(1) *Adjusted risk-weighted assets.* Calcuate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the counter derivative positions)[7] and receivables arising from the posting of cash collateral that is associated with securities borrowing transactions to the extent the receivables are collateralized by the market value of the borrowed securities, provided that the following conditions are met:

(i) The transaction is based on securities includable in the trading book that are liquid and readily marketable,

(ii) The transaction is marked to market daily,

(iii) The transaction is subject to daily margin maintenance requirements,

(iv) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in the adjusted risk weighted assets asdetermined in appendix A of this part.

* * * * *

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, 1828(o), 1831i, 1831p–1, 1843(c), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907. and 3909; 15 U.S.C. 6801 and 6805.

2. In appendix E to part 225, under section 3, paragraph (a)(1) is revised to read as follows:

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies; Market Risk Measure

* * * * *

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) * * *

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions)[7] and receivables arising from the posting of cash collateral that is associated with securities borrowing transactions to the extent the receivables are collateralized by the market value of the borrowed securities, provided that the following conditions are met:

(i) The transaction is based on securities includable in the trading book that are liquid and readily marketable,

(ii) The transaction is marked to market daily,

(iii) The transaction is subject to daily margin maintenance requirements,

(iv) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in the adjusted risk weighted assets as determined in appendix A of this part.

By order of the Board of Governors of the Federal Reserve System, November 24, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix C to part 325, under section 3, paragraph (a)(1) is revised to read as follows:

Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks: Market Risk

* * * * *

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) * * *

* * * * *

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions)[7] and receivables arising from the posting of cash collateral that is associated with securities borrowing transactions to the extent the receivables are collateralized by the market value of the borrowed securities, provided that the following conditions are met:

(i) The transaction is based on securities includable in the trading book that are liquid and readily marketable,

(ii) The transaction is marked to market daily,

(iii) The transaction is subject to daily margin maintenance requirements,

(iv) The transaction is a securities contract for the purposes of section 555 of the Bankruptcy Code (11 U.S.C. 555), a qualified financial contract for the purposes of section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)), or a netting contract between or among financial institutions for the purposes of sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401–4407), or the Board's Regulation EE (12 CFR Part 231).

* * * * *

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in the adjusted risk weighted assets as determined in appendix A of this part.

Dated at Washington, DC, this 21st day of November, 2000.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–30748 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 00–31]

RIN 1557–AB72

Assessment of Fees; National Banks; District of Columbia Banks

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending the assessment formula it uses to assess independent trust banks. A trust bank is considered independent for purposes of this regulation if it specializes in trust activities and is not affiliated with a

full-service national bank. Under the revised rate structure, all independent trust banks will be assessed based on balance sheet assets plus a minimum fee as provided by the OCC in the annual Notice of Comptroller of the Currency Fees (Notice of Fees). Independent trust banks with assets under management in excess of $1 billion would pay an additional amount based on a declining marginal rate, which also will be provided in the Notice of Fees.

EFFECTIVE DATE: December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mitchell E. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Karen McCluskey, National Bank Examiner, Asset Management Division, (202) 874–7276.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2300 national banks and 58 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.

The OCC funds the activities it undertakes to carry out this mission through assessments on national banks and Federal branches and agencies of foreign banks. The National Bank Act authorizes the OCC to collect these assessments, stating, in relevant part:

> The Comptroller of the Currency may impose and collects assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office of the Comptroller. Such assessments, fees, and other charges shall be set to meet the Comptroller's expenses in carrying out authorized activities.

12 U.S.C. 482 (Supp. 2000).

This provision authorizes the OCC to adjust its assessment formula so that banks, or categories of banks, pay an assessment that appropriately apportions to them the OCC's overall expenses of carrying out the agency's activities. Therefore the OCC currently assesses national banks and Federal branches and agencies according to a formula based on several factors, including a bank's size, condition, and whether it is the ''lead'' bank or ''non-lead'' bank among national banks in a holding company.[1] The OCC also has reserved in its assessment regulation (12 CFR part 8) the authority to assess a fee for certain special examinations and investigations and for examining the fiduciary activities of national banks. 12 CFR 8.6(a). In recent years, however, the OCC stopped separately charging national banks for the expenses of examining and supervising fiduciary activities.

Since the OCC eliminated those separate fees, the number, size, and complexity of the activities of independent trust banks have increased and their balance sheet assets increasingly do not reflect the ongoing scope or complexity of their activity, nor the extent of the OCC's responsibilities with respect to them. For example, although trust assets managed by a bank are not shown on the bank's balance sheet, the bank's fiduciary activities are subject to extensive regulatory standards under 12 CFR part 9 as well as under state laws that are made applicable to national bank fiduciary activities by 12 U.S.C. 92a. The OCC evaluates the bank's adherence to those standards as part of our examination, supervision, and regulation of the bank.

On March 21, 2000, we published a notice of proposed rulemaking in the **Federal Register** (65 FR 15111) to amend the OCC's assessment regulation to revise the formula for independent trust banks. The purpose of the proposal was to adjust the OCC's assessment structure to better reflect the full extent of the OCC's activities in the examination, supervision, and regulation of those banks. For the reasons discussed below, we are adopting the rule as proposed with changes to clarify the definition of ''affiliated'' and to address situations in which a large trust bank becomes affiliated with a small full-service national bank. We also have updated our anticipated flat minimum fee and rate schedules applicable to managed assets to reflect more recent data concerning the OCC's activities, as discussed more fully below.

Proposed Rule and Comments Received

We proposed to amend 12 CFR 8.6 to give the OCC the flexibility to increase assessments on independent trust banks by applying either a managed assets component or a flat fee, depending on the amount of assets a particular bank has under management. Under the proposed rule, the managed assets component and flat fee were assessed on independent trust banks in addition to the assessment calculated on book assets under 12 CFR 8.2.

The OCC received 18 comments on the proposal. The comments included 16 from trust banks and 2 from bank trade associations. While many of the commenters objected to paying increased assessments, the commenters also recognized that the OCC must recover its expenses through assessments. Several commenters recommended specific changes to the proposal or asked for clarifications. The following is a more detailed discussion of the issues raised by the proposal, the comments we received concerning those issues, and the OCC's responses to the comments.

Scope of the rule. The proposal did not include additional assessments for full-service national banks or trust banks that are affiliated with a full-service national bank. Four commenters suggested that we apply the proposal to all trust banks, not only those affiliated with a full-service national bank.

In the case of a full-service national bank that exercises trust powers, however, since the bank also conducts substantial non-fiduciary activities, the balance sheet assets approach of the general assessment schedule continues to be a fair yardstick for determining the bank's assessments. Similarly, when a full-service bank opts as a matter of corporate form to use a separate charter to conduct its trust business, the OCC is able to supervise, examine, and regulate those activities on a coordinated basis with its activities with respect to the affiliated full-service bank. Thus, in this situation, since the activities of the two charters will be evaluated in combination, the balance sheet assets approach for determining assessments continues to be a fair basis of measurement.

Independent trust banks that are not affiliated with a full-service national bank present a distinguishable situation because their balance sheet assets do not constitute a fair yardstick of the complexity of their operations or the extent of the OCC's activities related to their operations. Therefore, except as noted below in the discussion of the test for affiliation, the OCC has decided to confine the scope of the rule to independent trust banks.

Test for affiliation. The proposal defined an ''independent trust bank'' as a national bank that ''has trust powers, does not primarily offer full-service banking, and is not *affiliated* with a full service national bank'' (emphasis

[1] A ''lead bank'' is the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's most recent Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries) (Call Report). 12 CFR 8.2(a)(6)(ii)(A).

added).[2] It did not, however, define ''affiliated.'' Two commenters asked that we clarify the meaning of the term ''affiliated.''

The final rule states that a trust bank is ''affiliated'' with another entity for assessment purposes if it meets the criteria for affiliation found in the OCC's trust regulation (12 CFR part 9), which incorporates the definition of ''affiliate'' found in section 2 of the Banking Act of 1933, 12 U.S.C. 221a(b). Generally speaking, a trust bank is deemed ''affiliated'' with a full-service national bank under that section if the full-service bank owns more than 50% of the voting stock of the trust bank or controls the election of a majority of the trust bank's directors, or if the trust bank is controlled by shareholders that own at least 50% of the full-service bank or control the election of a majority of the full-service bank's directors. Given that this is the test already used in the OCC's trust regulation, affected institutions should be familiar with its application.

The final rule also adds a provision, in new § 8.6(c)(2), to address situations in which an independent trust bank affiliates with a comparatively small full-service national bank for the purpose of evading the assessment regulation. The final rule preserves the authority of the OCC in those instances to assess a trust bank that is affiliated with a full-service national bank as if the trust bank were independent. This change is consistent with one of the underlying premises of the rulemaking, namely, that assessments paid by full-service national banks that are affiliated with trust banks are adequate to meet the OCC's expenses in carrying out our authorized activities.

Distinguishing discretionary from non-discretionary assets. Under the proposal, independent trust banks with assets under management in excess of $1 billion would pay a managed assets component that would be calculated by multiplying the amount of assets under management by a factor to be supplied by the OCC in the annual Notice of Fees pursuant to 12 CFR 8.8. ''Assets under management'' are those assets reported by national banks on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001).

The proposal asked for comment on whether we should distinguish for assessment purposes between assets over which the bank has investment discretion (discretionary assets) and those that it holds without discretion (non-discretionary assets), for example in a custodial capacity. Two commenters stated that they can differentiate such assets and that the OCC should make that distinction. A third commenter, a large independent trust bank with a considerable amount of assets under management, rejected the assumption underlying the question. This commenter disagreed with the implication that it takes more time or resources to supervise discretionary assets and rejected the concept of making the distinction.

After considering these views, we have concluded that making this distinction between discretionary and non-discretionary assets is inappropriate because it is inconsistent with the way the OCC examines trust banks. The OCC examines trust banks based on lines of business and areas of risk rather than on the discretionary/non-discretionary asset distinction. Making the distinction between discretionary and non-discretionary assets for assessment purposes would not reflect this risk-focused examination approach. One additional basis for rejecting the distinction is that, depending on the nature of the product or services, it can be difficult for trust banks to fit assets neatly in one category or the other. Indeed, there is a large ''gray'' area in making this distinction, which supports a risk-focused supervisory approach rather than one based on the label applied to the assets.

Basis for the flat fee and managed asset rates. The proposal stated the flat fee and managed asset rate tiers were being proposed to better align the OCC's assessment structure with the OCC's responsibilities regarding independent trust banks. One commenter opined that the ''assets under management'' approach fails to take into account economies of scale or relative risks of off-balance sheet activities or the OCC's ratings of individual banks.

The OCC notes that the proposal does reflect economies of scale. As is explained further in the discussion of the final rule, all independent trust banks will pay a minimum flat fee. In addition to the minimum flat fee, independent trust banks with assets under management in excess of $1 billion will be assessed according to a declining marginal rate to reflect the economies of scale noted by the commenter. For institutions with $1 billion or less in assets under management, we have identified no additional economy of scale when analyzing the expenses of supervising these institutions. Accordingly, the final rule retains the approach of assessing these institutions by a minimum flat fee that is set at a level consistent with the OCC's expenses.

Application of assessment to de novo banks. The proposal did not distinguish the assessment of *de novo* independent trust banks from those already established. Six commenters suggested that the OCC assess ''start-up'' independent trust banks at a reduced rate or phase in the fees over a few years. These banks asserted that our proposed flat fee will be burdensome for them.

We believe that it would be inappropriate to charge *de novo* institutions less. While we recognize that newly formed trust banks typically will not be immediately profitable, they nevertheless require considerable supervisory attention as they set up systems and procedures and learn the compliance requirements. In addition, *de novo* national trust banks are often not new to trust business—they are often formed when an institution transfers its existing trust business into a national bank charter. For these reasons, the OCC believes that it is appropriate to treat *de novo* trust banks in the same manner as all other *de novo* national banks are treated.

Billable hours. The proposed rule did not include a billable hours component, although it did invite comment on whether the OCC should adopt a billable hours approach to assessing independent trust banks. Five commenters were of the view that a system of assessments for independent trust banks with $1 billion or less in managed assets based on billable hours would be more ''fair'' than a flat fee, because it would ensure that the assessment was directly linked to the amount of effort required of the OCC in any given assessment period.

After a careful consideration of the comments received, we have declined to adopt a billable hours approach. Based on experience gained previously with a billable hours system, we have concluded that such a system can have an adverse impact on the examiner/banker relationship. In addition, given the variability in scheduling examinations, a billable hours approach could result in assessments that vary from year to year for any given institution, thereby making it difficult for banks to anticipate expenses.

Final Rule

For the reasons discussed above, the OCC adopts the rule as proposed, with two changes. The first change, as described previously, is to clarify the meaning of ''affiliate'' for purposes of the assessment rule. The second is to address affiliations created for the

[2] *See Charters,* Corporate Manual, Office of the Comptroller of the Currency at 19–20 (1998) (describing trust banks).

purpose of evading the assessment regulation.

While the actual assessment rates will be set in the Notice of Fees, we have revised our projected fee schedule to include an additional marginal rate. Under the final rule, the OCC will assess all independent trust banks a minimum flat fee. Independent trust banks with assets under management in excess of $1 billion will pay an additional amount, calculated by multiplying assets under management by a declining marginal rate. That calculation will yield the managed assets component of the assessment for these banks. In either case, the trust bank will also be assessed an amount based on its book assets.

In the proposal, we set out estimated rates and fees that reflected the data we had at the time. These rates and fees have been adjusted in the final rule to reflect more recent data. Using these more recent data, we now anticipate that a bank having assets under management in excess of $1 billion would, in the upcoming year, calculate each of its semiannual assessments by multiplying the first $1 billion in assets under management by 0.00001875 [3], assets under management over $1 billion up to $10 billion by 0.00000375, assets under management over $10 billion up to $100 billion by 0.000000625, and assets under management over $100 billion by .0000004. The product then would be added to the assessment calculated under section 8.2 that is based on book assets.

For independent trust banks that have $1 billion or less in trust assets, the OCC will assess a flat fee that reflects the minimum expenses of regulating and supervising any independent trust bank, regardless of size. We expect that the fee due with each of the semiannual assessments for the upcoming year will be $18,750, in addition to the amount calculated under the formula based on balance sheet assets. The actual fees and rates used to calculate assessments of independent trust banks will be published in the Notice of Fees. Future rates and fees may be adjusted to reflect the OCC's latest expense data and the appropriate allocation of those expenses to national banks.

Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a ''significant economic impact'' on a ''substantial number of small entities.'' 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify. The OCC has reviewed the impact this final rule will have on small independent trust banks. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion is that the rule will apply to a very small portion of national banks. For purposes of this Regulatory Flexibility Analysis and regulation, the OCC defines ''small independent trust banks'' to be those banks with less than $100 million in total assets, including managed assets.[4] Using this definition, the final rule will affect only seven small entities, representing less than 1% of all national banks. The OCC does not believe this to be a substantial number of small entities.

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (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 an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

[3] This rate will yield $18,750 on a semi-annual basis, which is the same as the minimum flat fee for independent trust banks with $1 billion or less in managed assets.

[4] The OCC is using this definition for the sole purose of this preliminary regulatory flexibility analysis after consulting with the Small Business Administration's Office of Advocacy. The OTS, in its assessment regulation, also consulted with the Office of Advocacy and defined ''small savings associations'' as those with less than $100 million in total assets, including off-balance sheet assets. *See* Assessments and Fees, 63 FR 43642, 43646 (1998).

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 8 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for Part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, and 3102 and 3108; 15 U.S.C. 78c and 781; and 26 D.C. Code 102.

2. In § 8.6, the section heading is revised and a new paragraph (c) is added to read as follows:

§ 8.6 Fees and assessments for examinations and investigations; independent trust banks.

* * * * *

(c) *Additional assessments on trust banks.* (1) *Independent trust banks.* The assessment of independent trust banks will include a managed asset component, in addition to the assessment calculated according to § 8.2 of this part, as follows:

(i) *Minimum fee.* All independent trust banks will pay a minimum fee, to be provided in the Notice of Comptroller of the currency Fees.

(ii) *Additional amount for independent trust banks with managed assets in excess of $1 billion.* Independent trust banks with managed assets in excess of $1billion will pay an amount that exceeds the minimum fee. The amount to be paid will be calculated by multiplying the amount of trust assets under management by a rate or rates provided by the OCC in the Notice of Comptroller of the Currency Fees.

(2) *Trust banks affiliated with full-service national banks.* The OCC will assess a trust bank in accordance with paragraph (c)(1) of this section, notwithstanding that the bank is affiliated with a full-service national bank, if the OCC concludes that the affiliation is intended to evade the assessment regulation.

(3) *Definitions.* For purposes of this paragraph (c) of this section, the following definitions apply:

(i) *Affiliate* has the same meaning as this term has in 12 U.S.C. 221a(b);

(ii) *Independent trust bank* is a national bank that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service national bank; and

(iii) *Trust assets* are those assets reported on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001). The form is available by mail from the Office of the Comptroller of the Currency, Asset Management Division, 250 E Street, SW., Washington, DC 20219.

Dated: October 20, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–30843 Filed 12–4–00; 8:45 am]

BILLING CODE 4810–33–P

POSTAL SERVICE

39 CFR Part 111

Nonmailable Written, Printed, and Graphic Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Part C030 of the Domestic Mail Manual (DMM) to provide for changes to the standards concerning written, printed, and graphic matter as a result of a recent Department of Justice opinion concerning lottery material.

EFFECTIVE DATE: December 14, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease (703) 292–4184.

SUPPLEMENTARY INFORMATION: As the result of an inquiry from the Postal Service, the Department of Justice has issued an opinion stating that the statute prohibiting the mailing of truthful advertising concerning lawful gambling activity, whether state-run or private, is no longer enforceable. The Attorney General has notified Congress that it will no longer enforce the criminal lottery statute (18 U.S.C. Section 1302) against gambling advertisement mailers, so long as the activity advertised is legal and the mailing does not provide any entry materials.

The Attorney General's opinion is based upon a decision of the Supreme Court issued in June 1999, which struck down similar prohibitions against truthful broadcast advertising for lawful gambling activity.

Accordingly, the Domestic Mail Manual (DMM) is revised to conform to the Attorney General's new guidance. The changes mean that:

1. Mailers may now mail advertisements for casinos and state-run or private lotteries (so long as that lottery is legal).

2. Newspapers and other publications that are mailed may run advertisements for lawful gambling activity without risking their authorizations to mail at periodicals rates.

3. The Postal Service may actively solicit advertising mail from licensed casinos and others lawfully conducting gambling activity.

The following prohibitions will still apply:

1. No mailing is acceptable if it provides entry materials or instrumentalities (lottery or raffle tickets, for instance) through the mail.

2. Mailing gambling proceeds, instrumentalities, or other means of participation continue to violate the criminal statute.

The changes announced in this document are effective on December 14, 2000, and also will be published in Postal Bulletin 22039 (12–14–00). These revisions to the DMM will be included in the printed version of DMM Issue 56, scheduled for January 2001 (pending a decision about the R2000–1 omnibus rate case). These amendments are being published without provision for public comment because the changes are required by law.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM) which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise part C030 of the DMM to include the following revisions:

C CHARACTERISTICS AND CONTENT

C000 General Information

* * * * *

C030 Nonmailable Written, Printed, and Graphic Matter

* * * * *

C031 Written, Printed, and Graphic Matter Generally

* * * * *

3.0 LOTTERY MATTER (18 USC 1302)

* * * * *

[Revise 3.2 to read as follows:]

3.2 Unlawful Mail Matter

Unlawful matter includes any letter, newspaper, periodical, parcel, stamped card or postcard, circular, or other matter permitting or facilitating participation in a lottery; any lottery ticket or part thereof or substitute; and any form of payment for a lottery ticket or share.

3.3 Fishing Contests, Indian Gaming Regulatory Act, Lotteries

[Remove item b. Redesignate items c and d as b and c, respectively. Revise newly redesignated item c to read as follows:]

* * * * *

c. An advertisement, list of prizes, or other information on a lottery not prohibited by the state where it is conducted.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30810 Filed 12–4–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1504 and 1552

[FRL–6912–2]

Acquisition Regulation: Business Ownership Representation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to add a new clause that will provide the Agency with information regarding its contract awards. This new clause requests the successful awardee of an EPA contract to voluntarily identify the specific racial/ethnic category that best represents the ownership of its business. The information provided by the clause will not be used for the establishment of a set-aside or quota. The information will be used for general statistical purposes or for the purpose of focusing future outreach initiatives to those businesses owned by racial/ethnic groups who are unaware of EPA contracting opportunities.

DATES: This rule is effective January 4, 2001.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Telephone: (202) 564–4364.

SUPPLEMENTARY INFORMATION: