

PART 575—MUTUAL HOLDING COMPANIES

27. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

- 28. Section 575.9 is amended by:
 - a. revising Section 1 of the Charter in paragraph (a)(1);
 - b. removing, in Section 5 of the Charter in paragraph (a)(1), the sixth, seventh, and eighth sentences in the last paragraph;
 - c. revising Section 6 of the Charter in paragraph (a)(1);
 - d. revising Section 8 of the Charter in paragraph (a)(1);
 - e. revising the signature blocks at the end of the Charter in paragraph (a)(1);
 - f. revising paragraph (a)(2);
 - g. revising the last sentence of paragraph (a)(4); and
 - h. revising the last sentence of paragraph (a)(5).

The revisions read as follows:

§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.

(a) *Charters and bylaws for mutual holding companies*—(1) *Charters.* * * * Charter

Section 1. Corporate title. The name of the mutual holding company is _____ (the "Mutual Company").

* * * * *

Section 6. Directors. The Mutual Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Company's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate.

* * * * *

Section 8. Amendment. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Office prior to approval by the members at a legal meeting and shall be effective upon filing with the Office in accordance with regulatory procedures.

Attest: _____
Secretary of the Association

By: _____
President or Chief Executive Officer of the Association

Attest: _____
Secretary of the Office of Thrift Supervision

By: _____
Director of the Office of Thrift Supervision

Effective Date: _____

(2) *Charter amendments.* The rules and regulations set forth in § 544.2 of this chapter regarding charter amendments and reissuances of charters (including delegations and filing instructions) shall be applicable to mutual holding companies to the same extent as if mutual holding companies were Federal mutual savings associations, except that, with respect to the pre-approved charter amendments set forth in § 544.2 of this chapter, §§ 544.2(b)(1) and (b)(3) of this chapter shall not apply to mutual holding companies, and mutual holding companies changing their corporate title pursuant to § 544.2(b)(2) of this chapter shall be required to comply with § 575.9(a)(3) of this part as well as § 543.1(b) of this chapter.

* * * * *

(4) * * * The model bylaws for Federal mutual savings associations set forth in the OTS Applications Processing Handbook shall also serve as the model bylaws for mutual holding companies, except that the term "association" each time it appears therein shall be replaced with the term "Mutual Company"; section 11(e) (extending leniency to borrowing members) and section 11(f) (rejection of applications for accounts or membership) shall be removed and the remaining paragraphs of section 11 redesignated accordingly.

(5) * * * Mutual holding companies shall also be subject to the provisions of § 544.8 of this chapter.

* * * * *

Dated: November 20, 1996.

By the Office of Thrift Supervision.
Nicolas P. Retsinas,
Director.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910 and 912

[No. 96-79]

Regulations Governing Book-Entry Federal Home Loan Bank Securities

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board is adopting an interim final rule amending its regulations governing procedures for maintaining book-entry (uncertificated) Federal Home Loan Bank securities within the Federal Reserve Banks' system of accounts. This

action is being taken in conjunction with similar amendments being made by the Department of Treasury to its regulations governing Federal Reserve Bank book-entry procedures for Treasury securities, and by the regulators of other government sponsored enterprises for which the Federal Reserve Banks maintain book-entry securities. These amendments are intended to update the regulations to eliminate the need to treat book-entry securities as if they were certificated securities and to conform more closely to the manner in which book-entry securities are treated under the laws of the majority of the states (as set forth in Article 8 of the Uniform Commercial Code, as revised in 1994).

DATES: The interim final rule will become effective on January 1, 1997.

The Finance Board will accept comments on the interim final rule in writing on or before February 3, 1997.

ADDRESSES: Mail comments to Elaine A. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, 202/408-2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Subsections (b) and (c) of section 11 of the Federal Home Loan Bank Act (Bank Act) authorize the issuance of consolidated Federal Home Loan Bank (FHLBank) debentures or bonds (collectively, "FHLBank securities"), which are the joint and several obligations of the FHLBanks, upon terms and conditions established by the Federal Housing Finance Board (Finance Board). See 12 U.S.C. 1431(b), (c). The Finance Board has set forth the terms and conditions regarding the issuance of FHLBank securities in part 910 of its regulations. 12 CFR part 910. Although, under the Bank Act, the Finance Board is designated as the "issuer" of FHLBank securities, it has delegated the issuance of FHLBank securities, along with such other ministerial functions as the servicing of the FHLBank securities, to the Office of Finance (OF) (a joint office of the FHLBanks) pursuant to section 2B(b)(1) of the Bank Act, 12 U.S.C. 1422b(b)(1), part 941 of the Finance Board's regulations, 12 CFR part 941, and periodic resolutions of the Board of Directors of the Finance Board.

Since 1977, the OF has issued domestic FHLBank securities

exclusively in "book-entry" form; that is, as uncertificated securities recorded as entries on the computerized system of accounts maintained by the Federal Reserve Banks (Reserve Banks), acting as fiscal agents of the FHLBanks. This arrangement between the FHLBanks and the Reserve Banks exists pursuant to a 1973 agreement which, as permitted under section 15 of the Bank Act, 12 U.S.C. 1435, authorizes the Reserve Banks to issue book-entry FHLBank securities; to maintain related book-entry accounts; to pay principal and interest due on book-entry FHLBank securities; and otherwise to service such FHLBank securities.

At the time this agreement was consummated, the former Federal Home Loan Bank Board (FHLBB)—the Finance Board's predecessor as regulator of the FHLBanks—promulgated regulations governing the rights and obligations of the FHLBanks, the Reserve Banks, and other persons with respect to the issuance and servicing of book-entry FHLBank securities and the operation of the associated FHLBank book-entry system. See 12 CFR 506a (1974); 38 FR 10969 (1973) (proposed rule); 38 FR 26355 (1973) (final rule). These regulations, and those of other government sponsored enterprises (GSEs) having similar book-entry arrangements with Reserve Banks, are patterned after part 306 of the regulations of the Department of Treasury, 31 CFR part 306 (1996), which govern Reserve Bank book-entry procedures for Treasury securities. Responsibility for the FHLBB book-entry regulations was transferred to the Finance Board by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, section 401(h), 103 Stat. 356 (1989), and the regulations were redesignated as part 912 of the Finance Board's regulations.

Like those underlying the analogous Department of Treasury regulations, the legal concepts upon which part 912 is based have become outdated. At the time that these regulations were developed, the United States government securities market was in a state of transition between one in which most securities existed in definitive form (that is, the traditional certificate) to one in which securities are maintained almost exclusively within computerized book-entry systems. This is evidenced by the fact that current part 912 and the parallel regulations contained provisions regarding the conversion of definitive securities into book entry securities. Because, as mentioned, all definitive FHLBank securities have reached maturity, new

part 912 contains no such "conversion" provisions.

Corresponding law (including state laws based on the Uniform Commercial Code (UCC)) at the time current part 912 was promulgated assumed that possession and delivery of physical certificates were the key elements in the securities holding system. This led the Department of Treasury, the FHLBB, and other GSE regulators to premise their regulations upon the "bearer-definitive security fiction," which deems each book-entry security to be the equivalent of a bearer-definitive security. Despite the usefulness of the bearer-definitive fiction, its shortcomings have become increasingly apparent over the past 25 years, as the rules based on this fiction have been found to leave many unanswered questions regarding transactions and rights in book-entry securities.

In addition, the rules have proved inadequate to deal with the tiered system of accounts in which book-entry securities are held. Each interest in a book-entry security must be credited to the account of a Reserve Bank "participant"—that is, an entity having an account with a Reserve Bank. Persons or entities, including securities broker-dealers, who wish to acquire an interest in book-entry securities, but who do not have an account with a Reserve Bank, must do so through a Reserve Bank participant. Non-participant broker-dealers who deal in book-entry securities through a participant may, in turn, hold these securities for other persons or entities who otherwise lack access to the securities markets. Accordingly, a Reserve Bank most likely will have no information regarding the beneficial owners of interests in book-entry securities, but, instead, will consider the participants in whose Reserve Bank accounts the book-entry securities are held to be the "owners" of the interests therein.

Since 1985, the Department of Treasury has been working to develop a new book-entry regulation that does not rely on the bearer-definitive fiction and that effectively addresses the tiered system of accounts in which book-entry securities are held. The Department of Treasury published proposed rules amending its regulations governing the book-entry system for Treasury securities (called "Treasury/Reserve Automated Debt Entry System" or "TRADES") in March 1986 (51 FR 8846), November 1986 (51 FR 43027) and April 1992 (57 FR 12244). After publication of the latter proposed rule, the Department of Treasury decided to defer publication of a final rule, or

additional proposed rules, pending the completion of a planned revision of Article 8 of the UCC, governing investment securities, in order to coordinate the concepts contained in the new TRADES regulation with those set forth in the revised version of Article 8.

The revised version of Article 8 of the UCC (Revised Article 8) was ratified by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 1994. Thereafter, the Department of Treasury, in March 1996, published a fourth proposed TRADES rule, see 61 FR 8420, that incorporates many of the concepts regarding transactions and rights in book-entry securities that are set forth in Revised Article 8 and that defers to state law modeled after Revised Article 8 in many circumstances. A largely similar final rule was published in August 1996, see 61 FR 43626, the substantive provisions of which will take effect on January 1, 1997.

In order to ensure uniformity in the treatment of book-entry government securities, the regulators of GSEs that maintain book-entry securities at Reserve Banks also are promulgating new regulations to govern their respective book-entry systems. These regulations will parallel the new TRADES regulation, with modifications appropriate to the particular GSE and government securities to which such regulations will apply, and will most likely become effective simultaneously with the new TRADES regulation.

As part of this effort, the Finance Board is now adopting an interim final rule amending part 912 of its regulations, governing book-entry FHLBank securities. Because new part 912 is based upon the new TRADES regulation and because the Department of Treasury has published extensive commentary in its proposed and final rules regarding the TRADES regulation, the Finance Board has not set forth here a comprehensive analysis of part 912. Instead, the Finance Board is including here concise summaries of each section of new part 912, which address the manner in which the new provisions will effect the FHLBank book-entry system specifically. Those wishing to review a more complete explanation of the nuances of the book-entry regulation and the principles underlying it are referred to the preambles of the proposed and final TRADES rules, as well as the official Department of Treasury Commentary on the TRADES regulation, which will be published as Appendix B to 31 CFR part 357 (and which was published as part of the final TRADES rule at 61 FR 43631).

Although new part 912 is intended to provide a legal framework for all book-entry FHLBank securities, it is not a codification of all laws that could affect interests in book-entry FHLBank securities. In general, the regulation provides that (with some exceptions regarding security interests) Federal law will govern the rights and obligations of the FHLBanks and the Reserve Banks arising from book-entry FHLBank securities and the book-entry system, and that state law (to the extent that states have adopted Revised Article 8) will govern all other rights and obligations. The regulation also sets forth the substantive Federal law that applies to the rights and obligations of the FHLBanks and the Reserve Banks arising from book-entry FHLBank securities and the book-entry system. The most prominent aspect of the substantive law set forth therein is that neither the FHLBanks nor the Reserve Banks are liable to persons having or claiming interests in book-entry securities that are below the participant level in the tiered system of ownership; that is, the FHLBanks and Reserve Banks need only recognize Reserve Bank participants as holders of interests in book-entry FHLBank securities.

II. Section-by-Section Analysis

Section 912.1 contains definitions for use in part 912. Section 912.2(a) provides that, with the exception of certain security interests addressed in § 912.2(b) (discussed below), the rights and obligations of the FHLBanks and the Reserve Banks with respect to the FHLBank book-entry system and the FHLBank securities maintained therein are governed solely and exclusively by Federal law, which is defined to include: part 912, book-entry FHLBank securities offering notices, and Reserve Bank Operating Circulars. The governing Federal law set forth in § 912.2 relates only to the matters set forth therein; other laws, such as tax, banking, and securities laws remain applicable and could affect the holders of book-entry FHLBank securities.

Section 912.2(b) provides an exception to the rule of Federal preemption set forth in § 912.2(a), stating that security interests in book-entry FHLBank securities in favor of a Reserve Bank that have not been recorded on the books of the Reserve Bank, as described in § 912.4(c)(1), shall be governed by: (i) the law of the state in which the head office of the Reserve Bank maintaining the participant's account is located, if the security interest is from a participant; or (ii) the law of the state to be determined as specified in § 912.3 (discussed below), if

the security interest is from a person other than a participant. By implication, security interests in favor of a Reserve Bank that have been recorded on the books of the Reserve Bank in accordance with § 912.4(c)(1) are governed by Federal law, as set forth in § 912.2(a). Thus, claims against the FHLBanks and Reserve Banks made by participants, or any other person claiming an interest in a book-entry FHLBank security, other than claims involving Reserve Bank security interests that have not been recorded on the books of the Reserve Bank, are governed solely and exclusively by Federal law.

Section 912.2(c) provides that, if the application of the jurisdictional rule set forth in the first sentence of § 912.2(b) would result in the application of the law of a state that has not adopted Revised Article 8, that state's law will be read as if it had adopted Revised Article 8. This limited rule of Federal preemption is included in order to ensure that matters involving book-entry FHLBank securities will be treated similarly regardless of the state having jurisdiction over the matter. As of November 1, 1996, 29 states have adopted Revised Article 8 and others are expected to follow. If and when all states adopt Revised Article 8, the Finance Board expects that this provision, and the similar provision contained in § 912.3(d), will be repealed. In the meantime, as provided in § 912.9(b), the Finance Board will defer to determinations of the Department of Treasury regarding whether particular states may be deemed to have adopted Revised Article 8 for purposes of part 912. With regard to the TRADES regulation, the Department of Treasury intends to publish such determinations in the Federal Register, as necessary. See 61 FR 43633-34.

Section 912.3 is a choice of law rule governing the substantive matters set forth in § 912.3(a)—which are meant to be coextensive with those matters covered by Revised Article 8 with respect to a person's interest in a book-entry FHLBank security, other than interests connected with a person's relationship with the Reserve Banks or the FHLBanks, which are governed by Federal law, as provided in § 912.2. Section 912.3(b) adopts Revised Article 8's general choice of law rule, providing that the law applicable to the securities intermediary will govern matters involving an interest in a book-entry FHLBank security held through that intermediary. Section 912.3(c) also parallels Revised Article 8 by excepting from the general rule the determination of whether security interests are

perfected automatically or by filing a financing statement and providing that this issue is to be resolved by reference to the law of the state in which the debtor is located.

Section 912.3(d) is analogous to § 912.2(c), providing that if the application of the jurisdictional rule set forth in § 912.3(b) would result in the application of the law of a state that has not adopted Revised Article 8, that state's law will be read as if it had adopted Revised Article 8.

Section 912.4(a) provides that a participant's securities entitlement is created when a Reserve Bank indicates by book-entry that a book-entry FHLBank security has been credited to the participant's securities account. The nature of the participant's "securities entitlement"—that is, the nature of its interest in a book-entry FHLBank security—once it is created, must be determined by reference to Federal law with respect to the participant's rights against and obligations to its Reserve Bank and the FHLBanks, as provided in § 912.2, or to applicable state law with respect to the participant's rights against and obligations to all other persons, as provided in § 912.3. Section 912.4(b) provides that a security interest in favor of the United States government to secure deposits of public money has priority over the interests of any other person in a book-entry FHLBank security.

Section 912.4(c)(1) provides that, where required by Federal law or regulation or pursuant to a specific agreement with a Reserve Bank, a security interest in book-entry FHLBank securities in favor of a Reserve Bank or other person may be created and perfected by a Reserve Bank marking its books to record the security interest. However, neither the FHLBanks nor the Reserve Banks have any obligation to agree to record a security interest in book-entry FHLBank securities on the books of a Reserve Bank, except as required by Federal law or regulation. A security interest created and perfected as specified in § 912.4(c)(1) has priority over all other interests in the book-entry FHLBank security, except an interest of the United States government, as described in § 912.4(b).

Section 912.4(c)(2) provides that a security interest in a book-entry FHLBank security may be perfected by any method available under applicable state law, as determined under §§ 912.2(b) or 912.3, and that the priority of such security interests shall be governed by such applicable law. If a person perfects a security interest pursuant to § 912.4(c)(2), obligations of the FHLBanks and the Reserve Banks

with respect to that security interest are limited, absent a specific agreement made by the FHLBanks or Reserve Banks pursuant to § 912.4(c)(1). In other words, although security interests in a book-entry FHLBank security perfected under applicable state law may be valid, neither the FHLBanks nor a Reserve Bank have any obligation to recognize any such interests, other than those of the participant in whose securities account the interest is maintained; a creditor's recourse will be solely against the debtor participant or other third party.

Section 912.5(a) sets forth the general rule that, with limited exceptions, the FHLBanks and the Reserve Banks will recognize the interest in a book-entry FHLBank security only of a participant in whose securities account such interest is maintained. As noted above, book-entry FHLBank securities are held via a tiered system of ownership. The records of a Reserve Bank reflect only the ownership interests of participants. Participants frequently will hold interests in book-entry FHLBank securities for the benefit of their customers (which may include broker-dealers and other securities intermediaries) who, in certain cases, in turn will hold interests in FHLBank securities for the benefit of their customers. Accordingly, neither the FHLBanks nor a Reserve Bank would know the identity or recognize a claim of a participant's customer if that customer were to present it to the FHLBanks or a Reserve Bank. Under the regulation, persons at levels below the participant level must present their claims to their securities intermediary; neither the FHLBanks nor the Reserve Banks are liable for any such claims.

Section 912.5(b)(1) sets forth a corollary to the rule set forth in § 912.5(a), providing that the FHLBanks discharge their payment responsibilities with respect to a book-entry FHLBank security when a Reserve Bank credits the funds account of a participant with amounts due on that security, or makes payment in some other manner specified by the participant. Section 912.5(b) establishes the mechanism for payment of book-entry FHLBank securities at maturity or upon redemption. Contrary to the practice with definitive securities, no act of presentment is required by the participant.

Section 912.6 authorizes the Reserve Banks, as fiscal agents of the FHLBanks, to operate the book-entry system for the FHLBanks. Section 912.7 provides that the FHLBanks and the Reserve Banks are not liable for actions taken in reliance on a tender, transaction request

form, Transfer Message, or other written instrument, or evidence submitted in support thereof. Section 912.8 makes clear where certain legal process should be directed, although it makes clear that the regulations do not establish whether a Reserve Bank is required to honor any such order or notice.

Section 912.9(a) references, for interpretive purposes, the Commentary that the Department of Treasury has appended to its TRADES regulation, so as to provide a comprehensive background to the matters contained in part 912 and to ensure that it is applied in similar fashion to the TRADES regulation. Section 912.9(b) defers to the Department of Treasury determinations regarding whether particular states may be deemed to have adopted Revised Article 8 for purposes of part 912.

Section 912.10 merely restates the substance of section 15 of the Bank Act, 12 U.S.C. 1435, which provides that FHLBank securities are not obligations of the United States and are not guaranteed by the United States.

III. Procedural Requirements

This interim final rule does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

The Finance Board finds that the notice and comment procedure required by the Administrative Procedures Act is unnecessary, impracticable, and contrary to the public interest in this instance. See 5 U.S.C. 553(b)(3)(B). The Treasury TRADES regulation on which this rule is based has been published, in various forms, as a proposed rule four times and as a final rule once. In each instance, the TRADES regulation was accompanied by extensive commentary addressing the background and provisions of the TRADES regulation. Accordingly, the Finance Board has concluded that publication of new part 912 for notice and comment is unnecessary given its similarity to the TRADES regulation and is impracticable given the compelling reasons for setting the effective date of the regulation at January 1, 1997, when the TRADES regulation and those of the other GSEs will most likely become effective. Nevertheless, because the Finance Board believes public comments aid in effective rulemaking, it will accept written comments on the interim final rule on or before February 3, 1997.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

There are no collections of information contained in this interim final rule. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects

12 CFR Part 910

Federal home loan banks, Government securities.

12 CFR Part 912

Federal home loan banks, Federal Reserve System, Government securities, electronic funds transfer.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX of the Code of Federal Regulations, to read as follows:

PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. The authority citation for part 910 is revised to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Section 910.3 is revised to read as follows:

§ 910.3 Transactions in consolidated bonds.

The general regulations of the Department of Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357, regarding book-entry procedure, are hereby incorporated into this part, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, as the regulations of the Board for similar transactions in consolidated Federal Home Loan Bank bonds. The book-entry procedure for consolidated Federal Home Loan Bank bonds is contained in part 912 of this subchapter.

3. Part 912 is revised to read as follows:

PART 912—BOOK-ENTRY PROCEDURE FOR FEDERAL HOME LOAN BANK SECURITIES

Sec.

- 912.1 Definitions.
- 912.2 Law governing rights and obligations of Federal Home Loan Banks and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks and Federal Reserve Banks.
- 912.3 Law governing other interests.
- 912.4 Creation of Participant's Security Entitlement; security interests.
- 912.5 Obligations of the Federal Home Loan Banks; no Adverse Claims.
- 912.6 Authority of Federal Reserve Banks.
- 912.7 Liability of Federal Home Loan Banks and Federal Reserve Banks.
- 912.8 Notice of attachment for Book-entry Federal Home Loan Bank Securities.
- 912.9 Reference to certain Department of Treasury commentary and determinations.
- 912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Authority: 12 U.S.C. 1422a, 1422b, 1431, 1435.

§ 912.1 Definitions.

For purposes of this part, unless the context otherwise requires or indicates:

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Book-entry Federal Home Loan Bank Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Federal Home Loan Bank Security* means a Federal Home Loan Bank Security maintained in the book-entry system of the Federal Reserve Banks.

(c) *Entitlement Holder* means a Person to whose account an interest in a Book-entry Federal Home Loan Bank Security is credited on the records of a Securities Intermediary.

(d) *Federal Home Loan Bank Security* means a consolidated bond, debenture, note, or other obligation of the Federal Home Loan Banks issued under authority of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(e) *Federal Reserve Bank* means the a Federal Reserve Bank or branch, acting as fiscal agent of the Federal Home Loan Banks, unless otherwise indicated.

(f) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

(g) *Funds account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

(h) *Participant* means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

(i) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Federal Home Loan Bank Securities held for a Participant are or may be credited.

(j) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a Federal Home Loan Bank, or a Federal Reserve Bank.

(k) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994

Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.

(l) *Securities Intermediary* means:

(1) A Person that is registered as a "clearing agency" under the federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry Federal Home Loan Bank Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(m) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Federal Home Loan Bank Security.

(n) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(o) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Federal Home Loan Bank Security, as set forth in Federal Reserve Bank Operating Circulars.

§ 912.2 Law governing rights and obligations of Federal Home Loan Banks and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Federal Home Loan Banks and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank securities; and the rights of any Person, including a Participant, against the Federal Home Loan Banks and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation

of the Book-entry system, as it applies to Federal Home Loan Bank Securities; are governed solely by regulations of the Federal Housing Finance Board, including the regulations of this part 912, the applicable offering notice, applicable procedures established by the Federal Home Loan Banks, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law determined in the manner specified in § 912.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 912.3 Law governing other interests.

(a) To the extent not inconsistent with this part 912, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a "Securities Intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Federal Home Loan Bank Book-entry Security is a Security Entitlement.

§ 912.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Federal Home Loan

Bank Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Federal Home Loan Banks and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 912.2(b) or § 912.3. The perfection, effect of perfection or non-perfection, and priority of a security

interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 912.5 Obligations of the Federal Home Loan Banks; No Adverse Claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 912.4(c)(1), for the purposes of this part 912, the Federal Home Loan Banks and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Federal Home Loan Bank Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor the Federal Home Loan Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Federal Home Loan Bank Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Federal Home Loan Bank Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Federal Home Loan Banks to make payments of interest and principal with respect to Book-entry Federal Home Loan Bank Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Federal Home Loan Bank Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Federal Home Loan Bank Securities are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such

principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry Federal Home Loan Bank Security, unless otherwise expressly required.

§ 912.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Federal Home Loan Banks to perform functions with respect to the issuance of Book-entry Federal Home Loan Bank Securities, in accordance with the terms of the applicable offering notice and with procedures established by the Federal Home Loan Banks; to service and maintain Book-entry Federal Home Loan Bank Securities in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Federal Home Loan Banks; to effect transfer of Book-entry Federal Home Loan Bank Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Federal Home Loan Banks.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 912, governing the details of its handling of Book-entry Federal Home Loan Bank Securities, Security Entitlements, and the operation of the book-entry system under this part 912.

§ 912.7 Liability of Federal Home Loan Banks and Federal Reserve Banks.

The Federal Home Loan Banks and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. The Federal Home Loan Banks and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§ 912.8 Notice of attachment for Book-entry Federal Home Loan Bank Securities.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal

process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§ 912.9 Reference to certain Department of Treasury commentary and determinations.

(a) The Department of Treasury TRADES Commentary (Appendix B to 31 CFR part 357) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry Federal Home Loan Bank Securities, as an interpretive aid to this part 912.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the Federal Register or otherwise, shall also apply to this part 912.

§ 912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Federal Home Loan Bank Securities are not obligations of the United States and are not guaranteed by the United States.

By the Board of Directors of the Federal Housing Finance Board.

Dated: November 7, 1996.

Bruce A. Morrison,
Chairman.

[FR Doc. 96-30454 Filed 12-2-96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 93G-0017]

Listing of Color Additives Exempt From Certification; Ferrous Lactate; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 4, 1996, for the final rule that appeared in the Federal Register of August 2, 1996 (61 FR 40317), and amended the color additive regulations to provide for the

safe use of ferrous lactate for the coloring of ripe olives.

DATES: Effective date confirmed: September 4, 1996.

FOR FURTHER INFORMATION CONTACT:

Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0001, 202-418-3074.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 2, 1996 (61 FR 40317), FDA amended 21 CFR part 73 to add a new § 73.165 to provide for the use of ferrous lactate for the coloring of ripe olives.

FDA gave interested persons until September 3, 1996, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the Federal Register of August 2, 1996, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, notice is given that no objections or requests for a hearing were filed in response to the August 2, 1996, final rule. Accordingly, the amendments promulgated thereby became effective September 4, 1996.

Dated: November 21, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96-30730 Filed 12-2-96; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 961030301-6301-01]

RIN 0651-AA55

Changes in Signature and Filing Requirements for Correspondence Filed in the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.