(1) Contain a statement of the basis for the disapproval; and

(2) Indicate that the filer may request a hearing.

(b) *Hearing request.* Following receipt of a notice of disapproval, a filer may request a hearing on the proposed acquisition. A hearing request must:

(1) Be in writing; and

(2) Be filed with the Hearing Clerk of the OCC within ten days after service on the filer of the notice of disapproval. If a filer fails to request a hearing with a timely written request, the notice of disapproval constitutes a final and unappealable order.

(c) *Hearing order.* Following receipt of a hearing request, the Comptroller shall issue, within 20 days, an order that sets forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) The matters of fact or law upon which the disapproval is based; and

(3) The requirement for filing an answer to the hearing order with OFIA within 20 days after service of the hearing order.

(d) *Answer.* An answer to a hearing order must specifically deny those portions of the order that are disputed. Those portions of the order that the filer does not specifically deny are deemed admitted by the filer. Any hearing under this subpart is limited to those portions of the order that are specifically denied.

(e) *Effect of failure to answer.* Failure of a filer to file an answer within 20 days after service of the hearing order constitutes a waiver of the filer's right to appear and contest the allegations in the hearing order. If a filer does not file a timely answer, enforcement counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the hearing order. Any final order issued by the Comptroller based upon a filer's failure to answer is deemed to be an order issued upon consent and is a final and unappealable order.

§ 19.162 [Removed]

20. Section 19.162 is removed.

Subpart I—[Amended]

21. In § 19.170, paragraph (d) is revised, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

§ 19.170 Discovery depositions.

* * * * *

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party will have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits must be in short form and must state the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

(e) *Recording the testimony*—(1) *Generally.* The party taking the deposition must have a certified court reporter record the witness's testimony:

(i) By stenotype machine or electronic sound recording device;

(ii) Upon agreement of the parties, by any other method; or

(iii) For good cause and with leave of the administrative law judge, by any other method.

(2) *Cost.* The party taking the deposition must bear the cost of the recording and transcribing the witness's testimony.

(3) *Transcript.* Unless the parties agree that a transcription is not necessary, the court reporter must provide a transcript of the witness's testimony to the party taking the deposition and must make a copy of the transcript available to each party upon payment by that party of the cost of the copy.

* * * * *

22. In § 19.171, paragraph (b) is revised to read as follows:

§ 19.171 Deposition subpoenas.

* * * * *

(b) *Service*—(1) *Methods of service.* The party requesting the subpoena must serve it on the person named therein, or on that person's counsel, by any of the methods identified in § 19.11(d).

(2) *Proof of service.* The party serving the subpoena must file proof of service with the administrative law judge.

* * * * *

Subpart J—[Amended]

23. Section 19.184 is revised to read as follows:

§ 19.184 Service of subpoena and payment of witness expenses.

(a) *Methods of service.* Service of a subpoena may be made by any of the methods identified in § 19.11(d).

(b) *Expenses.* A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Dated: April 2, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–10331 Filed 5–3–96; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–0878]

Uniform Rules of Practice and Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), as a result of an interagency review conducted by the Board, the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA), is amending its implementation of the Uniform Rules of Practice and Procedure for Administrative Hearings (Uniform Rules). The Board's review of the Uniform Rules was conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

The final rule is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Assistant General Counsel, Legal Division (202 452–3779), Douglas B. Jordan, Senior Attorney, Legal Division, (202 452–3787), or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation, (202/452–3528).

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (1989), required the Board, OCC, FDIC, OTS, and NCUA (agencies) to develop uniform rules and procedures for administrative hearings. The agencies each adopted final Uniform Rules in August, 1991.[1] Based

[1] The agencies issued a joint notice of proposed rulemaking on Monday, June 17, 1991 (56 FR 27790). The agencies promulgated their final rules

on their experience in using the rules since then, the agencies have identified sections of the Uniform Rules that should be modified. Accordingly, the agencies proposed amendments to the Uniform Rules on June 23, 1995 (60 FR 32882).

The Board received two comments on the proposal. Both commenters expressed general approval of the proposal, and one suggested specific improvements. The Board has also reviewed the comments received by the other agencies.

The final rule implements the proposal with minor changes. The following section-by-section analysis summarizes the final rule and highlights the changes from the proposal that the Board has made after considering the commenters' suggestions.

The OTS, FDIC, OCC, and NCUA are publishing separate final rules that are substantively identical to the Board's final rule. The OTS, FDIC, and OCC rules appear elsewhere in this Federal Register. The process of amendment of the Uniform Rules and their adoption in identical form by the agencies also meets the requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

B. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section 263.1 Scope

The proposal added two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. The two provisions were enacted by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, 108 Stat. 2160.

The first provision, CDRI section 406, amended the Bank Secrecy Act (BSA) (31 U.S.C. 5321) to require the Secretary of the Treasury to delegate authority to the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) to impose civil money penalties for BSA violations.

The second, CDRI section 525, amended section 102 the Flood Disaster Protection Act of 1973 (FDPA) (42 U.S.C. 4012a) to give each ''Federal entity for lending regulation'' authority to assess civil money penalties against a regulated lending institution if the institution has a pattern of committing violations of the FDPA or the notice requirements of the National Flood Insurance Act of 1968 (NFIA). Under the FDPA, the term ''Federal entity for lending regulation'' includes the agencies and the Farm Credit Administration.

CDRI section 525 also gave the agencies authority to require a regulated lending institution to take remedial actions that are necessary to ensure that the institution complies with the requirements of the national flood insurance program if: (1) The institution has engaged in a pattern and practice of noncompliance with regulations issued pursuant to the FDPA and NFIA; and (2) has not demonstrated measurable improvement in compliance despite the assessment of civil money penalties. The final rule adds a new paragraph to the scope section that reflects this additional authority.

The Board received no comments on this section, which is adopted as proposed.

Section 263.6 Appearance and Practice in Adjudicatory Proceedings

The proposal permitted the Administrative Law Judge (ALJ) to require counsel who withdraws after filing a notice of appearance on behalf of a party to accept service of papers for that party until either: (1) A new counsel has filed a notice of appearance; or (2) the party indicates that he or she will proceed on a *pro se* basis.

The Board received one comment on this section. The commenter suggested that the proposal does not adequately address certain situations: for example, when counsel withdraws because of a lack of payment of legal fees that is caused by an agency asset freeze, or withdraws because the client discharged him or her. The commenter's implication is that it is unfair to require counsel to continue to accept service in these situations. The commenter expressed concern that the administrative proceeding may become involved in a dispute between the client and counsel when the ALJ requires counsel to continue to accept service after a client discharges counsel. The commenter suggested that the rule should require that service be given to both the unreplaced counsel and the party.

The proposal was intended to ensure that a lawyer is always available to receive service in order to prevent a party from halting the administrative proceedings simply by evading service. The regulatory text is clear, however, that the ALJ has the discretion whether to require former counsel to continue to accept service. Fairness to counsel is among the factors that ALJ would consider in exercising this discretion, and the Board therefore believes that the provision as proposed is sufficiently flexible to accommodate the concerns raised by the commenter.

The final rule changes the proposal's reference from ''service of process'' to ''service'' to clarify that this section applies to all papers that the party is entitled to receive. This section is otherwise adopted as proposed.

Section 263.8 Conflicts of Interest

The proposal sought to improve, in two ways, the provisions governing conflicts of interest that arise when counsel represents multiple persons connected with a proceeding.

First, the proposal sought to protect the interests of individuals and financial institutions by expanding the circumstances under which counsel must certify that he or she has obtained a waiver from non-parties of any potential conflict of interest. The former rule required counsel to obtain waivers only from non-party institutions ''to which notice of the proceedings must be given.'' The proposal required counsel to obtain waivers from all parties and non-parties that counsel represents on a matter relevant to an issue in the proceeding. It thus ensured that all appropriate party and non-party individuals and institutions are informed of potential conflicts.

Second, the proposal simplified this provision by eliminating the requirement that counsel certify that each client has asserted that there are no conflicts of interest. The Board believes that the former provision was superfluous because the responsibility for identifying potential conflicts resides with counsel.

The Board received one comment on this section. The commenter noted that the proposal may inhibit multiple representation that otherwise complies with applicable ethics rules. The commenter suggested that the proposal could inappropriately tilt the proceeding in favor of the agencies.

The provision does not limit the right of any party to representation by counsel of the party's choice. Rather, it ensures that all interested persons are informed of potential conflicts so that they may avoid the conflict if they choose. State rules of professional responsibility that impose more stringent ethical standards are unaffected by this requirement.

In addition, the Board is unpersuaded by the argument that the provision grants the agencies any significant advantage in a proceeding. Persons and institutions may be well and vigorously

on the following dates: OCC on August 9, 1991 (56 FR 38024); Board on August 9, 1991 (56 FR 38052); FDIC on August 9, 1991 (56 FR 37975); OTS on August 12, 1991 (56 FR 38317); and NCUA on August 8, 1991 (56 FR 37767).

represented even if they are not all represented by the same counsel.

Therefore, the Board adopts this section as proposed.

Section 263.11 Service of Papers

The proposal changed this section by permitting parties, the Board, and ALJs to serve a subpoena on a party by delivering it to a person of suitable age and discretion at a party's place of work.

The Board received one comment on this section. The commenter supported the intent of the proposal, but asserted that permitting service at a person's place of work was too broad to be effective, particularly where a bank has numerous branches.

The Board interpreted the phrase ''person's place of work'' as used in the proposal to mean the physical location at which an individual works and not as any office of the corporation or association at which a person works. To avoid confusion, the Board has added specific reference to physical location in the regulatory text. In addition, the final rule states expressly that only an individual, not a corporation or association, may be served at a residence or place of work.

The comment points out, however, that the former Uniform Rules did not permit certain methods of service that are useful for serving a corporation or other association and that are permitted under the Federal Rules of Civil Procedure. The final rule, therefore, permits service on a party corporation or other association by delivery of a copy of a notice to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The final rule also provides that, if the agent is one authorized by statute to receive service and the statute so requires, the serving party must also mail a copy to the party. The final rule also restructures this provision for clarity.

Section 263.12 Construction of Time Limits

The proposal clarified that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § 263.12(c) is not included in determining whether an act is required to be performed within ten days. The proposal also clarified that additional time allotted for responding to papers served by mail, delivery, or electronic media transmission is counted by calendar days and, therefore, a party must count Saturdays, Sundays, and holidays when calculating a time deadline.

The Board received no comments on this section, which is adopted as proposed.

Section 263.20 Amended Pleadings

The proposal changed this section to permit a party to amend its pleadings without leave of the ALJ and to permit the ALJ to admit evidence over the objection that the evidence does not fall directly within the scope of the issues raised by a notice or answer.

The Board received one comment on this section. The commenter asserted that the change could unduly prejudice a party if a notice were amended to add or delete allegations immediately prior to the hearing. The commenter expressed concern that the amendment would give a party insufficient time to seek additional discovery or file for summary judgment.

The regulatory text gives the ALJ discretion to revise the hearing schedule to ensure that no prejudice results from last minute amendments to a notice. The Board believes this approach is adequate to avoid prejudice to a party and, therefore, adopts this section as proposed.

Section 263.24 Scope of Document Discovery

The former Uniform Rules were silent on the use of interrogatories. The proposal expressly prohibited parties from using interrogatories on grounds that other discovery tools are more efficient and less burdensome, and therefore more appropriate to administrative adjudications.

The proposal also sought to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

Accordingly, the proposal preserved the former rule's limitation by permitting discovery only of documents that have material relevance. However, the proposal specifically provided that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things: (1) it fails to include justifiable limitations on the time period covered and the geographic locations to be searched; (2) the time provided to respond in the request is inadequate; or (3) the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 263.25.

Under the proposal, the scope of permissible document discovery is not as broad as that allowed under Federal Rule of Civil Procedure 26(b) (28 U.S.C. app.). Historically, given the specialized nature of enforcement proceedings in regulated industries, discovery in administrative proceedings has not been as expansive as it is in civil litigation.

The Board received no significant comments on this section and, therefore, adopts this section as proposed.

Section 263.25 Request for Document Discovery From Parties

The Board proposed several changes to § 263.25. First, the proposal sought to reduce unnecessary burden by permitting a party to: (1) respond to document discovery either by producing documents as they are kept in the ordinary course of business or by organizing them to correspond to the categories in a document request; and (2) identify similar documents by category when they are voluminous and are protected by the deliberative process, attorney-client, or attorney-work-product privilege.

The proposal also amended section 263.25 to permit a party to require payment in advance for the costs of copying and shipping requested documents, and clarified that, if a party has stated its intention to file a timely motion for interlocutory review, the ALJ may not release, or order a party to produce, documents withheld on grounds of privilege until the motion for interlocutory review has been decided.

The Board received two comments on this section. One commenter sought guidance on when, how, and to whom a party must express an ''intention'' to file a timely motion for interlocutory review. Because it is the ALJ who may not release or order a party to produce documents, it was implicit in the proposed regulatory text that a party must make the intention to seek interlocutory review known to the ALJ. For clarity's sake, the final rule adds language to this effect.

Another commenter suggested that a request for interlocutory review should automatically stay the proceeding. Under § 263.28(d) of the Uniform Rules, a party may request that a proceeding be stayed during the pendency of an interlocutory review, and the ALJ has the discretion to decide whether a stay is appropriate. The Board believes that this procedure adequately protects the parties. For this reason and to avoid unnecessary delays in the administrative proceedings, the Board declines to provide for an automatic stay whenever a party requests interlocutory review.

One commenter asserted that permitting the Board to require payment in advance for document copying and shipping costs would give the Board an

advantage over other creditors if the party is bankrupt following the administrative hearing. The Board finds that this situation is rare and therefore does not outweigh the Board's need to ensure that it receives payment. Moreover, the provision does not preclude other creditors from requiring prepayment for products or services.

The Board adopts this section as proposed.

Section 263.27 Deposition of Witness Unavailable for Hearing

The proposal clarified that a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness's authorized representative. The Board does not include this proposed change because, in § 263.11(d), the final rule expressly permits a party to serve a subpoena by delivering the subpoena to an agent, which includes delivery to an authorized representative. Therefore, the proposed change to § 263.27 would be redundant.

The Board received no comments on this section, and makes no change to it.

Section 263.33 Public Hearings

The proposal changed this section to specify that a party must file a motion for a private hearing with the Board and not the ALJ, but must serve the ALJ with a copy of the motion.

The Board received no comments on this section, which is adopted as proposed.

Section 263.34 Hearing Subpoenas

The former Uniform Rules did not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal required that, after a hearing subpoena is issued by the ALJ, the party that applied for the subpoena must serve a copy of it on each party. Under the proposal, any party may move to quash any hearing subpoena and must serve the motion on each other party.

The Board received no comments on this section, which is adopted as proposed.

Section 263.35 Conduct of Hearings

The proposal limited the number of counsel permitted to examine a witness and clarified that hearing transcripts may be obtained only from the court reporter. The former Uniform Rules were silent on these issues.

The Board received no comments on this section, which is adopted as proposed.

Section 263.37 Post-Hearing Filings

The proposal changed the title of this section from ''Proposed findings and conclusions'' to ''Post-hearing filings'' to describe more accurately the content of the section.

The proposal also moved, from § 263.35(b) to § 263.37(a), the provision that requires the ALJ to serve each party with notice of the filing of the certified transcript of the hearing (including hearing exhibits). The proposal added a requirement that the ALJ must use the same method of service for this notice.

Finally, the proposal clarified that the ALJ may, when appropriate, permit parties more than the allotted 30 days to file proposed findings of fact, proposed conclusions of law, and a proposed order.

The Board received no comments on this section, which is adopted with a minor technical change.

Section 263.38 Recommended Decision and Filing of Record

Under the former Uniform Rules, the ALJ was not required to file an index of the record when he filed the record with the Board. The proposal added this requirement and reorganized this section to improve its clarity.

The Board received no comments on this section, which is adopted as proposed.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This final rule only imposes procedural requirements in administrative adjudications. It contains no substantive requirements. It improves the Uniform Rules of Practice and Procedure and facilitates the orderly determination of administrative proceedings. The changes in this final rule are primarily clarifications and impose no significant additional burdens on regulated institutions, parties to administrative actions, or counsel.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set out in the preamble, 12 CFR Part 263 is amended as set forth below:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909, and 4717; 15 U.S.C. 21, 78o-4, 78o-5, and 78u-2; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

2. In § 263.1, paragraph (e)(9) is amended by removing ''and'' after the semicolon, new paragraphs (e)(11) and (e)(12) are added, paragraph (f) is redesignated as paragraph (g) and revised, and new paragraph (f) is added to read as follows:

§ 263.1 Scope.

* * * * *

(e) * * *

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(12) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(g) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

3. In § 263.6, paragraph (a)(3) is revised to read as follows:

§ 263.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Board, shall file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. The notice of appearance must include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel agrees and represents that he or she is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the administrative law judge, continue to accept service until new counsel has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis.

* * * * *

4. In § 263.8, paragraph (b) is revised to read as follows:

§ 263.8 Conflicts of interest.

* * * * *

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § 263.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

5. In § 263.11, paragraphs (c)(2) and (d) are revised to read as follows:

§ 263.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § 263.6, the Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent, which, in the case of a corporation or other association, is delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method as is reasonably calculated to give actual notice.

* * * * *

6. In § 263.12, paragraphs (a), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 263.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays, and Federal holidays are not included.

* * * * *

(c) * * *

(1) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic media transmission, add one calendar day to the prescribed period, unless otherwise determined by the Board or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

7. Section 263.20 is revised to read as follows:

§ 263.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board or administrative law judge orders otherwise for good cause.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may admit the evidence when admission is likely to assist in adjudicating the merits of the action and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

8. In § 263.24, paragraphs (a) and (b) are revised to read as follows:

§ 263.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Subject to the limitations set out in paragraphs (b), (c), and (d) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term ''documents'' may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(2) Discovery by use of deposition is governed by § 263.53 of subpart B of this part.

(3) Discovery by use of interrogatories is not permitted.

(b) *Relevance.* A party may obtain document discovery regarding any matter, not privileged, that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 263.25.

* * * * *

9. In § 263.25, paragraphs (a), (b), (e), and (g) are revised to read as follows:

§ 263.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or must be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests 250 pages or more of copying, the requesting party shall pay for the copying and shipping charges. Copying charges are the current per-page copying rate imposed by 12 CFR Part 261 implementing the Freedom of Information Act (5 U.S.C. 552). The party to whom the request is addressed may require payment in advance before producing the documents.

* * * * *

(e) *Privilege.* At the time other documents are produced, the producing party must reasonably identify all documents withheld on the grounds of privilege and must produce a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney-work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The administrative law judge retains discretion to determine when the identification by category is insufficient.

* * * * *

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production is not a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge. Notwithstanding any other provision in this part, the administrative law judge may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the administrative law judge its intention to file a timely motion for interlocutory review of the administrative law judge's order to produce the documents, and until the motion for interlocutory review has been decided.

* * * * *

10. In § 263.33, paragraph (a) is revised to read as follows:

§ 263.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Board, in the Board's discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Board a request for a private hearing, and any party may file a reply to such a request. A party must serve on the administrative law judge a copy of any request or reply the party files with the Board. The form of, and procedure for, these requests and replies are governed by § 263.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

* * * * *

11. In § 263.34, paragraphs (a) and (b)(1) are revised to read as follows:

§ 263.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at the hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the administrative law judge.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart. Upon issuance by the administrative law judge, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify the subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

* * * * *

12. In § 263.35, paragraph (a)(3) is redesignated as paragraph (a)(4), a new paragraph (a)(3) is added, and paragraph (b) is revised to read as follows:

§ 263.35 Conduct of hearings.

(a) * * *

(3) *Examination of witnesses.* Only one counsel for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the administrative law judge may permit more than one counsel for the party presenting the witness to conduct the examination. A party may have one counsel conduct the direct examination and another counsel conduct re-direct examination of a witness, or may have one counsel conduct the cross examination of a witness and another counsel conduct the re-cross examination of a witness.

* * * * *

(b) *Transcript.* The hearing must be recorded and transcribed. The reporter will make the transcript available to any

party upon payment by that party to the reporter of the cost of the transcript. The administrative law judge may order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion.

13. In § 263.37, the section heading and paragraph (a)(1) are revised to read as follows:

§ 263.37 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the administrative law judge shall serve notice upon each party, that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of this notice by the administrative law judge or within such longer period as may be ordered by the administrative law judge.

* * * * *

14. Section 263.38 is revised to read as follows:

§ 263.38 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 263.37(b), the administrative law judge shall file with and certify to the Board, for decision, the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the Board for final determination the record of the proceeding, the administrative law judge shall furnish to the Board a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

By order of the Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 96–10890 Filed 5–3–96; 8:45 a.m.]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AB49

Uniform Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulatory provisions implementing the Uniform Rules of Practice and Procedure (Uniform Rules). The final rule is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Andrea Winkler, Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; (202) 736–0762.

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (1989), required the FDIC, Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA)(collectively agencies) to develop uniform rules and procedures for administrative hearings. The agencies each adopted final Uniform Rules in August 1991.[1] Based on their experience, the agencies have identified sections of the Uniform Rules that should be modified. Accordingly, the agencies proposed amendments to the Uniform Rules on June 23, 1995 (60 FR 32882).

The FDIC received one comment on the proposal. The commenter generally supported the proposal, but suggested improvements. The FDIC also considered comments received by the other agencies.

The final rule implements the proposal with minor changes. The following section-by-section analysis summarizes the final rule and highlights the changes from the proposal that the FDIC has made after considering the commenters' suggestions.

The OTS, OCC, Board and NCUA are publishing separate final rules that are substantively identical to the FDIC's final rule. The OTS, OCC, and Board rules appear elsewhere in this Federal Register.

B. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section 308.1 Scope

The proposal added two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. The two provisions were enacted by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, 108 Stat. 2160.

The first provision, CDRI section 406, amended the Bank Secrecy Act (BSA) (31 U.S.C. 5321), to require the Secretary of the Treasury to delegate authority to the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) to impose civil money penalties for BSA violations.

The second, CDRI section 525, amended section 102 of the Flood Disaster Protection Act of 1973 (FDPA) (42 U.S.C. 4012a) to give each ''Federal entity for lending regulation'' authority to assess civil money penalties against a regulated lending institution if the institution has a pattern or practice of committing violations of the FDPA or the notice requirements of the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4104a). Under the FDPA, the term ''Federal entity for lending

[1] The agencies issued a joint notice of proposed rulemaking on Monday, June 17, 1991 (56 FR 27790). The agencies promulgated their final rules on the following dates: OCC on August 9, 1991 (56 FR 38024); Board on August 9, 1991 (56 FR 38052); FDIC on August 9, 1991 (56 FR 37975); OTS on August 12, 1991 (56 FR 38317); and NCUA on August 8, 1991 (56 FR 37767).