

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 71

#### Regulations for the Safe Transport of Radioactive Material; Solicitation of Proposed Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Solicitation of proposed changes.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Transportation (DOT) are jointly seeking proposed changes to the International Atomic Energy Agency (IAEA) Regulations for the Safe Transport of Radioactive Material (referred to as TS-R-1). The proposed changes that are submitted by the U.S. and other IAEA member states and International Organizations might necessitate subsequent domestic compatibility rulemakings by both the NRC and the DOT.

**DATES:** Proposed changes will be accepted until June 7, 2004. Proposed changes received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for proposed changes received on or before this date.

**ADDRESSES:** Mail proposed changes to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Hand deliver proposed changes to Two White Flint North, 11545 Rockville Pike (Mail Stop T6D59), Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** John Cook, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-8521; e-mail: [jrc1@nrc.gov](mailto:jrc1@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

### Background

The IAEA periodically revises its Regulations for the Safe Transport of Radioactive Material (TS-R-1) to reflect new information and accumulated experience. The DOT is the U.S. competent authority before the IAEA for radioactive material transportation matters. The NRC provides technical support to the DOT in this regard, particularly with regard to Type B and fissile packages.

The IAEA has recently initiated the review cycle for the 2007 edition of TS-R-1. The IAEA's review process calls for Member States and International Organizations to provide proposed changes to the IAEA by July 15, 2004. The objective is publication of revised regulations in 2007, nominally to become effective worldwide in 2009. To assure opportunity for public involvement in the international regulatory development process, the DOT and the NRC are soliciting proposed changes at this time. This information will assist the DOT and the NRC in having a full range of views as the agencies develop the proposed changes the U.S. will submit to the IAEA.

Proposed changes must be submitted in writing (electronic file on disk in Word format preferred) and are to include:

- Name;
- Address;
- Telephone no.;
- Fax no.;
- E-mail address;
- Objective of change/regulatory problem (e.g., a description of the problem being addressed and its consequences);
- Justification for change (e.g., the proposed change maintains safety in transport, is risk-informed, and is effective and efficient (e.g., does not impose an undue burden on shippers or carriers));
- TS-R-1 paragraphs affected (existing text, and proposed new text);
- Modification of or additional guidance material (existing text, and proposed new text); and
- Reference(s) and/or reference material as needed.

The NRC and the DOT will review the proposed changes and rationales received by June 7, 2004. Based in part on the information, the agencies will

determine the U.S. proposed changes to be submitted to IAEA by July 15, 2004.

Proposed changes from all Member States and International Organizations will be considered at an IAEA Review Panel Meeting to be convened by IAEA on September 27—October 1, 2004, in Vienna, Austria. Prior to that meeting, the DOT and the NRC anticipate holding a public meeting to solicit comment on all (including U.S.) proposed changes submitted to the IAEA. Note that future domestic rulemakings, if necessary, will continue to follow established rulemaking procedures, including the opportunity to formally comment on proposed rules.

Dated in Rockville, Maryland, this 23rd day of April, 2004.

For the Nuclear Regulatory Commission.

**John R. Cook,**

*Senior Transportation Safety Scientist, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04-9226 Filed 4-22-04; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 32

[Docket No. 04-11]

RIN 1557-AC83

#### Lending Limits Pilot Program

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing to extend for three years an OCC pilot program that authorizes new, special lending limits for 1-4 family residential real estate loans and small business loans. Under the program, eligible national banks with main offices located in states that have a lending limit available for residential real estate loans or small business loans that is higher than the current Federal limit, may apply to take part in the pilot and make use of the higher limits. The pilot program will expire on June 11, 2004, although national banks approved to participate in the program as of that date may continue to lend under the higher limits until September 10, 2004. While our preliminary analysis indicates that

the pilot program has operated in a safe and sound manner, additional experience with the program is needed before we can make a determination to retain, modify, or rescind these special lending limits. Accordingly, the proposal would extend the pilot program for an additional three years. The proposal also seeks comment on expansion or modification of the scope of the current pilot program.

**DATES:** Comments must be received by May 24, 2004.

**ADDRESSES:** Please designate the OCC in your comment and include the docket number 04-11. Because paper mail in the Washington area and at OCC may be subject to delays, please submit your comments by e-mail or fax whenever possible. You may submit comments by any of the following methods:

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

- *OCC Web Site:* <http://www.occ.treas.gov>. Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."

- *E-mail address:* [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Fax:* (202) 874-4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Public Reference Room, Mail Stop 1-5, Washington, DC 20219.

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

*Instructions:* As a general rule, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. The Freedom of Information Act (FOIA) protects certain information, such as trade secrets and commercial or financial information from disclosure. You may request, and the OCC may grant, confidential treatment for items of information in your comment that you identify as protected under FOIA.

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

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

- *Viewing Comments Electronically:* You may request e-mail or CD-ROM copies of comments that the OCC has received by contacting the OCC's Public Reference Room at [foia-pa@occ.treas.gov](mailto:foia-pa@occ.treas.gov).

- *Docket:* You may also request available background documents using the methods described earlier.

**FOR FURTHER INFORMATION CONTACT:** Tom O'Dea, National Bank Examiner, Credit Risk, (202-874-5170); Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090, Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090, or Jonathan Fink, Senior Attorney, Bank Activities and Structure, (202) 874-5300.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Twelve U.S.C. 84 governs the percentage of capital and surplus that a bank may loan to any one borrower. Section 84 and the OCC's implementing regulations, 12 CFR part 32, permit a national bank to make loans in an amount up to 15 percent of its unimpaired capital and surplus to a single borrower. A national bank may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by "readily marketable collateral." Part 32 refers to these lending limits as the "combined general limit." The statute and regulation also provide other exceptions to, and exemptions from, the combined general limit for various types of loans and extensions of credit.

Section 84 authorizes the OCC to establish lending limits "for particular classes or categories of loans" that are different from those expressly provided by the statute's terms. Effective September 10, 2001, the OCC published a final rule (2001 final rule) to amend part 32 to establish a pilot program with special lending limits for residential real estate loans and small business loans. 66 FR 31114 (June 11, 2001). The purpose of the program was to enable community banks to remain competitive in states that provide their state-chartered institutions with a higher lending limit for these types of loans, while maintaining national bank safety and soundness.

For purposes of the pilot program, a residential real estate loan is a loan secured by a perfected first-lien security interest in one-to-four family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan is made. A small business loan is a loan secured by "nonfarm, nonresidential property" or a "commercial and industrial loan" as those terms are defined in the instructions for preparation of the Consolidated Report of Condition and

Income (Call Report), Schedule RC-C, Part 1, 1.e and 4 (rev. 3-03).

The pilot program authorizes eligible national banks to apply for approval to make residential real estate loans and small business loans to a single borrower in addition to amounts that they may already lend to a single borrower under the existing combined general limit and special limits in 12 CFR 32.3(a) and (b). A bank is eligible for the pilot program only if it is well capitalized, as defined in 12 CFR 6.4(b)(1), and has a rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS), with at least a rating of 2 for asset quality and for management. These criteria ensure that only banks with sufficient capital and good managerial oversight are permitted to use the increased limits.

Under the pilot program, an eligible national bank may make residential loans in an additional amount up to the lesser of 10 percent of its capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available for residential real estate loans or unsecured loans in the state where the main office of the national bank is located. Similarly, an eligible national bank may make small business loans in an additional amount up to the lesser of 10 percent of capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available for small business loans or unsecured loans in the state where the main office of the national bank is located. In each case, the bank may not lend more than \$10 million to a single borrower under the new authority.

The OCC adopted a number of safeguards that apply to banks using the authority under the pilot program. For example, the amount that a bank may lend under the pilot program's special limits is subject to an individual borrower cap and an aggregate borrower cap. Under the individual borrower cap, the total outstanding amount of a bank's loans to one borrower under 12 CFR 32.3(a) and (b), together with loans made under the program, may not exceed 25 percent of the bank's capital and surplus. The aggregate cap provides that the total outstanding amount of any loan or parts of loans made by a bank to all of its borrowers under the special limits of the pilot program may not exceed 100 percent of the bank's capital and surplus.

A bank must apply and obtain the OCC's approval before it may use the

special lending limits. The application includes a certification that the bank is well capitalized and has the requisite ratings, citation to state law on lending limits, a copy of a written resolution by a majority of the bank's board of directors approving the use of the new lending authority, and a description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

### Description of the Proposal

The pilot program is scheduled to expire on June 11, 2004, although national banks approved to participate in the program as of June 11, 2004 can continue to lend under the extended limits until September 10, 2004. The OCC stated in the preamble to the 2001 final rule that prior to the conclusion of the pilot program it would evaluate its experiences and determine whether, and under what circumstances, to extend the program.

As of the end of February 2004, 169 national banks headquartered in 23 states had received approval to participate in the program. The OCC compared the performance of 129 banks that participated in the program to that of comparable state-chartered banks and national banks that did not participate in the program focusing on: (1) Loan portfolio composition; (2) asset quality; (3) liquidity and capital; and (4) differences in interest expense, non-interest expense and profitability indicators between participating banks and their peers. Based on this review, the OCC could not attribute any statistical differences directly to participation in the program. In the OCC's view, banks in the program have not had the additional lending authority for a sufficient period of time for the OCC to assess fully the effects of their participation in the program. In particular, the limited number of banks in the program, and the relatively small number of quarters of data available for review, make reaching a definitive conclusion about the program premature.

For these reasons, this proposal would amend 12 CFR part 32 to continue the pilot program in its current form until June 11, 2007. Banks that receive OCC approval to participate in the program before June 11, 2007, would be authorized to lend under the expanded limits until September 10, 2007, provided that a bank continues to be an "eligible bank" as defined in 12 CFR 32.2(i). Banks already approved under the pilot program need not do anything further to continue their approval.

The OCC invites comment on all aspects of this proposal, including whether to continue the pilot program as proposed and, if it is continued, whether to modify it for the next three-year period. Commenters recommending modifications that would expand the types of loans covered by, or otherwise liberalize the program are encouraged to identify appropriate safeguards to ensure that the changes they propose are consistent with safety and soundness.

Commenters urging the expansion of the pilot program also are asked to describe situations or circumstances in which a higher state lending limit has competitively disadvantaged a national bank in that lending market. For example, in what circumstances has the current scope of the pilot program prevented the bank from making loans?

The part 32 lending limits apply to all loans and extensions of credit made by national banks and their "domestic operating subsidiaries." The OCC is aware that some national banks control entities authorized by statute ("statutory subsidiaries") other than operating subsidiaries or financial subsidiaries (e.g., agricultural credit corporations) that make loans that are currently excluded from the part 32 lending limits. The OCC invites comment on the current treatment of such "statutory subsidiaries," including whether the current treatment provides a means to achieve additional flexibility in agricultural lending, and whether, and if so how, loans by such entities should be included in the scope of the part 32 lending limits.

### Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what

changes to the format would make the regulation easier to understand?

- What else could we do to make the regulation easier to understand?

### Solicitation of Comments on Impact on Community Banks

The OCC adopted the pilot program following a review of our regulations that focused specifically on ways to change the regulations to respond to community bank needs. 66 FR 31114, 31115 (June 11, 2001). The purpose of the review was to explore ways in which our regulations could be modified, consistent with safety and soundness, to reflect the fact that community banks operate with more limited resources, and often different risk profiles, than larger institutions. Our goal was to identify alternative regulatory approaches to minimize the burden on community banks and promote their competitiveness.

The OCC seeks comments on how community banks assess the program and on the impact of the proposal on community banks' current resources and available personnel with requisite expertise. The OCC also seeks comments on whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

### Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires Federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this proposal, if adopted in final form, is unlikely to have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Commenters are invited to provide the OCC with any information they may have about the likely quantitative effects of the proposal.

### Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

### Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before

promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under control number 1557-0221, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, because OCC is proposing to extend the pilot program, we invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on the respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

#### List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 84, and 93a.

2. In § 32.7, paragraphs (c) and (e) are revised to read as follows:

#### § 32.7 Pilot program for residential real estate and small business loans.

\* \* \* \* \*

(c) *Duration of approval.* Except as provided in paragraph (d) of this section, a national bank that has received OCC approval may continue to make loans and extensions of credit under the special lending limits in paragraphs (a)(1) and (2) of this section until the date three years after September 10, 2004, provided the bank remains an "eligible bank."

\* \* \* \* \*

(e) *Duration of pilot program.* The pilot program will terminate on June 11, 2007, unless it is terminated sooner by the OCC.

\* \* \* \* \*

Dated: April 20, 2004.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 04-9360 Filed 4-22-04; 8:45 am]

**BILLING CODE 4810-33-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[COTP Memphis 04-001]

RIN 1625-AA00

#### Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel. This proposed safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. Entry into this proposed zone during the enforcement periods would be prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before June 22, 2004.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard, Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301,

Memphis, Tennessee 38103-2300, Attn: Chief Petty Officer James Dixon. Marine Safety Office Memphis maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, Tennessee, 38103-2300 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Chief Petty Officer (CPO) James Dixon, Marine Safety Office Memphis at (901) 544-3941, extension 2116.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Memphis 04-001], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Memphis at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

On February 26, 2004, the Army Corps of Engineers requested a channel closure for the Lower Mississippi River from mile 778.0 to 781.0, to occur daily from 6 a.m. until 6 p.m. beginning on August 1, 2004 and ending on September 30, 2004. The effective dates for this proposed rule are based upon the best available information and may change. This closure is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in the vicinity of ten,