We agree with the reasons presented for this suggestion. Accordingly, we are removing the language in § 301.48–4(d)(4) that pertains to application of d-phenothrin.

The third suggestion was to eliminate the term ''tail swapping'' in the regulations because of concerns that this term is not commonly used and could be misconstrued.

We believe the term ''tail swapping'' is commonly used by the airline industry and, therefore, is appropriate for use in a regulation targeted at that industry. However, to ensure clarity, we are changing the wording in § 301.48–4(d)(6). As reworded, § 301.48–4(d)(6) will begin: ''When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as 'tail swapping'). * * *''

The final suggestion was to delay issuance of this final rule until the list of infested States used in the U.S./Canada Japanese Beetle Harmonization Plans has been finalized.

We are not taking any action in regard to this suggestion because this list, which is primarily used by noninfested States to regulate the movement of nursery stock from infested States, is constantly being updated. It will never be ''finalized,'' per se. Just as we added Minnesota and Wisconsin to the list of quarantined States in the interim rule, if we determine that a State other than those currently listed in § 301.48(a) is infested with Japanese beetles and needs to be quarantined, we will take action at that time to include that State in the list of quarantined States.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the National Environmental Policy Act.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 7 CFR part 301 which was published at 61 FR 32636–32641 on June 25, 1996, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.48–4, paragraph (d)(4) and the first sentence of paragraph (d)(6) are revised to read as follows:

§ 301.48–4 Conditions governing the interstate movement of regulated articles from quarantined States.

* * * * *

(d) * * *

(4) Aircraft must be treated in accordance with the Treatment Manual no more than 1 hour before loading. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions as required by the Treatment Manual.

* * * * *

(6) When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as ''tail swapping''), the alternate aircraft must be inspected and all Japanese beetles must be removed. * * *

* * * * *

Done in Washington, DC, this 24th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–27972 Filed 10–31–96; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0936]

Bank Holding Companies and Change in Bank Control (Regulation Y)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: Section 2208 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 amended the Bank Holding Company Act to eliminate the requirement that bank holding companies seek Board approval *before* engaging *de novo* in permissible nonbanking activities listed in Regulation Y if the holding company is well-capitalized and meets certain other criteria specified in the statute. Section 2208 also established an expedited procedure for well-capitalized bank holding companies that meet these criteria to obtain Board approval to acquire smaller companies that engage in any permissible nonbanking activities listed in Regulation Y as well as to engage in nonbanking activities that the Board has approved only by order. These changes are effective immediately.

Section 2208 provides that a bank holding company shall be considered ''well-capitalized'' if it meets the capital levels required by the Board. For purposes of determining the capital levels at which a bank holding company shall be considered ''well-capitalized'' under section 2208 and Regulation Y, the Board has adopted, as an interim rule, risk-based capital thresholds that are the same as the levels set for determining that a state member bank is well capitalized under the provisions established under section 38 of the Federal Deposit Insurance Act, and a modified leverage ratio. Because section 2208 became effective upon enactment on September 30, 1996, this definition is adopted effective immediately on an interim basis. The Board invites public comment on the definition of ''well-capitalized,'' including how this provision in section 2208 applies to foreign banking organizations. The Board will adjust the definition as appropriate in light of public comment.

DATES: Interim rule effective October 23, 1996; comments must be received by December 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0936, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.8(a) of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Deborah M. Awai, Senior Attorney (202/452–3594), Legal Division; Rhoger Pugh, Assistant

Director (202/728–5883), Norah M. Barger, Manager (202/452–2402), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Section 2208 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended section 4 of the Bank Holding Company Act to provide that a well-capitalized bank holding company that meets certain criteria is no longer required to obtain *prior* Board approval to engage *de novo* in a nonbanking activity listed in Regulation Y. A bank holding company that meets the qualifications in section 2208 is required only to notify the Board within 10 business days after the activity has been started.[1]

Section 2208 also established an expedited procedure for well-capitalized bank holding companies that meet the criteria in section 2208 to obtain Board approval to acquire companies (other than an insured depository institution) that engage in any permissible nonbanking activities as well as to engage *de novo* in nonbanking activities that the Board has approved only by order.[2] Under the statutory change, a qualifying bank holding company must provide the Board with at least 12 business days advance notice of a proposed acquisition or of a proposal to engage in an activity approved only by order, and the Board may notify the bank holding company during that period that a full application is required.[3]

To qualify for this exemption and procedure, a bank holding company must be well-capitalized. Section 2208 provides that a bank holding company is ''well-capitalized'' for purposes of that section if the holding company meets the required capital levels for well-capitalized bank holding companies established by the Board. The Board's capital adequacy guidelines do not currently define a capital level at which a bank holding company would be considered to be ''well-capitalized'' for any purpose.

For purposes of section 2208 and the provisions of Regulation Y, the Board considers a bank holding company to be ''well-capitalized'' if:

1. The bank holding company, on a consolidated basis, maintains a total risk-based capital ratio of 10.0 percent or greater;

2. The bank holding company, on a consolidated basis, maintains a Tier 1 risk-based capital ratio of 6.0 percent or greater.

3. The bank holding company, on a consolidated basis, maintains either:

A. A Tier 1 leverage ratio of 4.0 percent or greater, or

B. If the bank holding company has a composite 1 rating under the BOPEC (or comparable) rating system or has implemented the risk-based capital measure for market risk, a Tier 1 leverage ratio of 3.0 percent or greater; and

4. The bank holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

The risk-based ratios are the risk-based capital levels at which a state member bank is deemed to be well-capitalized for purposes of the provisions of the Federal Deposit Insurance Act that govern prompt corrective action. The Board believes it is desirable for bank holding companies also to maintain a minimum base of capital to total assets, but recognizes that the leverage ratio can be an inexact measure of capital adequacy for many bank holding companies, particularly for holding companies that engage in significant nonbanking activities. The leverage ratio can be particularly misleading for very large organizations that have significant trading portfolios and are extensively engaged in fee-generating off-balance sheet activity.

Accordingly, the Board requires a leverage ratio that is somewhat different than the ratio required for a ''well-capitalized'' bank.[4] Specifically, in order to be deemed well-capitalized for purposes of Regulation Y and the modifications to the application process, a bank holding company must maintain a minimum Tier 1 leverage ratio of 3 percent so long as the organization has a composite 1 BOPEC rating or has implemented the risk-based capital market risk measure set forth in the Board's capital adequacy guidelines.[5] All other bank holding companies would be subject to a 4 percent minimum Tier 1 leverage ratio. In calculating the various capital levels, a bank holding company should apply the definition of capital, assets, weighted risk assets, Tier 1 capital, leverage, and other capital terms as defined currently in the capital adequacy guidelines applicable to bank holding companies.[6]

The changes enacted by section 2208 will reduce regulatory burden on well-capitalized bank holding companies that meet the criteria of that section by eliminating the current statutory requirement for prior approval of proposals to engage *de novo* in nonbanking activities that the Board has approved by regulation, and by establishing a streamlined prior notice requirement for these companies to obtain approval to make small acquisitions of companies engaged in permissible nonbanking activities and to engage *de novo* in activities permitted by order. Because the provisions of section 2208 became effective on the date of enactment, which was September 30, 1996, and because the change to Regulation Y would establish a definition that is needed to identify

[1] The other criteria established by section 2208 require that 1) the lead insured depository institution controlled by the bank holding company and insured depository institutions that control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the holding company be well-capitalized; 2) no insured depository institution controlled by the holding company be undercapitalized; 3) the bank holding company, its lead insured depository institution and insured depository institutions representing at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the bank holding company have received at least a composite 2 examination rating and a ''satisfactory'' rating for management at the most recent examination; 4) no insured depository institution controlled by the bank holding company have received a composite examination rating of 4 or 5 at the latest examination; and 5) no supervisory or enforcement action be pending against the bank holding company or any of its insured depository institutions.

[2] In addition to meeting the criteria described in footnote 1, an acquisition qualifies under the statute if the acquired assets or company represent less than 10 percent of the total risk-weighted assets of the acquiring bank holding company and the consideration paid for the assets or company does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

[3] By the terms of the statutory change, this expedited procedure is not available for acquisitions of savings associations or other insured depository institutions. Proposals that involve the acquisition of a savings association or other insured depository institution, or that do not otherwise meet the criteria established in section 2208 must receive prior System approval under the procedures currently set forth in Regulation Y.

[4] To be classified as ''well-capitalized,'' a state member bank must have a Tier 1 leverage ratio of at least 5 percent, in addition to the two risk-based capital ratios described above.

[5] The Board's current guidelines for determining that a banking organization is ''adequately capitalized'' set the minimum level of Tier 1 capital to total assets at 3 percent for organizations with a composite 1 BOPEC rating that also meet certain other conditions, and at 3 percent plus an additional cushion of 100 to 200 basis points for all other organizations.

[6] Capital Adequacy Guidelines for Bank Holding Companies: Risk-based Measure (12 CFR Part 225, Appendix A); and Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure (12 CFR Part 225, Appendix D).

bank holding companies that qualify for the regulatory relief contained in section 2208, the Board believes that there is good cause for adopting its definition of a ''well-capitalized'' bank holding company on an interim basis effective immediately.

The Board invites public comment on the definition of ''well-capitalized,'' including how this provision in section 2208 applies to foreign banking organizations. The Board will adjust the definition as appropriate in light of public comment.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, the Board is required to conduct an analysis of the effect, on small institutions, of the proposed revision to Regulation Y. As of December 31, 1995, the number of bank holding companies totalled 5,274.[7] The following chart provides a distribution, based on asset size, for those companies.

Asset size category (M=Million)	Number of bank holding companies	Percent of bank holding company assets (percent)
Less than $150M	3,954	[1] 5.5
Greater than $150M	1,320	94.5

[1] Bank holding companies with consolidated assets of less than $150 million are not required to file financial regulatory reports on a consolidated basis. Assets for this group are estimated based on reports filed by the parent companies and subsidiaries.

The Board does not believe that the interim rule would have a significant adverse economic impact on a substantial number of small entities. The rule would reduce regulatory burdens imposed by the Board's procedures on well-capitalized bank holding companies by eliminating or streamlining the notice requirements under section 4 of the Bank Holding Company Act. Elimination or streamlining of these procedures for well-capitalized bank holding companies is expected to have a particular benefit to small bank holding companies that qualify for this exemption by reducing the paperwork burden and processing time associated with regulatory filings, and the costs associated with complying with regulation. This will improve the ability of all bank holding companies, including small organizations, to conduct business on a more cost-efficient basis. The Board invites public comment on this subject.

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–00171, 7100–0121, 7100–0134, 7100–0131, 7100–0119, as applicable; see below), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

This interim rule will eliminate one information collection requirement and substantially reduce another for any bank holding company that meets the proposed definition of a well-capitalized bank holding company and the other statutory requirements. The affected information requirements are found in 12 CFR 225.23 and 12 CFR 225.24. This information is required to evidence compliance with the requirements of the Bank Holding Company Act. The respondents are for-profit financial institutions and other corporations, including small businesses, and individuals. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless it displays a currently valid OMB control number. The OMB control numbers are indicated below.

The Board believes the interim rule will result in a reduction in burden by defining when a bank holding company is ''well-capitalized'' and, consequently, qualifies for the new statutory exemption from or streamlined notice procedures for obtaining prior approval for nonbanking proposals under section 4 of the Bank Holding Company Act.

Bank holding companies that qualify for the exemption from the prior approval requirement to engage *de novo* in permissible nonbanking activities and for the streamlined procedure for obtaining approval for proposals to acquire small nonbanking companies should benefit from a significant reduction in burden for respondents that file the Application for Prior Approval To Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y–4; OMB No. 7100–0121). Approximately 360 respondents file the FR Y–4 annually to meet application requirements, and 114 respondents file to meet notification requirements. The current burden per response is 59.0 hours and 1.5 hours, respectively, for a total estimated annual burden of 21,529 hours. Under the proposed rule it is estimated that between 30 and 50 percent of these respondents would meet the criteria to qualify either for elimination or for the filing of a streamlined application, representing between 109 and 181 applications and between 34 and 57 notifications. The average number of hours per response for the required post-consummation notice is 0.5 hours and for the required streamlined notice is 1.5 hours. Therefore the total amount of annual burden is estimated to be between 11,121.5 and 15,261.5 hours. Based on an hourly cost of $50, the annual cost to the public under the proposed revision is estimated to be between $556,075 and $763,075, which represents an estimated cost reduction of between $313,375 and $520,375 from the current estimated annual cost to the public of $1,076,450 under the current rule.

All information contained in these collections of information are available to the public unless the respondent can substantiate that disclosure of certain information would result in substantial competitive harm or an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act.

Comments are invited on: a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR Part 225 as follows:

[7] Financial top-tier domestic bank holding companies. Excludes middle-tier bank holding companies, and foreign bank holding companies that are not required to file a Y–9 report with the Federal Reserve System.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.2, paragraph (q) is added to read as follows:

§ 225.2 Definitions.

* * * * *

(q) *Well-capitalized*—(1) *Bank holding company.* In the case of a bank holding company, *well-capitalized* means that:

(i) On a consolidated basis, the bank holding company maintains a total risk-based capital ratio of 10.0 percent or greater, as defined in Appendix A of this part;

(ii) On a consolidated basis, the bank holding company maintains a Tier 1 risk-based capital ratio of 6.0 percent or greater, as defined in Appendix A of this part;

(iii) On a consolidated basis, the bank holding company maintains either:

(A) A Tier 1 leverage ratio of 4.0 percent or greater; or

(B) If the bank holding company has a composite 1 rating under the BOPEC (or comparable) rating system or has implemented the risk-based capital measure for market risk, a Tier 1 leverage ratio of 3.0 percent or greater; and

(iv) The bank holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) *Insured depository institution.* In the case of an insured depository institution, *well-capitalized* means that the institution maintains at least the capital levels required to be *well-capitalized* under the capital adequacy regulations or guidelines applicable to the institution that have been adopted by the appropriate federal banking agency for the institution under section 38 of the Federal Deposit Insurance Act.

By order of the Board of Governors of the Federal Reserve System, October 23, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–27691 Filed 10–31–96; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Part 263

[Docket No. R–0938]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its Rules of Practice for Hearings to include a section listing increases in the maximum amounts of each civil money penalty (CMP) under its jurisdiction. The Board is required to enact such regulation by the Debt Collection Improvements Act of 1996 (Debt Collection Act), which requires agencies to adjust their statutorily based civil money penalties to account for inflation.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Alan E. Sorcher, Senior Attorney (202/452–3564), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) *only*, please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Debt Collection Act [1] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), 28 U.S.C. 2461 *note*, to require each subject agency to enact regulations to adjust each civil money penalty provided by law within its jurisdiction for inflation in accordance with an inflation adjustment formula stated in section 5(b) of the Inflation Adjustment Act. Implementing regulations must be issued within 180 days of enactment of the Debt Collection Act, and at least once every four years thereafter.

The adjustment required is based on the percentage increase in the Consumer Price Index between June of the calendar year when the penalty amount was last set or adjusted and June of the calendar year preceding the adjustment. The statute also provides rules as to rounding off these adjustments, and limits the amount of the initial adjustment to no more than ten percent of the amount of the civil money penalty. The increases in penalty amounts apply only to violations which occur after the effective date of this rule.

Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective amendment. The Debt Collection Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires the new regulation to take effect on October 23, 1996. Moreover, the regulation that the Board is adopting to implement the Debt Collection Act is ministerial, technical, and noncontroversial. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical, and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the Federal Register, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act:

No significant impact.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set forth in the preamble, the Board of Governors is amending 12 CFR Part 263 as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR Part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4,78o-5, 78u-2; and 28 U.S.C. 2461 note.

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

2. A new § 263.65 is added to subpart C to read as follows:

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil

[1] Pub.L. 104–134, section 31001(s), 110 Stat. 1321–358 (Apr. 26, 1996), codified at 28 U.S.C. 2461 *note*.