

4328) requires that agencies assess the impact of proposed actions on family well-being before implementing policies and regulation. Agencies must assess such an action with respect to whether—(1) it strengthens or erodes the stability or safety of the family and, particularly, the marital commitment, (2) it strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children, (3) it helps the family perform its functions, or substitutes governmental activity for the function, (4) it increases or decreases disposable family income or poverty of families and children, (5) its benefits justify the financial impact on the family, (6) it can be carried out by State or local government or by the family, (7) it establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. Additionally, agency heads must submit a written certification to the Director of the Office of Management and Budget and to Congress that the policy or regulation has been so assessed and they must provide an adequate rationale for the implementation of each policy or regulation that may negatively affect family well-being.

The Department has determined that the action proposed today, which amends the definition of the term "electric refrigerator," does not have any significant potential negative impact on the family well-being. Therefore, the requirements of the above provisions under Public Law 105-277 do not apply to this action.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on June 7, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition of "Electric refrigerator" to read as follows:

§ 430.2 Definitions.

* * * * *

Electric refrigerator means a cabinet designed for the refrigerated storage of food at temperatures above 32 °F and below 41 °F, storage racks configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F.

* * * * *

[FR Doc. 99-17657 Filed 7-12-99; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-1031]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: In December 1998, the Board issued an advance notice of proposed rulemaking requesting comment on the potential benefits and drawbacks of a modification to its Regulation CC that would shorten the maximum hold for many nonlocal checks. This modification would shorten the availability schedule for nonlocal checks from five to four business days, except that a depository bank could retain a five-day availability schedule for subcategories of nonlocal checks for which it certifies that it does not receive a sufficient proportion of returned checks within four business days. This proposal was one of several possible alternatives for defining subcategories of nonlocal checks that would be subject to a shortened availability schedule. The Board has concluded that return times for nonlocal checks do not support a reduced availability schedule for nonlocal checks in the aggregate at this time. The Board has also determined that the costs and potential risks would outweigh the likely benefits of establishing subcategories of nonlocal checks for availability purposes at this time. Therefore, the Board has decided not to propose any specific regulatory changes at this time to reduce the nonlocal check availability schedule.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, Check Payments Section (202/452-2660) or Michele Braun, Project Leader (202/452-2819), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Managing Senior Counsel (202-452-3198), Legal Division. For the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

As a result of concerns about some banks' practice of delaying funds availability by placing holds on the proceeds of checks deposited into customers' transaction accounts, Congress passed the Expedited Funds Availability Act (EFAA) in 1987.¹ The EFAA specifies maximum time limits on the holds that banks may place on funds deposited into transaction accounts.

The EFAA funds availability schedules attempt to balance banks' concerns about managing their risk with consumers' concerns about the availability of their funds. Congress recognized that banks would be exposed to risks if they were required to make funds from a check available before they had a reasonable opportunity to learn that the check was returned unpaid. To balance depositors' interest in receiving prompt access to their funds with banks' ability to manage their risks, the EFAA directed the Board to consider improvements to the check processing system that would speed the collection and return of checks.² In addition, the EFAA required the Board to reduce the statutory funds availability schedules to as short a time as possible and equal to the period achievable under the improved check clearing system for a depository bank to reasonably expect to learn of the nonpayment of most items for each category of checks.³

The Board's Regulation CC (12 CFR part 229), which implements the EFAA, includes maximum availability schedules for funds deposited into transaction accounts as well as provisions designed to accelerate the check return system. The regulation's availability schedules incorporate several provisions in the EFAA where Congress deemed that, in certain cases, a longer time was necessary to provide a reasonable amount of time for a

¹ 12 U.S.C. 4001-4010. As used in this notice and in Regulation CC, the term *bank* includes commercial banks, savings institutions, and credit unions. *Depository bank* refers to the bank of first deposit (see 12 CFR 229.2(e) and (o)).

² 12 U.S.C. 4008(b) and (c).

³ 12 U.S.C. 4002(d)(1).

depository bank to learn of a returned check before having to make the funds from that check available for withdrawal. For example, the schedules provide for a one-day schedule extension for checks deposited in Alaska, Hawaii, Puerto Rico, and the Virgin Islands that are payable by a bank located in another state or territory.⁴ Similarly, the EFAA provides a one-day extension for making certain funds available for withdrawal by cash or similar means.⁵

The availability schedules in the EFAA and Regulation CC apply to three broad categories of checks. Certain "low-risk" checks drawn or guaranteed by credit-worthy institutions, such as cashier's checks, teller's checks, certified checks, and government checks, generally must be made available for withdrawal on the next business day following the banking day of deposit. Local checks (checks payable by banks located in the same check processing region as the depository bank) generally must be made available for withdrawal within two business days. Nonlocal checks (checks payable by banks located in different check processing regions than the depository bank) generally must be made available for withdrawal within five business days.⁶

Pursuant to the EFAA's direction to reduce the statutory schedules when banks can reasonably learn of the return of most items in a category of checks within a faster time, the Board adopted Appendix B of Regulation CC. Appendix B requires depository banks within certain check processing regions to make certain nonlocal checks available within a faster time period than that required by the EFAA. Current appendix B requires depository banks in

the Utica, Nashville, and Kansas City check processing regions to make selected nonlocal checks available for withdrawal within three, rather than five, business days.⁷ The Board formulated these reduced schedules in 1988 through a relatively informal process in which each Federal Reserve Bank check processing office estimated which nonlocal checks that were deposited in banks in its region could be collected and returned faster than the prescribed EFAA maximum hold period. These estimates were based on the Reserve Bank's knowledge of geographic proximity between certain banks or robust transportation networks and projected improvements in return times that would result from requirements intended to speed the return of unpaid checks.

1998 Proposal

After a decade of experience with the post-Regulation CC check collection and return system, the Board undertook a study of whether a more rigorous approach to reducing nonlocal check schedules would be appropriate and what the relative costs and benefits of such an approach would be. For guidance on the conditions under which it would be appropriate to reduce the availability schedules, the Board looked to the 1987 Conference Report on the EFAA.⁸

The Conference Report tied availability schedules to banks' ability to reasonably expect to learn of the nonpayment of a significant number of checks. The Report suggested that if improvements in the check clearing system make it possible for two-thirds of the items in a category of checks to meet this test in a shorter period of time, then the Board must shorten the schedules accordingly.⁹ The Report also recognized that geographic proximity or transportation arrangements between check processing regions would permit the Federal Reserve to provide shorter times than the general schedule for nonlocal checks would require. The Report noted that shorter times would be possible for checks transported between such nearby territories as New York City and Jericho, Long Island, and for checks transported between banks in cities with Federal Reserve check processing offices, such as banks in Boston and San Francisco.¹⁰

In considering whether nonlocal checks overall met the Conference Report's "two-thirds" test, the Board drew on data from four surveys conducted by the Reserve Banks between 1990 and 1997. In general, the more recent surveys showed that over 80 percent of nonlocal unpaid checks were returned to the depository bank within five business days after the day of deposit, and 60 to 65 percent of unpaid nonlocal checks were returned within four business days. (The surveys are discussed in more detail below.)

In addition to examining nonlocal checks as a single broad category, the Board also began investigating whether it would be appropriate to define subcategories for various types of nonlocal checks and specify maximum availability schedules for these subcategories. One means of establishing subcategories of nonlocal checks would be for the Board to make subcategory determinations by regulation. These determinations would require a trade-off between precision in subcategory definition and the practical limitations of the data collection needed to support the categorization. Identifying a large number of subcategories of nonlocal checks should increase the likelihood that the checks are accurately categorized based on when they are returned. The greater accuracy afforded by a large number of subcategories would lower the risk that funds from a particular check would have to be made available by the depository bank before it would normally be returned. Similarly, a higher degree of accuracy would increase the probability that customers would receive faster availability for those checks for which the depository bank learns of the return before making funds available for withdrawal. Thus, a large number of subcategories of nonlocal checks should provide a better balance, as sought by Congress, between banks' needs to manage their fraud-loss risk and their customers' interests in having as early access to their funds as possible.

The Board explored alternative approaches for defining subcategories of nonlocal checks that should receive earlier availability. These approaches ranged from categorizing the almost 2,000 possible pairs of check processing regions to a more aggregated approach that would group nonlocal checks into only three categories nationwide based on the availability zone (city, RCPC, or country) of the paying bank.¹¹ Each

⁴ 12 U.S.C. 4002(d)(2); 12 CFR 229.12(e).

⁵ Under the "cash-withdrawal rule," the depository bank may extend the holds on local and nonlocal checks for purposes of making funds available for withdrawal by cash or similar means. The depository bank may extend the hold until 5:00 p.m. on the normal availability day for the first \$400 of the deposit and until the following business day for the remainder of the deposit. See, 12 U.S.C. 4002(b)(3); 12 CFR 229.12(d).

⁶ Under Regulation CC's temporary availability schedule, which was in effect from September 1, 1988, through August 31, 1990, funds deposited by most local checks had to be made available for withdrawal within three business days, and nonlocal checks had to be made available for withdrawal within seven business days. Other than the change from the temporary to the current permanent schedule, the EFAA's local and nonlocal check availability schedules have not been modified since the EFAA was enacted. During this period, the Federal Reserve has consolidated several of its check processing regions, listed in Regulation CC's appendix A, which has resulted in some checks being reclassified from nonlocal to local. Thus, the availability that must be accorded to some deposits has improved.

⁷ A more extensive set of reduced schedules for nonlocal checks was in effect during the temporary schedule period from September 1, 1988, to August 31, 1990.

⁸ H.R. Conf. Rep. No. 100-261 (1987).

⁹ *Id.* at 179.

¹⁰ *Id.*

¹¹ In general, nonlocal checks payable by banks located closest to Federal Reserve check processing

approach recognized the roles of geographic proximity and transportation arrangements in the check clearing and return cycle. It was not clear, however, what would be the most reasonable and cost-effective way to identify those subcategories of nonlocal checks that should receive earlier availability. Collecting data to support a valid analysis of return cycles for nonlocal checks becomes increasingly expensive and, in some cases, impractical as the number of subcategories increases.

The Board requested comment on an alternative approach for establishing nonlocal check subcategories. Specifically, the Board considered a self-certification system under which the general nonlocal check availability schedule would be reduced to four business days, and depository banks could conduct their own surveys, if they believed it would be cost-effective to do so, to determine the subcategories of nonlocal checks that would be subject to five-day availability schedules. This approach would match the bank's actual return experience with availability schedules more precisely than any approach that relies on data that the Reserve Banks could collect. Permitting a bank to certify that it qualifies to use five-day availability schedules for some subcategories of nonlocal checks could give it the flexibility to weigh (1) the costs of collecting data with which to certify that it should be permitted to hold certain subcategories of nonlocal checks for five days, (2) the fraud risk associated with its hold policy, and (3) the customer benefits of that policy.

The Board noted, however, the difficulty of obtaining a sufficient sample to validate several of the available options for defining such subcategories of nonlocal checks. If a bank determined that the administrative cost associated with demonstrating that certain subcategories of nonlocal checks should be subject to five-day availability and the resulting increased complexity of its availability schedules outweighs the incremental fraud protection, then it could adopt a four-day or shorter schedule for all of its nonlocal check deposits.

The Board requested comment on this self-certification approach in an

offices are returned fastest. Nonlocal checks payable by banks located further away require somewhat more time. The locations are organized roughly in concentric circles. City checks are payable by banks located relatively close to a Federal Reserve office, RCPC checks are payable by banks located somewhat further from a Federal Reserve office, and country checks are payable by banks even more geographically remote. Only eight of forty-four check processing regions have country availability zones.

advance notice of proposed rule-making, issued in December 1998.¹² The notice noted that the Board was also considering other methods for defining categories of nonlocal checks that might reasonably meet the congressional mandate.

Summary of Comments

General Comments

The Board received one hundred twenty-five comment letters in response to the December 1998 advance notice of proposed rulemaking. The following table shows the number of comments by the category of commenter:

| Category of commenter | Number of responses |
|--|---------------------|
| Banks and bank holding companies | 99 |
| Clearinghouses and associations representing banks | 21 |
| Check processors | 1 |
| Federal Reserve Banks | 4 |
| Total | 125 |

One hundred sixteen commenters opposed shortening nonlocal hold periods. One commenter stated that it would support any reduction in the hold period as a move to improve the image of banks in general. The eight other commenters did not address the length of the nonlocal availability schedule, but did comment on specific questions posed by the Board about implementing the proposed self-certification process.

Eighty-two commenters cited increased risk of fraud loss as their reason for opposing any proposal to shorten nonlocal hold periods. Many commenters also stated that banks frequently maintain availability policies that make funds available sooner than required by Regulation CC.¹³ These commenters stated that although their banks generally make funds available earlier than required, on a case-by-case basis they withhold funds for the maximum permissible period. Several of these commenters further stated that the checks for which they use case-by-case holds are the ones with greatest risk for loss, so that shortening the hold period

by even one day could increase the risk of loss dramatically. Other banks stated that they use the maximum permissible hold period and that shortening the permitted hold period would expose them to a potentially significant increase in check fraud losses.

Eighteen commenters also stated that shortening nonlocal holds by one day would provide little benefit to consumers, either because banks already make most funds available more quickly than required or because banks that use four- or five-day holds may release funds early if the customer so requests and the banks can verify payment by contacting the paying bank. Thus, these commenters argued, shortening the nonlocal hold period by one day would not benefit many depositors.

Reasonable Time To Learn of Nonpayment

As noted above, the Board included in its notice data regarding return times for nonlocal checks from four surveys. In 1996, the Board's comprehensive survey of check-fraud losses at banks asked respondents to indicate the proportion of returned checks that they typically received on each business day following the initial deposit of a check (1996 bank survey). In conjunction with that check-fraud study, Federal Reserve staff also collected detailed data from a sample of checks processed during one week through the Federal Reserve Banks (1996 Reserve Bank survey).¹⁴ In 1997, Federal Reserve staff repeated the Reserve Bank survey for six weeks and thereby increased the number of nonlocal returned checks sampled compared with the prior survey (1997 Reserve Bank survey).¹⁵ The results of the 1997 survey were generally consistent with those of the 1996 survey. For historical comparison, the Board also reviewed a survey of checks returned through the Reserve Banks conducted shortly after the implementation of Regulation CC (1990 Reserve Bank survey).¹⁶ The table below summarizes the average nonlocal return

¹⁴ Board of Governors of the Federal Reserve System, *Report to the Congress on Funds Availability Schedules and Check Fraud at Depository Institutions* (Board of Governors, 1996).

¹⁵ The 1997 survey was designed to provide a sufficient number of checks to estimate the proportion of nonlocal checks returned within four and five days nationwide. The sample was not intended to provide statistically valid results between each possible pairing of check processing regions throughout the country. (63 FR 69027, December 15, 1998).

¹⁶ Board of Governors of the Federal Reserve System, *The 1990 Report to Congress Under the Expedited Funds Availability Act* (Board of Governors, 1990).

¹² 63 FR 69027, December 15, 1998.

¹³ These statements are consistent with findings reported in studies conducted by the Board and the American Bankers Association. In these studies, 70 and 86 percent of responding banks, respectively, reported that they do not hold nonlocal checks for the full period permitted under Regulation CC. Board of Governors of the Federal Reserve System, *Report to the Congress on Funds Availability Schedules and Check Fraud at Depository Institutions* (Board of Governors, 1996), p. 36, and American Bankers Association, *ABA 1998 Check Fraud Survey Report*, (1998), p. 19.

cycles observed in the 1990, 1996, and 1997 surveys.

CUMULATIVE PERCENTAGE OF NONLOCAL CHECKS RETURNED WITHIN NUMBER OF BUSINESS DAYS

| | 1997 Reserve Bank survey ¹ | 1996 Reserve Bank survey ¹ | 1996 bank survey | 1990 Reserve Bank survey | Percent im- provement 1990-97 |
|---|---|---|---------------------|--------------------------------|-------------------------------------|
| 3 business days | 27.8 | 33.3 | 32.0 | 21.0 | 32.4 |
| 4 business days | 59.9 | 64.1 | 64.9 | 47.0 | 27.5 |
| 5 business days | 82.8 | 83.3 | 84.3 | 73.0 | 13.4 |
| Number of nonlocal checks sampled | 31,646 | 5,707 | ² 773 | NA | NA |

¹ Excludes outlier observations defined as nonlocal checks that exceed 15 business days. For example, the 1997 survey data exclude 1.6 percent of nonlocal checks sampled.

² Reflects the number of commercial banks, savings institutions, and credit unions sampled.

Source: Board of Governors of the Federal Reserve System. See text notes 17, 18, and 19 for sources of data.

Twenty-nine commenters stated that, in the aggregate, the return periods reported in the Board's notice indicated that banks did not yet receive two-thirds of their returns within four business days. Fifteen commenters stated that the average return cycle was shorter in 1996 than in 1997 and requested that the Board defer shortening the maximum hold periods until the data showed that return times for nonlocal checks, in the aggregate, clearly exceeded at least the two-thirds threshold.

The way in which the Board presented the data in the 1998 notice suggested that a nonlocal check that was returned to the depository bank on the fifth business day after the day of deposit afforded the depository bank a reasonable time in which to learn that the check was returned before making funds available for withdrawal on that day. Similarly, the notice could be read as assuming that if a nonlocal check is returned on the fourth business day after deposit, it may be appropriate to reduce the availability schedule applicable to that check to four business days.

Several commenters, including the American Bankers Association, argued that all banks need the ability to hold funds for one day beyond the day on which they receive returned checks. These commenters noted that Regulation CC requires that funds be made available at the start of the business day on which the depositor must have access to funds pursuant to the schedules, but unpaid checks typically are not delivered until mid-day. As a result, the depositor might be permitted to withdraw cash several hours before the bank knows that the check was being returned.¹⁷ Therefore,

they argued, banks should be able to hold checks for one day beyond the day they can "reasonably expect to learn of the nonpayment of most items." Under this theory, nonlocal schedules should not be reduced to four business days unless two-thirds of nonlocal checks can be returned to the depository bank by the third business day after the banking day of deposit. The American Bankers Association further argued that the extra day permitted for cash withdrawals does not ameliorate this problem because the attendant requirement that cash and check withdrawals be tracked separately is not operationally feasible for most banks.

In addition, seven commenters argued that the two-thirds threshold suggested by the legislative history was inadequate and that receiving as many as one-third of returned checks back after the maximum permissible hold period would expose banks to more risk than they considered acceptable. One commenter cited the statutory language that requires shorter schedules where the depository bank can reasonably expect to learn of the nonpayment of "most" items and argued that, as interpreted by several courts in other contexts, "most" means an amount more significant than two-thirds, and the Conference Report language should not be considered controlling.

Twenty-four commenters provided data on their return experiences. Some commenters provided explicit surveys of their return items, while others asserted that some items took six or more days to be returned and, therefore, they opposed reducing the permissible hold period. These banks also noted the difficulty they had collecting representative data and explained that this was an expensive, labor-intensive, manual process.

Several smaller institutions pointed out that they use one or more intermediaries to process and collect checks, which tends to add at least one

day to the collection process, and that they would be particularly disadvantaged by shortened hold periods for nonlocal checks. The National Association of Federal Credit Unions stated that shorter nonlocal hold periods would have a disproportionately negative effect on credit unions because credit unions are less likely than commercial banks to receive returned checks within four business days.

Subcategories of Nonlocal Checks

In general, the commenters stated that there were difficulties associated with an availability policy that includes subcategories of checks. Seven commenters stated that creating subcategories of checks within the categories of next-day, local, and nonlocal checks would greatly increase the complexity of the regulation, the cost of implementation, and the difficulty of adequately disclosing banks' availability policies to consumers. These commenters also stated that they could not reliably collect data on check return patterns beyond the existing categories of checks.

Some of these commenters further stated that the EFAA established the check categories and does not require the Board to further subdivide those categories. The American Bankers Association stated that the most obvious meaning of "category of checks" in the EFAA is provided by the statute (that is, next-day, local, and nonlocal checks), on which the statutory funds availability schedules are based.

Many commenters stated that it would be important to disclose availability policies to depositors thoroughly. The American Bankers Association stated, however, that creating a more complex, changeable system would confuse consumers when one of the main purposes of the statute was to inform consumers. Most commenters expressed similar views,

¹⁷ 12 CFR 229.19(b). Specifically, funds must be made available for withdrawal by the later of 9:00 a.m. (local time of the depository bank) or the time the depository bank's teller facilities (including ATMs) are available for customer-account withdrawals.

stating that existing availability schedules were complicated to explain to depositors and that policies that differentiate among categories of nonlocal checks would be more confusing.

Forty-two respondents stated that administering holds for subcategories, implementing the proposed self-certification process, making any change to availability schedules, and training clerical staff on current hold and disclosure policies would be excessively costly. Fifty-two commenters stated that Regulation CC was already very complex and that training staff to properly administer the regulation presented a continuing problem. These commenters argued against any changes that might increase the cost or complexity of implementing or explaining the Regulation's provisions.

Thirty-four commenters commented on the proposed self-certification procedure. Generally, commenters indicated that banks would be unlikely to use the self-certification option because of its complexity and implementation cost, and that they would simply use shorter hold periods or shorter case-by-case holds despite the potentially increased risk.

Conclusions

Reasonable Time to Learn of Nonpayment.

Although the EFAA requires the Board to reduce availability schedules based on improvements in the check collection process, the EFAA states that such reductions should be made when depositary banks can reasonably expect to learn of the nonpayment of most items subject to the reduced schedules. Other provisions of the EFAA, such as the extended schedules allowed for cash withdrawal purposes and for certain checks deposited outside the continental U.S., indicate that Congress meant to protect depositary banks from undue risk that might accompany the EFAA's maximum availability schedules.¹⁸ Thus, the EFAA attempts to balance the interests of depositors in receiving prompt availability of funds against the risks to depositary banks of

making funds available before learning that checks have not been paid.

Although the discussion of the survey data in the Board's December 1998 notice was based on the premise that a depositary bank should be able to make funds available from a check on the day it would normally receive the return of that check, the Board has reconsidered that reasoning. The Board believes that the depositary bank can reasonably expect to learn of the nonpayment of most items only if it learns of the returned checks in time to take action before funds are required to be available for withdrawal. Generally, banks receive returned checks around midday. Banks require time to process the unpaid checks and post entries to depositors' accounts. Under the EFAA, \$400 in cash must be made available not later than 5:00 p.m. on the day that funds are to be made available for other purposes. While banks are permitted to delay by one more day the withdrawal of additional amounts by cash or similar means, it is costly and perhaps operationally not feasible for banks to treat cash and check withdrawals differently. Accordingly, banks appear to make funds available for withdrawal by cash at the opening of business on the same day on which they make funds available for other purposes. If the schedule is shortened so that the depositary bank is required to make funds available at the opening of business on the day that it receives the returned check, it may need to make funds available several hours prior to receipt of the check and before it is able to post the returned check to the depositor's account. Accordingly, the Board has reconsidered the time frame within which the "two-thirds" test is relevant. The Board believes that, before availability schedules are reduced for a category (or subcategory) of checks, a depositary bank should be able to learn of the return of most checks in that category in time to prevent depositors from withdrawing funds from the checks. The data from the surveys shows that, on an aggregate basis for nonlocal checks, the proportion of nonlocal checks returned to banks within three business days was well below the two-thirds envisioned by Congress. In addition, although the proportion of nonlocal checks returned within four business days after deposit was close to two-thirds, it remained slightly below that threshold. The Board has concluded, therefore, that it would not be appropriate to reduce the general availability schedule for nonlocal checks five to four days at this time. This determination does not foreclose

the possibility that improvements in the check return system or in posting systems might lead to a shortening of the general availability schedule in the future.

Subcategories of Nonlocal Checks

After reviewing the comments on the difficulties of implementing differing availability schedules for subcategories of nonlocal checks, the Board has determined that the costs and difficulties of establishing such subcategories, in addition to those already specified in appendix B of Regulation CC, would outweigh the likely benefits. As stated by the commenters, creation of subcategories of nonlocal checks would increase depositary bank costs significantly, particularly in the area of employee training and operations changes. These costs would increase regardless of whether the subcategories were established by regulation or by a self-certification process, although depositary banks would bear additional costs under the latter process.¹⁹ In addition, the commenters expressed concern that increasing the complexity of the availability schedules would also increase confusion for depositors and bank employees. The Board also notes that most banks do not appear to impose the maximum permissible hold periods, thus reducing the apparent potential benefits to depositors of reducing the nonlocal hold period.

Furthermore, it would be difficult to determine specific categories of nonlocal checks that should be subject to a shortened availability schedule. While Reserve Bank estimates based on geographic proximity or robust transportation networks formed the basis for including specific categories of checks in appendix B, the basis for determining additional categories of nonlocal checks subject to shortened availability schedules in a comprehensive way would be more complex. Optimally, statistical sampling of data from returned checks would provide a valid estimate of the number of returned checks with reasonable confidence intervals around the estimates. Collecting such an optimum sample of returned nonlocal checks, however, is not simple. First, because most checks are local, the sample size

¹⁸ The Act also permits depositary banks to extend holds under certain exception situations, such as when a deposit is over \$5,000 or when a bank has reasonable cause to doubt the collectibility of a check. These exception holds are not based on the amount of time it takes to collect and return the particular check, indicating that Congress may have presumed that, in the normal course of events, a significant number of checks would not be returned in time to provide the depositary bank with protection within the regular availability schedules, making these exception holds necessary.

¹⁹ Moreover, as some commenters stated, it is not clear that the EFAA requires reduced schedules for subcategories of checks. Although the EFAA does not define "categories of checks," some commenters argued that the Board should rely on the categories of checks delineated in the EFAA and that the EFAA does not direct the Board to define additional check categories. The 1987 Conference Report, however, provided an example using subcategories of nonlocal checks.

would have to be very large to obtain a sufficient number of nonlocal checks. Second, as the number of subcategories of nonlocal checks increases, the number of checks that need to be sampled increases as well. It may be virtually impossible to collect a sufficient number of checks between certain regions of the country owing to the limited number of checks returned between them. Further, collecting the data is a costly and time-consuming process. The information on returned checks needed for a survey must be collected manually from the back of checks and is often overprinted, lightly printed, and otherwise difficult to read. Data collection is further complicated by processing schedules. Returned checks become available to be sampled during peak processing periods in the middle of the night when bank staff have very limited time to collect the required data without slowing the return of those checks to the depository bank.

Accordingly, the Board has decided not to establish different maximum availability schedules for additional subcategories of nonlocal checks. Although the Board has decided not to propose any specific regulatory changes at this time to reduce the nonlocal check availability schedule, the Board will continue to monitor the time periods needed to return unpaid nonlocal checks and may consider further action if return times improve significantly.

By order of the Board of Governors of the Federal Reserve System, July 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-17679 Filed 7-12-99; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-10]

Proposed Establishment of Class D Airspace; Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority is installing a control tower at the Tupelo Municipal—C.D. Lemons Airport. Class D surface area airspace is required when the control tower is open to accommodate current

Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This would establish Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport.

Control tower hours of operation are scheduled for 0600-2200, daily.

DATES: Comments must be received on or before August 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99-ASO-10, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5627.

FOR FURTHER INFORMATION CONTACT:

Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue,

College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority is installing a control tower at the Tupelo Municipal—C.D. Lemons Airport. Class D surface area airspace is required when the control tower is open to accommodate current SIAP and for IFR operations at the airport. Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.