the proposed rules provide no remedy for employees if they believe they have been aggrieved by the agency's failure to schedule them properly. Section 610.121(b) requires the head of an agency (or an official who has been delegated the authority to schedule work of employees) to reschedule an employee's tour of duty when it is known in advance of an administrative workweek that there will be a different work requirement in that workweek. The head of the agency has the responsibility to establish an employee's tour of duty (the specific calendar days and hours of the days) to meet agency work requirements. If he or she fails to schedule the employee in a manner that realistically reflects the employee's actual work requirement for that administrative workweek, this is a violation of OPM regulations. In this event, the employee has various avenues in which to seek corrective action and payment for "regularly scheduled" work. For example, the employee may seek administrative relief by filing a grievance under the appropriate agency or negotiated grievance procedures or submitting a claim to GAO. After the employee has exhausted administrative remedies, he or she may seek judicial relief.

(3) Voluntary Work During Night Hours

GAO recommended that the scheduling requirements in § 610.121(b) be expanded to include situations where employees perform overtime work during night hours on a voluntary basis.

Employees who perform voluntary overtime work are paid overtime pay for

such work regardless of whether it is regular overtime work or irregular or occasional overtime work. In this situation, regularly scheduled work is a determinant only for the employee's entitlement to night pay differential. It is OPM's position that such voluntary overtime work is not regularly scheduled work, provided no specific employee is scheduled to perform the voluntary overtime work and there is no penalty for "no shows."

Effective Date

GAO recommended that the final regulations expressly state that they are prospective only. They stated a long held principle that regulations may be amended prospectively to increase or decrease rights under them, but, in the absence of obvious error, they may not be amended retroactively.

The purpose of these regulations is to clarify the definition of the term "regularly scheduled" and to clarify the relationship originally intended between an agency's requirement to establish workweeks for its employees and an employee's entitlement to premium pay for that work. The current work scheduling provisions and premium pay provisions were enacted by Congress in the Federal Employees Pay Act of 1945. The term "regularly scheduled," and related terms, were contained in the original Act of 1945 (and subsequent amendments in 1946 and 1954) and were used in OPM (then Civil Service Commission) regulations as early as 1954.

It is OPM's position that these regulations are a clarification of the originally intended meaning of this term. The Court of Claims in its latest ruling on this issue adopted OPM's interpretation. See *Bennett et al. v. United States*, No. 565-78 (Cl. Cl. Sept. 30, 1982). Accordingly, all claims for the payment of premium pay for "regularly scheduled" work (including work performed during prior periods) should be settled based on the definition of this term as clarified in these regulations.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only employees of the Federal Government.

List of Subjects in 5 CFR Parts 550 and 610

Government employees, Holidays, Wages, Civil defense, Administrative practice and procedure.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, Parts 550 and 610 of Title 5 of the Code of Federal Regulations are amended as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. Section 550.101 is amended by removing and reserving paragraph (b)(3), revising paragraphs (4), (9), (15), and (16), and adding paragraphs (b)(17) and (18).

§ 550.101 Coverage and exemptions.

- (b) * * *
- (3) Reserved;
- (4) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of title 5, United States Code, or by a wage board or similar administrative authority serving the same purpose, except that § 550.113(d) is applicable to such an employee whose rate of basic pay is fixed on an annual or monthly basis;
- (9) A member of the United States Park Police or the United States Secret Service Uniformed Division;
- (15) An employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;
- (16) A "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20, United States Code;
- (17) A Foreign Service officer or a member of the Senior Foreign Service; or
- (18) A member of the Senior Executive Service.

2. Section 550.103 is amended by revising paragraphs (e), (f), (g), (i), (k), (n), and (o), and adding paragraphs (p) and (q) to read as follows:

§ 550.103 Definitions.

- (e) "Nightwork" has the meaning given that term in § 550.121, and includes any nightwork performed by an employee as part of his or her regularly scheduled administrative workweek.
- (f) "Irregular or occasional overtime work" means overtime work that is not

part of an employee's regularly scheduled administrative workweek.

(g) "Regular overtime work" means overtime work that is part of an employee's regularly scheduled administrative workweek.

(i) "Premium pay" means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty or administratively uncontrollable work.

(k) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

(n) "Regularly scheduled administrative workweek," for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111 of this chapter, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(o) "Sunday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday.

(p) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111 of this chapter.

(q) "Holiday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty on a holiday designated in accordance with § 610.202 of this chapter.

3. In § 550.112, paragraph (d) is revised to read as follows:

§ 550.112 Computation of overtime work.

(d) *Night, Sunday, or holiday work.* Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

4. In § 550.121, paragraph (a) is revised to read as follows:

§ 550.121 Authorization of night pay differential.

(a) Except as provided by paragraph (b) of this section, nightwork is regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m. Subject to § 550.122, and except as otherwise provided in this subpart, an employee who performs nightwork is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her rate of basic pay.

5. In § 550.122, paragraphs (c) and (d) are revised to read as follows:

§ 550.122 Computation of night pay differential.

(c) *Relation to overtime, Sunday, and holiday pay.* Night pay differential is in addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) *Temporary assignment to a different daily tour of duty.* An employee is entitled to a night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

6. In § 550.131, paragraph (a) is revised to read as follows:

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not in excess of 8 hours.

PART 610—HOURS OF DUTY

1. Section 610.102 is amended by revising paragraph (b) and adding paragraphs (g) and (h) to read as follows:

§ 610.102 Definitions.

(b) "Regularly scheduled administrative workweek," for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111, within which the employee is

regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(g) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111.

(h) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

2. Section 610.111 is amended by revising paragraphs (a) and (b) to read as follows:

§ 610.111 Establishment of workweeks.

(a) The head of each agency, with respect to each full-time employee to whom this subpart applies, shall establish by regulation:

(1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. Except as provided in paragraphs (b) and (c) of this section, the regulation shall specify the days and hours within the administrative workweek that constitute the basic workweek.

(2) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established in accordance with paragraph (a)(1) of this section, plus the period of regular overtime work, if any, required of each employee. Except as provided in paragraphs (b) and (c) of this section, the regulation, for purposes of leave and overtime pay administration, shall specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.

(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional

hours of officially ordered or approved work within the administrative workweek are overtime work.

3. Section 610.121 is revised to read as follows:

§ 610.121 Establishment of work schedules.

(a) Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she shall provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b)(1) The head of an agency shall schedule the work of his or her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements.

(2) When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The head of the agency shall inform the employee of the change, and he or she shall record the change on the employee's time card or other agency document for recording work.

(3) If it is determined that the head of an agency should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so in accordance with paragraphs (b) (1) and (2) of this section, the employee shall be entitled to the payment of premium pay for that period of work as regularly

scheduled work under Subpart A of Part 550 of this chapter. In this regard, it must be determined that the head of the agency: (i) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek, and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.

(5 U.S.C. 5548 and 6101(c))

[FR Doc. 83-2490 Filed 1-27-83; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 396]

Lemons Grown in California and Arizona Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period January 30-February 5, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: January 30, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantial affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910; 47 FR 50196), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601-674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982-83. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on January 25, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

Section 910.696 is added as follows:

§ 910.696 Lemon Regulation 396.

The quantity of lemons grown in California and Arizona which may be handled during the period January 30, 1983, through February 5, 1983, is established at 190,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 27, 1983.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable
Division, Agricultural Marketing Service.

[FR Doc. 83-2666 Filed 1-27-83; 12:12 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 83-4]

Bank Service Corporations,
Transactions With Affiliates,
Borrowing Limits, VisitationAGENCY: Comptroller of the Currency,
Treasury.

ACTION: Final rule.

SUMMARY: This final rule removes three interpretive rulings pertaining to bank service corporations, transactions with affiliates concerning standby letters of credit and national bank indebtedness. It also amends an interpretive ruling concerning the review of a national bank's records by state officials. This action is necessary in light of the Garn-St Germain Depository Institutions Act of 1982, which was enacted on October 15, 1982, and will harmonize the various rulings with the new act.

EFFECTIVE DATE: January 15, 1983.

FOR FURTHER INFORMATION CONTACT: Moira Donohue, Attorney, Legislative Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447-1632.

SUPPLEMENTARY INFORMATION

Background

The Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (October 15, 1982), significantly amended provisions of law affecting banks, including, among other things, the Bank Service Corporation Act, 12 U.S.C. 1861 *et seq.*; Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, relating to member bank transactions with affiliates; provisions of the National Bank Act regarding borrowings by national banks, 12 U.S.C. 82; and visitation and inspection of national banks by state officials, 12 U.S.C. 484. As a result of these amendments, the following interpretive rulings were superseded: Interpretive Rulings 7.7390, 7.7361, and 7.7518 (12 CFR 7.7390, 7.7361, and 7.7518). In addition, Interpretive Ruling 7.6025(b), (12 CFR 7.6025(b)), relating to visitation, is amended to reflect the new law. Accordingly, the Office of the Comptroller of the Currency ("Office") is removing 12 CFR 7.7390, 7.7361, and 7.7518, and is amending 12 CFR 7.6025(b) as follows:

In the third sentence after the word "except", strike the remainder of the sentence and insert in lieu thereof "for the limited purpose of ensuring compliance with applicable State

unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with such laws."

Special Studies

The Office has determined that these actions do not constitute "major rules" under Executive Order 12291. Removal of the interpretive rulings will merely eliminate confusion resulting from rulings which are inconsistent with the amended law. Amendment of 12 CFR 7.6025(b) will conform that ruling to the new law. These actions will neither increase national bank costs or prices nor have any adverse competitive effect. Therefore, a Regulatory Impact Analysis is not necessary and will not be prepared. The Regulatory Flexibility Act does not apply to this action since the Office is dispensing with notice and comment procedures. Notice and comment are impracticable and contrary to the public interest.

List of Subjects in 12 CFR Part 7

National banks, Bank service corporations, Affiliates, Borrowing limits, Visitation.

Authority and Issuance

PART 7—[AMENDED]

For the reasons set out in the preamble, 12 CFR Part 7 is amended as follows:

1. The authority citation for Part 7—Interpretive Rulings—reads as follows:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et seq.*, unless otherwise noted.

§§ 7.7391, 7.7361, 7.7518 [Removed]

2. Sections 7.7391, 7.7361 and 7.7518 are removed.

3. Section 7.6025(b) is revised to read as follows:

§ 7.6025 Books and records of national banks.

(b) *Visitorial powers.* The exercise of visitorial powers over national banks is vested in the Comptroller of the Currency. See 12 U.S.C. 484. Other officials, including state banking officials, have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable State unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to

believe that the bank has failed to comply with such laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes (26 U.S.C. 3305(c)), for enforcing the Fair Labor Standards Act (29 U.S.C. 211), and for ascertaining the correctness of Federal tax returns (26 U.S.C. 7602).

Dated: January 14, 1983.

C. T. Conover,
Comptroller of the Currency.

[FR Doc. 83-2482 Filed 1-27-83; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 546, 552, 561, 563, 583,
and 584

[No. 83-51]

Eligibility for Insurance of Accounts;
Holding Company Activities

January 24, 1983.

AGENCY: Federal Home Loan Bank
Board.ACTION: Final rule; request for
comments.

SUMMARY: The Board is amending its regulations to allow associations with insurance of accounts from the Federal Savings and Loan Insurance Corporation ("FSLIC") that convert to state savings banks to retain their FSLIC insurance, provided they do not receive significantly greater empowerments as a result of obtaining the new charter or designation. These amendments were inadvertently omitted from the changes in the Board's regulations approved by Board Resolution 82-791, effective December 15, 1982. In addition, the Board by this action is incorporating into its regulations a restriction on savings and loan holding company activities required by the Garn-St Germain Depository Institutions Act of 1982 ("Act"), Public Law 97-320, which also was inadvertently omitted from the prior action of the Board. Finally, the Board is deleting certain merger authority that was inadvertently provided by such action that is in excess of express statutory authority.

DATES: Effective December 16, 1982.

Comments must be received by
February 22, 1983.

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will