

Appendix A to Subpart B—[Amended]

2. Appendix A to subpart B of part 532 is amended for the State of Iowa by removing the entry for Dubuque.

3. Appendix C to subpart B is amended by removing the wage area listing for Dubuque, Iowa, and revising the Davenport-Rock Island-Moline, IA, listing to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Iowa

* * * * *

Davenport-Rock Island-Moline**Survey Area**

Iowa:

Scott

Illinois:

Henry

Rock Island

Area of Application. Survey Area Plus

Iowa:

Clinton

Des Moines

Dubuque

Jackson

Lee

Louisa

Muscatine

Illinois:

Adams

Brown

Bureau

Carroll

Cass

Fulton

Hancock

Henderson

Jo Daviess

Knox

McDonough

Marshall

Mason

Mercer

Peoria

Putnam

Schuyler

Stark

Tazewell

Warren

Whiteside

Woodford

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 99-080-1]

Citrus Canker Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations to allow citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The citrus fruit produced outside the quarantined areas would have to be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area. We are taking this action to relieve unnecessary restrictions on regulated fruit originating outside a quarantined area but packed within a quarantined area.

DATES: This interim rule was effective October 29, 1999. We invite you to comment on this docket. We will consider all comments that we receive by January 3, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99-080-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 99-080-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

SUPPLEMENTARY INFORMATION:**Background**

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which renders the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75-1 through 301.75-14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. The regulations currently list parts of Broward, Collier, Dade, and Manatee Counties, FL, as quarantined areas for citrus canker.

Among the entities that are affected by the restrictions of the regulations are producers of regulated fruit and packing plants that handle regulated fruit. With regard to the packing and movement of regulated fruit, the regulations have provided for the three sets of circumstances that may face producers and packers when areas within a State are quarantined for citrus canker:

- The regulated fruit is both produced and packed in a quarantined area (§ 301.75-7(a));
- The regulated fruit is produced in a quarantined area and packed outside the quarantined areas (§ 301.75-4(d)(2)(ii)); and
- The regulated fruit is produced outside the quarantined areas and packed in a quarantined area (§ 301.75-7(b)).

In each of these three situations, the regulations provide specific conditions that must be met in order for the fruit to qualify for interstate movement after packing, and in each case the regulated fruit may not be moved into commercial citrus-producing areas of the United States after packing.

When the most recent additions were made to the quarantined areas in an interim rule effective January 26, 1999, and published in the **Federal Register** on February 1, 1999 (64 FR 4777-4780, Docket No. 95-086-2), approximately 13 citrus fruit packing plants fell within the quarantined areas. It has come to our attention that at least one of the packing plants located in the quarantined areas could expect to encounter significant financial hardship as a result of that quarantine action due to the fact that a large portion of the packer's business involves shipping gift fruit to areas of Florida located outside the quarantined areas. As noted in the previous paragraph, regulated fruit packed in a quarantined area may not be moved into commercial citrus-producing areas, so the operator of this packing plant could expect to see his business drastically curtailed as a direct result of the inclusion of his plant in a quarantined area.

In an effort to minimize the expected significant economic effects on this, and potentially other, fruit packing operations, we reexamined our citrus canker regulations with an eye toward identifying potential alternatives to the prohibition on the movement of regulated fruit that has been packed within a quarantined area. After consulting with our Citrus Canker Eradication Program staff, various citrus packer groups, and the Florida Department of Agriculture and Consumer Services, we concluded that a regulatory approach that incorporated the segregation of fruit within the packing plant—i.e., keeping regulated fruit produced outside the quarantined areas physically separated from regulated fruit produced within a quarantined area—and other safeguards would allow packing plants located within a quarantined area to move regulated fruit from outside a citrus canker quarantined area into a quarantined area for packing under certain conditions and then ship it to any area of the United States, including commercial citrus-producing areas. This approach is consistent with § 301.75-4(d)(2)(ii) of the regulations, which provides conditions, including fruit segregation, that allow regulated fruit produced both within and outside the quarantined areas to be packed in plants located outside the quarantined areas without affecting the ability of those plants to move regulated fruit produced outside the quarantined areas to any destination, including commercial citrus-producing areas. Similarly, Florida's State-run Caribbean fruit fly (Carib fly) program has for several years

successfully provided for fruit produced both within and outside the areas regulated for Carib fly to be packed in plants located within regulated areas under conditions that include fruit segregation.

Based on these considerations, we have amended the citrus canker regulations to provide conditions under which regulated fruit produced outside the quarantined areas may be packed within a quarantined area and subsequently moved into any area of the United States, including commercial citrus-producing areas. These conditions, which incorporate features drawn from elsewhere in our citrus canker regulations and include specific documentation, cleaning, disinfection, and handling requirements in addition to fruit segregation, are explained in detail below.

We believe that most producers and packers of regulated fruit will be willing to observe the conditions set forth in this interim rule in order to qualify regulated fruit produced outside the quarantined areas but packed within a quarantined area for movement to all areas of the United States, including commercial citrus-producing areas. However, we acknowledge that there may be some producers or packers who wish to continue to use the current provisions in § 301.75-7(b) for the packing of fruit within a quarantined area, which is not then eligible to be shipped to commercial citrus-producing areas. These provisions may be preferred by packers who do not wish to take the extra step of keeping regulated fruit produced outside the quarantined areas segregated from fruit produced within a quarantined area. Therefore, we are retaining the original provisions of § 301.75-7(b) in this interim rule; those provisions will now be found in § 301.75-7(b)(1).

New § 301.75-7(b)(2) contains conditions under which regulated fruit produced outside the quarantined areas but packed within a quarantined area may be moved interstate to any area of the United States, including commercial citrus-producing areas. We have revised the introductory text of § 301.75-7(b) to indicate that there are now two options available to qualify regulated fruit produced outside the quarantined areas for subsequent movement when that fruit is packed in a plant located within a quarantined area.

Under the provisions of new paragraph § 301.75-7(b)(2), regulated fruit produced outside the quarantined areas but packed in a plant located within a quarantined area will be eligible for movement into any area of the United States, including commercial

citrus-producing areas, under the following conditions:

Documentation. The regulated fruit produced outside the quarantined areas must be accompanied to the packing plant by a document that states the location of the grove where the fruit was produced, the variety and quantity of fruit, the address to which the fruit will be delivered for packing, and the date the movement of the fruit began. This documentation serves to establish that the regulated fruit was produced in an area outside the quarantined areas and, by providing a record of the amount and type of fruit in the shipment, helps ensure that regulated fruit from other sources is not added to the shipment during movement.

Unloading and loading. The regulated fruit produced outside the quarantined areas must be moved through the quarantined area without being unloaded, and no regulated article may be added to the shipment in the quarantined area. Keeping the regulated fruit produced outside the quarantined areas separated from fruit produced within a quarantined area is one of the primary safeguards of these new provisions, so this requirement is necessary to ensure that the integrity of the shipment is maintained from the time the fruit is loaded in the nonquarantined production area to the time it is unloaded at the packing plant. Producers or packers who wish to pick up additional regulated fruit produced within the quarantined area while en route to the packing plant may still do so under the provisions of § 301.75-7(b)(1), but, as noted above, fruit from that packing plant will be ineligible for movement into commercial citrus-producing areas.

Protecting the shipment. The regulated fruit produced outside the quarantined areas must be completely covered, or enclosed in containers or in a compartment of a vehicle, both during its movement to a packing plant in a quarantined area and during its movement from a packing plant in a quarantined area to destinations outside that quarantined area. This requirement is necessary to protect the regulated fruit produced outside the quarantined areas from the possibility of contamination during its movement through the quarantined area.

Segregation and treatment. At the packing plant, the regulated fruit produced outside the quarantined areas must be stored separately from, and have no contact with, regulated fruit produced in a quarantined area. Any equipment at the packing plant that comes in contact with regulated fruit produced in a quarantined area must be

treated in accordance with § 301.75–11(d) of this subpart before being used to handle any regulated fruit not produced in a quarantined area. Requiring the regulated fruit produced outside a quarantined area to be segregated from other fruit within the packing plant will prevent the commingling of the two types of fruit, thus preventing the contamination that could occur as a result of that commingling, and will ensure that only fruit produced outside the quarantined areas is moved interstate to commercial citrus-producing areas. Similarly, the application of the cleaning and disinfection measures of § 301.75–11(d) to the handling equipment in the plant will prevent regulated fruit produced outside a quarantined area from becoming contaminated by equipment that has been used to handle fruit produced within a quarantined area.

Fruit treatment. The regulated fruit produced outside the quarantined areas must be treated at the packing plant in accordance with § 301.75–11(a) of the regulations. While regulated fruit produced outside a quarantined area does not present the same citrus canker risks as fruit produced within a regulated area, we are nonetheless requiring it to be treated with sodium hypochlorite or sodium o-phenyl phenate (SOPP) in accordance with § 301.75–11(a) as a redundant safeguarding measure, given that the fruit is being packed within a quarantined area and will be eligible for movement into commercial citrus-producing areas. Beyond the role of those treatments in mitigating the risks posed by citrus canker, we understand that sodium hypochlorite and SOPP treatments, as well as additional measures such as fruit waxing, are standard packing industry practices even outside the quarantined areas because such measures help prevent fruit spoilage. That consideration, plus the fact that packing plants within the quarantined areas are already equipped to apply the required treatments, lead us to believe that this requirement will not impose any additional burdens on the operators of packing plants.

Handling of culls and debris. Due to the likelihood that they will be commingled with similar regulated articles collected from regulated fruit produced in a quarantined area, all leaves, litter, and culls collected at the packing plant from the shipment of regulated fruit produced outside the quarantined areas must be handled as prescribed in § 301.75–4(d)(2)(ii)(E) of the regulations. Paragraph (d) of § 301.75–4 contains the conditions that must be met in order for less than an

entire State to be designated as a quarantined area; those conditions include the specific provisions for the intrastate movement and handling of leaves, litter, and culls cited above as appearing in § 301.75–4(d)(2)(i)(E). Those requirements, which include the incineration or burying in a fenced public landfill of such articles and the option of processing culls into a product other than fresh fruit (e.g., juice or juice concentrate), are intended to prevent the artificial spread of citrus canker that could occur through the movement of leaves, litter, and culls. Given that it usually takes some time before a sufficiently large load of, for example, leaves and litter to be collected to warrant a trip to the landfill, we believe that it is likely that packing plant operators will store the leaves, litter, and culls collected from the shipment of regulated fruit produced outside the quarantined areas with similar articles collected from shipments of regulated fruit produced within the quarantined area. Therefore, we believe that it is necessary to require that all those regulated articles, regardless of their origin, be handled in the same manner as the regulated articles presenting the highest risk.

Certificate. The regulated fruit produced outside the quarantined areas maybe moved interstate from the packing plant to any destination if it is accompanied by a certificate issued in accordance with § 301.75–12 of the regulations. The certificate will provide documentation that the requirements of this interim rule have been met. Under the regulations, a certificate is used to authorize the interstate movement of a regulated article from a quarantined area into any area of the United States, and a limited permit is used to authorize the movement of regulated articles from the quarantined areas, but with restrictions on the areas of the United States into which the articles may be moved. Because regulated fruit produced outside the quarantined areas and handled in accordance with the new provisions of this interim rule will be eligible for movement to any area of the United States, including commercial citrus-producing areas, a certificate, and not a limited permit, will be required.

Regulated fruit produced outside the quarantined areas can be packed within a quarantined area and moved into any area of the United States, including commercial citrus-producing areas, under the conditions set forth in this interim rule without contributing to the artificial spread of citrus canker. Although our pest data sheet for citrus

canker¹ indicates that the causal pathogen could potentially move long distances on diseased fruit, that data sheet also states that there is no authenticated example of a citrus canker outbreak that was initiated by diseased fruit. If diseased fruit is an unlikely pathway for the spread of citrus canker, then it is reasonable to expect that fruit produced outside the quarantined areas, which is the only fruit affected by this rule, will present an even lower risk, even if it is packed within a quarantined area. Given the preponderance of evidence and expert opinion that the long-distance spread of citrus canker occurs primarily through the movement of infected planting and propagative materials, and given the absence of documented cases of citrus canker outbreaks attributable to the movement of infected fruit, we have concluded that regulated fruit produced outside the quarantined areas and handled, treated, and packed under the conditions of this rule will present a negligible disease risk.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to provide, prior to the start of the winter shipping season, conditions under which regulated fruit produced outside the quarantined areas but packed within a quarantined area may be moved into any area of the United States, including commercial citrus-producing areas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866

¹ This pest data sheet may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the citrus canker regulations to allow citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The citrus fruit produced outside the quarantined areas would have to be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area. We are taking this action to relieve restrictions that are no longer warranted due to our development of alternatives to address the disease risks presented by regulated fruit packed within a quarantined area.

The overall economic effect of this interim rule is expected to be small. Prior to this interim rule, the regulations already provided for fruit produced within a quarantined area to be packed in plants located outside the quarantined areas and vice versa, and the experience of the cooperative Citrus Canker Eradication Program administered by APHIS and the State of Florida has shown that packing fresh fruit from quarantined and nonquarantined areas in the same facility can be safely conducted. Whereas the regulations had previously prohibited regulated fruit packed within a quarantined area from being moved into commercial citrus-producing areas of the United States, regardless of where the fruit was produced, this interim rule provides conditions under which packing plants located within a quarantined area may ship regulated fruit produced outside the quarantined areas to all areas of the United States, including commercial citrus-producing areas. In so doing, this interim rule makes it possible for packing plants to move regulated fruit into markets that had been denied to them from the time the plants were included in a quarantined area.

Effect on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration's (SBA) definition of a "small entity" packaging fresh or farm-dried fruits and vegetables is one whose total sales are less than \$5 million annually. In 1997, there were 850 firms in Standard Industrial Classification (SIC) 0723, Crop

Preparation Services for Market in the United States, which includes fresh citrus packers. Under SBA guidelines, 634 of these 850 firms (74 percent) would be considered small entities.

Within the quarantined areas, there are approximately 13 citrus fruit packers and 13 gift fruit shippers that could be affected by this rule. We do not currently have the data necessary to determine the percentage of these businesses that would be considered small entities under the SBA's criteria. However, while we expect that this rule will allow some of those packing plants to maintain their established business patterns and others to reestablish business relationships that were disrupted by the packing plants' inclusion in the areas quarantined for citrus canker, the overall economic effect of this rule is expected to be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.75–7, paragraph (b) is revised to read as follows:

§ 301.75–7 Interstate movement of regulated fruit from a quarantined area.

* * * * *

(b) Regulated fruit not produced in a quarantined area. Regulated fruit not produced in a quarantined area but moved into a quarantined area for packing may be subsequently moved out of the quarantined area only if all the conditions of either paragraph (b)(1) or (b)(2) of this section are met.

(1) Conditions for subsequent movement into any area of the United States except commercial citrus-producing areas. (i) The regulated fruit was accompanied to the packing plant by a bill of lading stating the location of the grove in which the regulated fruit was produced.

(ii) The regulated fruit was treated in accordance with § 301.75–11(a) of this subpart.

(iii) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the regulated fruit.

(iv) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75–12 of this subpart.

(2) Conditions for subsequent movement into any area of the United States including commercial citrus-producing areas. (i) The regulated fruit is accompanied by a bill of lading that states the location of the grove where the fruit was produced, the variety and quantity of fruit, the address to which the fruit will be delivered for packing, and the date the movement of the fruit began.

(ii) The regulated fruit is moved through the quarantined area without being unloaded and no regulated article is added to the shipment in the quarantined area.

(iii) The regulated fruit is completely covered, or enclosed in containers or in a compartment of a vehicle, both during its movement to a packing plant in a quarantined area and during its movement from a packing plant in a quarantined area to destinations outside that quarantined area.

(iv) At the packing plant, regulated fruit produced outside the quarantined areas is stored separately from and has had no contact with regulated fruit produced in a quarantined area. Any equipment at the packing plant that comes in contact with regulated fruit

produced in a quarantined area is treated in accordance with § 301.75–11(d) of this subpart before being used to handle any regulated fruit not produced in a quarantined area.

(v) The regulated fruit is treated at the packing plant in accordance with § 301.75–11(a) of this subpart.

(vi) Due to the likelihood that they will be commingled with similar regulated articles collected from regulated fruit produced in a quarantined area, all leaves, litter, and culls collected from the shipment of regulated fruit at the packing plant are handled as prescribed in § 301.75–4(d)(2)(ii)(E) of this subpart.

(vii) The regulated fruit is accompanied by a certificate issued in accordance with § 301.75–12 of this subpart.

Done in Washington, DC, this 29th day of October 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–28876 Filed 11–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, and 7

[Docket No. 99–14]

RIN 1557–AB61

Investment Securities; Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is updating and clarifying its rules regarding investment securities, corporate activities, and bank activities and operations. Most of the changes involve the OCC's interpretations regarding national bank activities and operations. This final rule clarifies existing rules, adds new provisions based on recent statutory changes, judicial rulings, OCC decisions, and other developments, and makes technical changes. This final rule reflects the OCC's continuing commitment to assess the effectiveness of our rules and to make changes where necessary.

EFFECTIVE DATE: December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lussier, Senior Attorney, or

Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC published a notice of proposed rulemaking in the *Federal Register* on June 14, 1999 (64 FR 31749) inviting comments on proposed changes to several of the OCC's regulations. The OCC received a total of 16 comments, including seven from banks and banking industry representatives, three from states, four from community groups, and one from two individuals. Eight of the commenters favored all or some of the proposed changes, while eight opposed one or more of the proposal's provisions.

The final rule implements most of the initiatives contained in the proposal. However, the OCC has made a number of changes in response to the comments received and to further clarify the rules. The following discussion summarizes the proposed rule, the comments received, and describes the action the OCC has taken in the final rule.

Part 7—Bank Activities and Operations

This final rule changes the name of part 7 from “Interpretive rulings” to “Bank activities and operations” to better describe the content of part 7.

Messenger Service (§ 7.1012)

The OCC proposed to amend § 7.1012 to conform to caselaw that streamlined the criteria for determining when a national bank is operating a branch. Under the current rule, in order to avoid being treated as a bank branch, a messenger service, including both a messenger service affiliated with a bank and a service that is independent of a bank, generally must both make its services available to the public, including other depository institutions, and retain the ultimate discretion to determine which customers and geographic areas it will serve. 12 CFR 7.1012(c)(2)(ii)(A) and (B).

The recent cases indicate that this test should apply differently depending on whether the service is affiliated with a bank.¹ Pursuant to these cases, a

¹ In the proposal, the OCC cited two cases supporting the revision to § 7.1012: *Cades v. H&R Block*, 43 F.3d 869 (4th Cir. 1994), cert. denied, 515 U.S. 1103 (1995); *Christiansen v. Beneficial Nat'l Bank*, 972 F. Supp. 681 (S.D. Ga. 1997). See 64 FR at 31749 n.1. These cases held that a tax preparation firm that delivered tax refund anticipation loan (RAL) proceeds to mutual customers of the firm and a national bank was not a branch within the meaning of the branching laws. The standards articulated by both courts in reaching this conclusion formed the basis for the amendment to § 7.1012 that the OCC proposed, and the OCC

nonaffiliated service need show only that it has the discretion to determine, in its own business judgment, which customers it will serve and where. In contrast, an affiliated service, because it may be more likely to favor its affiliates as a result of its common ownership or control, must show that it actually serves the public generally, including nonaffiliated depository institutions.

The OCC proposed to combine the criteria in §§ 7.1012(c)(2)(ii)(A) and (c)(2)(ii)(B) into one new paragraph and apply the resulting criteria differently depending on whether or not the messenger service is affiliated with the bank. The OCC also proposed a stylistic amendment to § 7.1012(c)(2)(i).

The OCC received three comment letters addressing these proposed changes. Letters from two commenters supported adopting the changes. The third letter, representing the views of three commenters, opposed the changes on the ground that they would encourage national banks to make small loans with short maturities and high rates of interest. The commenters' discussion on this point relies on two premises; first, that the messenger service rule set forth in § 7.1012 authorizes national banks to make loans at non-branch facilities; and, second, that banks will therefore rely on the messenger service rule to make certain types of loans, including so-called payday loans, that would not be permissible if the branching laws applied. Both premises are incorrect.

First, the messenger service rule does not, and could not lawfully, authorize a national bank to conduct the core banking activities of taking deposits, paying checks, or lending money in a non-branch facility. By statute, a branch is defined, subject to certain specified exceptions, as an office or place of business where deposits are received, checks paid, or money lent. 12 U.S.C. 36(j). Section 7.1012 permits a national bank to use a messenger service—a courier, for example—to pick-up and deliver items related to transactions between a bank and its customer, but neither the existing rule, nor the amendment proposed by the OCC, expands the authority of a national bank to conduct core banking activities only at branches. Thus, a bank may find it convenient to use a messenger service to deliver loan proceeds to its customer, but its use of the service in that way

continues to rely on those cases for that purpose. The principal issue in the cases, however, was the permissibility of certain fees charged by the national bank in connection with the RAL. The fee issue, which both courts resolved in the bank's favor based upon 12 U.S.C. 85, is not relevant to the OCC's amendment to § 7.1012.