be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the Act and the regulation. The Conference Report on the Act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal. H.R. Rep. No. 261, 100th Cong. 1st Sess. at 182 (1987).

2. Thus, if a state had wished to adopt a law governing funds availability, it had to have made that law effective on or before September 1, 1989. Laws adopted after that date do not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that had a law governing funds availability in effect before September 1, 1989, amended its law after that date, the amendment would not supersede federal law, but an amendment deleting a state requirement would be effective.

3. If a state provides for a shorter hold for a certain category of checks than is provided for under federal law, that state requirement will supersede the federal provision. For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-ofstate bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the federal schedule to the extent that it applies to in-state, nonlocal checks.

4. The Act also provides that any state law that provides for availability in a shorter period of time than required by federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

B. 229.20(b) Preemption of Inconsistent Law

1. This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective. C. 229.20(c) Standards for Preemption

1. This section describes the standards the Board uses in making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depositary bank to make funds available to a customer in a longer period of time than the maximum period permitted by the Act and this regulation. For example, a state law that permits a hold of four business days or longer for local checks permits a hold that is longer than that permitted under the Act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the Act and this regulation (§ 229.10(c)(1)(vii)) require nextday availability for the first \$100 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of \$100 or less that is deposited. Under the Act and this regulation, if either one \$150 check or three \$50 checks are deposited on a given day, \$100 must be made available for withdrawal on the next business day, and \$50 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the Act, this provision of state law is inconsistent and preempted in its entirety.

3. In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the Act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with § 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used

4. State laws that provide maximum availability periods for categories of deposits that are not covered by the Act would not be preempted. Thus, state funds availability laws that apply to funds in time and savings deposits are not affected by the Act or this regulation. In addition, the availability schedules of several states apply to "items" deposited to an account. The term items may encompass deposits, such as nonnegotiable instruments, that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not covered by the Act also would not be preempted. For example, a state law that governs money market mutual funds would not be affected by the Act or this regulation.

5. Generally, state rules governing the disclosure or notice of availability policies

applicable to accounts also are preempted, if they are different from the federal rules. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than "accounts," such as savings or time deposits, are not inconsistent with the Act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

D. 229.20(d) Preemption Determinations

1. The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of Subparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state U.C.C. provisions to the requirements of Subpart C.

E. 229.20(e) Procedures for Preemption Determinations

1. This provision sets forth the information that must be included in a request by an interested party for a preemption determination by the Board.

XV. Section 229.21 Civil Liability

A. 229.21(a) Civil Liability

1. This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (See Commentary to § 229.20.)

B. 229.21(b) Class Action Awards

1. This paragraph sets forth the provision in the Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

C. 229.21(c) Bona Fide Errors

1. A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give nextday availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account; or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately.

D. 229.21(d) Jurisdiction

1. The Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

E. 229.21(e) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form, notice, or clause (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were