Department of the Treasury
Office of Thrift Supervision

Transmittal

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The office of Thrift Supervision (OTS) is asking for input on whether its electronic banking regulations are in line with 1990s' technology and, at the same time, is proposing to substantially streamline its deposit rules.

In the attached proposals, OTS asks for comment on whether its regulations are flexible enough to permit savings associations to engage in appropriate electronic activities. OTS is seeking broad public comment on all aspects of electronic banking, such as providing banking services over the Internet and having customers use machines at remote locations to open accounts or obtain loans.

OTS is also considering recent inquiries from the industry including: how can a savings association operating on the Internet comply with the Community Reinvestment Act, and may savings associations open accounts on the Internet for depositors in other countries.

Since computers can now make decisions on whether to grant a customer a loan, OTS is also questioning whether its regulations adequately address machines processing risk assessments. Emerging technologies such as smart cards are currently not specifically covered by any OTS regulation.

OTS' proposed overhaul of its deposit regulations is the latest in a series of revisions aimed at reducing regulatory burden on savings associations to the greatest extent possible consistent with safety and soundness requirements. Targeted for elimination or streamlining are regulations that duplicate or overlap other rules or federal law.

Several long-standing deposit regulations would be removed because they have been superseded by laws, such as the Truth in Savings Act, and by Federal Reserve Board regulations D (Reserve Requirements) and DD (Truth in Savings) that apply to thrifts as well as banks.

In addition, deposit regulations that micromanage thrift operations would be removed. For example, several specific recordkeeping requirements would be replaced by a general provision that gives overall guidance necessary to ensure safety and soundness.

OTS also proposes to consolidate all its deposit rules under a new Part 557 in the Code of Federal Regulations to make deposit-related rules easier to locate.

The notice of proposed rulemaking on deposit regulations and advance notice of proposed rulemaking on electronic banking were published in the April 2, 1997, edition of the *Federal Register*, Vol. 62, No. 63, pp. 15626–15635. Written comments must be received on or before June 2, 1997, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be e-mailed to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number.

For further information on deposits contact:
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Attachment

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 557, 561, 563, and 563g

[97–27]

RIN 1550–AB00

Deposits and Electronic Banking

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking and advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to substantially streamline its deposit-related regulations. This Notice of Proposed Rulemaking (NPR) follows a detailed staff review of pertinent regulations and policy statements in the Code of Federal Regulations (CFR) to determine whether each provision is necessary, imposes the least possible burden consistent with safety and soundness, and is clearly written. Today's proposal is issued pursuant to the Regulatory Reinvention Initiative of the Vice-President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

In addition, OTS is publishing an advance notice of proposed rulemaking (ANPR) seeking comment on OTS electronic banking regulations. OTS is concerned that its current electronic banking regulations do not adequately address advances in technology and may impede prudent innovation by federal savings associations.

DATES: Comments must be received on or before June 2, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 97–27. These submissions may be hand-delivered to 1700 G. Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For Deposits: Edward J. O'Connell, III, Project Manager, (202) 906–5694, Supervision Policy; or Richard Blanks, Counsel (Banking and Finance), (202) 906–7037; or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639. For Electronic Banking: Paul Glenn, Special Counsel, Chief Counsel's Office, (202) 906–6203, or Paul Robin, Program Analyst, Compliance Policy, (202) 906–6648, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

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I. Background of the Proposal and Advance Notice of Proposed Rulemaking

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive; systematic regulatory burden review. The first areas reviewed—lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance—were selected because they have a significant impact on thrift operations, and had not been developed on an interagency basis or been comprehensively reviewed for many years. OTS has issued comprehensive final regulations on all of these areas.[1]

Today's proposal is the first in the next phase of OTS's review of its regulations. It follows an intensive review of OTS's deposit-related regulations and policy statements. In developing this proposal, OTS considered the relevant regulations, agency guidance, legal interpretations, and requirements of the other federal banking agencies. Like other OTS regulatory reinvention efforts, this proposal was prepared in consultation with those who use these regulations on a daily basis, including OTS regional examination staff.

OTS is also seeking public input on a related area of its regulations that has had an increasing impact on thrift operations, but has not been recently amended—electronic banking. OTS has three regulations affecting electronic banking. These include: 12 CFR 545.136 (Data processing services); 545.141 (Remote service units); and 545.142 (Home banking services). After reviewing these electronic banking regulations, OTS has decided to solicit public comment through an ANPR before determining what regulatory amendments may be appropriate. OTS is concerned that these regulations may not appropriately address electronic banking services under emerging technologies.

II. Notice of Proposed Rulemaking: Deposits

A. Objectives

The overarching goal of OTS's reinvention initiative is to reduce regulatory burden on savings associations to the greatest extent possible, consistent with statutory requirements and safety and soundness. In the context of deposit-related regulations, we believe that maximum burden reduction can be achieved by pursuing the following objectives.

First, we are attempting to eliminate duplication and overlap from OTS regulations. Several OTS deposit-related regulations address areas that are covered by Regulations D and DD of the Federal Reserve Board. These regulations apply to all depository institutions, including savings associations. Regulation D (Reserve Requirements of Depository Institutions)[2] contains comprehensive deposit definitions. Further, Regulation DD (Truth in Savings)[3] applies to all depository institutions except credit unions.[4] This approach has two benefits—the elimination of regulations from the CFR and reduced confusion for savings associations.

Second, as part of its reinvention effort, OTS is endeavoring to eliminate regulations that are outdated or micromanage thrift operations. For example, OTS proposes to replace several specific deposit-related recordkeeping requirements with a general recordkeeping regulation that is tied more closely to safety and soundness. This approach, which parallels recent changes in OTS's loan documentation regulation, will help savings associations take better advantage of technological advances.[5]

Third, OTS wants to remove regulations that merely restate existing statutory authority. It has been the long-standing position of OTS and its predecessor agency, the Federal Home Loan Bank Board (FHLBB), that specific regulations are not required to permit federal savings associations to engage in activities authorized by the Home Owner's Loan Act (HOLA).[6] Rather, the role of OTS regulations should be to impose necessary conditions or limitations on those statutorily authorized activities. Section 5(b) of the HOLA states that a federal savings association may raise funds through a variety of types of accounts, "[s]ubject to the terms of its charter and regulations of the Director [of OTS]."[7] Either the association's charter or OTS regulations may set out the rights afforded accountholders. Thus, unless OTS regulations or the institution's charter restrict the type of accounts a federal savings association may offer, an association may offer whatever types of statutorily authorized accounts it deems appropriate.

[1] 61 FR 50951 (September 30, 1996) (Lending and Investment); 61 FR 66561 (December 18, 1996) (Subsidiaries and Equity Investments); 61 FR 60173 (November 27, 1996) (Conflicts of Interest, Corporate Opportunity and Hazard Insurance); 61 FR 64007 (December 3, 1996) (Corporate Governance).

[2] 12 CFR Part 204 (1996).

[3] 12 CFR Part 230 (1996).

[4] 12 CFR Part 707 contains separate Truth in Savings regulations applicable to credit unions.

[5] 61 FR 50951, 50982 (to be codified at 12 CFR 560.170).

[6] 12 U.S.C. 1461–1470.

[7] 12 U.S.C. 1464(b).

Fourth, OTS believes that it should maintain a clear and consistent position on the preemptive effect of federal regulation on the deposit-related activities of savings associations. It is particularly necessary to reiterate this position as existing regulations are restructured, amended, converted into guidance, or deleted. OTS has long held that, with certain narrow exceptions, state laws or regulations that purport to affect the deposit activities of federal savings associations are preempted.[8] Preemption in this area is essential to OTS's regulation of the operations of federal savings associations because deposit taking is one of the most important functions of a savings association. None of the changes discussed today should be construed as evidencing an intent by OTS to change this long-held position. Whether OTS retains a specific regulation addressing a particular aspect of deposit taking or deletes the provision to streamline its regulations and reduce regulatory burden, the agency intends to occupy the entire field of deposit regulation for federal savings associations.

This approach is consistent with court decisions that provide that OTS has authority over federal thrifts from their "cradle to [their] corporate grave."[9]

This proposed rule includes a general deposit preemption provision. This provision restates long-standing preemption principles applicable to federal savings associations, as developed in a long line of court cases and legal opinions by OTS and the FHLBB. The agency hopes that the increased clarity and specificity of the proposal will reduce confusion and the need for frequent preemption inquiries in the future.

Finally, OTS is removing certain regulations and policy statements that merely reiterate universally recognized deposit-related incidental powers of federal savings associations, such as the ability to use insured banks as collecting and paying agents and the ability to provide "deposit assurance" on certain direct deposits.

With these goals in mind, all OTS deposit-related regulations will be consolidated, streamlined, and moved into a new part 557. This action will make the deposit-related regulations easier to locate and follow.

B. Historical Overview

Since enactment of the HOLA, federal savings associations have been authorized to raise funds through a variety of accounts, and to issue passbooks, certificates, or other evidence of accounts.[10] In 1982, the Garn-St Germain Depository Institutions Act (DIA) expanded this authority to permit federal thrifts to accept demand accounts.[11]

Historically, the FHLBB, through its regulations, affirmatively approved specific deposit-related activities. This approach has shifted in recent years as a result of changes in the applicable statutes and advances in business and technology. Now thrifts may undertake any activity permitted by statute, unless a regulation limits or restricts the authority. Accordingly, it is no longer necessary to retain regulations specifically approving deposit-related activities.

Additionally, many of the deposit-related regulations originated with the FHLBB, in its capacity as the operating head of the former Federal Savings and Loan Insurance Corporation (FSLIC), which insured thrift deposits. Since OTS is not the insurer of thrift deposits, these regulations are no longer needed.

Finally, certain FHLBB-era regulations have now been superseded by more recent statutes, such as the Truth in Savings Act,[12] and by Federal Reserve Board regulations applicable to all insured institutions. Consequently, many of the policy and legal reasons for certain regulations no longer exist.

C. Proposed Disposition of Deposit-Related Regulations

Part 545 Operations (Federal Savings Associations)

Section 545.10 Savings Deposits or Shares

Section 545.10 states that OTS approves savings deposits or shares that comply with the provisions of subsection (b) of section five of title III of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")[13] (12 U.S.C. 1464(b)), the federal savings association's charter, and OTS rules and regulations relating to the type, form, return, and maturity of deposits or shares. OTS proposes to delete this paragraph. OTS "approval" of deposits or shares is not required by 12 U.S.C. 1464(b), which authorizes federal savings associations to raise funds through various types of accounts and issue evidence of such accounts.

Section 545.11 Issuance of Accounts

Section 545.11(a) requires a federal savings association to obtain and maintain FDIC insurance prior to doing business. OTS proposes to delete this subsection and rely on the statutory requirement that federal savings associations must obtain and maintain FDIC insurance. See 12 U.S.C. 1462(4), 1818(a)(1).

Section 545.11(b) provides that federal savings associations may issue accounts as defined in § 561.2. OTS proposes to replace the detail of this subsection with a more general statement of authority in new Part 557.

Section 545.11(c) sets forth the status and priority of savings deposits and accounts in the event of a liquidation, dissolution or winding up of the association. OTS proposes to delete this subsection because these priorities are set forth by statute. See 12 U.S.C. 1821(d)(11) and 1464(b)(1)(B).

Section 545.12 Demand Deposit Accounts

Section 545.12(a) states that a federal savings association may accept demand deposit accounts from any person. OTS proposes to delete this subsection because 12 U.S.C. 1464(b)(1)(A) contains the authority for issuance of demand deposit accounts.

Section 545.12(b) prohibits a federal savings association from paying interest on a demand deposit. OTS proposes to delete this subsection because 12 U.S.C. 1464(b)(1)(B)(i) contains this prohibition. This section also provides that finders' fees offered in accordance with 12 CFR 561.16(b) are not payments of interest. OTS proposes to transfer the finders' fee exception to the Thrift Activities Handbook.

Section 545.12(c) indicates that demand deposit accounts include only those accounts that are payable on demand within the meaning of 12 CFR 563.5. This provision is unnecessary in light of the deletion of paragraphs (a) and (b). For guidance in interpreting 12 U.S.C. 1464(b)(1)(A) and (b)(1)(B)(i), institutions should refer to the definition of demand deposit contained in Regulation D.[14]

Section 545.13 Account Records

Section 545.13(a) states that a federal savings association must comply with §§ 563.1 and 563.170(c)(8), and that accounts must be evidenced by a written agreement with transactions confirmed by issuance of a receipt or

[8] See OTS Op. Chief Counsel (October 11, 1991).

[9] *Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 145, quoting *California* v. *Coast Federal Savings and Loan Ass'n*, 98 F. Supp. 311, 316 (S.D. Cal. 1951).

[10] 12 U.S.C. 1464(b).

[11] Pub. L. 97–320, 96 Stat. 1469 (October 15, 1982).

[12] 12 U.S.C. 4301 *et seq.*

[13] Pub. Law 101–73, 103 Stat. 183 (August 9, 1989).

[14] This proposal does not address deposit-related definitions currently contained in OTS regulations. OTS is planning a comprehensive review of all regulatory definitions later this year.

advice. OTS proposes to delete this subsection. The cross-references are no longer appropriate because § 563.1, which formerly dealt with forms of accounts, was amended in 1992 to refer to a de novo savings association's charters and by-laws,[15] and § 563.170(c)(8) has been recently removed.[16] The term "advice" is no longer a part of transactional terminology. Moreover, OTS would replace the specific recordkeeping requirements for written agreements and receipts by a more general recordkeeping regulation in new Part 557. Nothing in this proposed revision would prohibit a savings association from the normal business practice of providing receipts for transactions. However, the proposed change may allow federal savings associations to take better advantage of technological and marketplace advances in telephonic and electronic banking.

Section 545.13(b)(1) provides that a federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the federal association's books. Under this section, accounts are only transferable on the association's books on proper application by the transferee and acceptance of the transferee as accountholder on terms approved by the board of directors. OTS proposes to modify and incorporate this subsection into new Part 557.

Under § 545.13(b)(2), a federal savings association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the federal savings association. OTS proposes to replace this subsection with the more general recordkeeping requirement in new Part 557. We note that the FDIC has a regulation concerning negotiable certificates of deposits where the depository institution has defaulted. If any deposit obligation of an insured institution is evidenced by a negotiable instrument, the FDIC will recognize the owner as if that person's name were on the records of the institution if the instrument was negotiated to such owner prior to the date of default of the institution. See 12 CFR 330.4(b)(4) (1996).

Section 545.13(c) recites authority for federal savings associations to use insured banks as collecting and paying agents for its accounts. OTS proposes to delete this subsection because these incidental powers are uniformly recognized and do not need to be codified in regulatory text.

[15] 57 FR 14344 (Apr. 20, 1992).

[16] 61 FR 50951 (September 30, 1996).

Section 545.14 Determination and Distribution of Earnings

Under § 545.14(a), a federal savings association may issue savings accounts earning interest at different rates of return. These rates may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted, subject to 12 CFR 563.10. OTS proposes to incorporate this subsection in new Part 557.

Section 545.14(b) states that a federal savings association may distribute earnings on savings accounts as provided in its charter and bylaws and the terms of the account. OTS proposes to incorporate this subsection into new Part 557.

Section 545.14(c) prohibits the distribution of earnings on share accounts until the federal savings association has provided for the payment of expenses and for the pro rata portion of credits to reserves, as required by the federal savings association's charter and 12 CFR Part 567. The term "reserve credits" is an archaic reference to the transfer of a portion of net income to a restricted capital account. Charters for mutual share institutions had required this transfer. OTS proposes to delete this subsection because modern federal charters no longer provide for mutual share institutions.

Part 556 Statements of Policy

Section 556.12 Deposit Assurance of Direct Deposit of Social Security Payments

This Statement of Policy states that the implied powers of a federal savings association include the provision of "deposit assurance" in connection with the Social Security Administration's direct deposit program. A federal savings association provides deposit assurance when it credits a social security beneficiary's account with payment on its due date, whether or not the payment has been received by the association.

The Statement of Policy advises federal savings associations to implement safeguards and controls to address the risks of the program. The policy statement further notes that Regulation E (Electronic Fund Transfers)[17] applies to the program.

OTS proposes to delete this Statement of Policy because insured depository institutions universally provide deposit assurance of social security payments. OTS will consider whether handbook guidance would be useful to reiterate the need for adequate institutional safeguards and controls and the applicability of Regulation E.

[17] 12 CFR Part 205 (1996).

Part 563 Operations

Section 563.2 Simple Form of Certificate; Passbooks

Section 563.2 sets forth the requirements for a simple form of certificate account. A mutual savings association may issue a simple form of savings or investment certificate or a passbook if, in accordance with State law, the association's charter, constitution, or bylaws includes a clear provision indicating that: (i) All shareholders are members and share equally in earnings and in assets pro rata to paid-in value, plus credited dividends; and (ii) the savings association may not charge any fee for the privilege of becoming, remaining, or ceasing to be a member of the savings association. This simple form is not required to contain any membership certificate or any statement of the dividend, withdrawal, or other rights of members.

OTS proposes to delete this section because it is outdated. Savings associations will continue to be subject to the disclosure requirements of Regulation DD.

Section 563.3 Long Form of Membership Certificate

Under § 563.3, a savings association must include certain specified statements in all share, membership, deposit certificates, passbook, or other instrument evidencing a withdrawal instrument that: (i) Pay a different rate of dividends or interest to different classes of shares or securities; (ii) prefer any one or more classes of shares or securities; or (iii) charge any fee for the privilege of becoming, remaining, or ceasing to be a saver or investor in the savings association.

Like § 563.2, this section is outdated and unnecessary in light of the disclosure requirements in Regulation DD. Accordingly, OTS proposes to delete this provision.

Section 563.6 Payment of Accounts on Demand

Section 563.6 prohibits a savings association from issuing any account, or advertising or representing that it will pay holders of its accounts, on demand. Demand accounts, tax and loan accounts, note accounts, and United States Treasury general accounts are not subject to this prohibition. This section also sets forth various definitions of the term "accounts payable on demand."

OTS proposes to delete this section and instead rely on the disclosure requirements applicable under

Regulation DD, and on statutory provisions authorizing savings associations to issue demand deposits (12 U.S.C. 1464(b)(1)(A)(i)) and prohibiting the payment of interest on demand deposits (12 U.S.C. 1464(b)(1)(B)(i)). These statutory provisions should be interpreted in a manner that is consistent with the definition of demand deposit contained in Regulation D.

Section 563.7 Fixed-Term Accounts (Certificate Accounts)

Under § 563.7(a), a savings association may offer certificate accounts in such form as the board of directors of the savings association may authorize by resolution. Further, with respect to any time deposit, a savings association may impose a penalty for early withdrawal.

Section 563.7(b) authorizes a savings association to pay earnings on a certificate account at a rate, or anticipated rate of return, determined when the deposit is accepted. The rate may be fixed or be based on a schedule, index, or formula specified at the time the account is accepted.

Section 563.7(c) prohibits an association from accepting a fixed-term account for a term of less than seven days. This paragraph also prohibits an institution from issuing any certificate account unless the association has complied with the chartering provisions of § 563.1.

Section 563.7(d) states that a certificate may prohibit withdrawal prior to maturity except in the cases of death or incompetence.

OTS proposes to modify this section. While the provisions of paragraph (b) would be retained in the new regulation at § 557.3, the remainder of this section would be deleted to avoid duplication and redundancy. Institutions issuing such certificate accounts must comply with the disclosure requirements contained in Regulation DD and should rely on the definitions applicable to such accounts contained in Regulation D.

Section 563.9 Eurodollar Deposits

This regulation addresses the issuance of Eurodollar deposits. When this provision was added, FHLBB regulations on pooled accounts and other restrictions did not apply to Eurodollar deposits. These restrictions have been removed for all accounts. OTS, therefore, proposes to delete this section because it is no longer necessary. This approach is consistent with the regulations of the other banking regulators which do not specifically address regulatory treatment of Eurodollar deposits.

Section 563.10 Earnings-Based Accounts

Section 563.10 provides extensive definitions and limitations regarding earnings-based accounts. In an earnings-based account, the payment of interest is determined by reference to an index based upon the profitability, earnings, cash flow, appreciation, or return on assets owned by, or under the control of, the savings association.

OTS proposes to delete this section because it is unnecessary and duplicative of disclosure requirements contained in Regulation DD.

D. Proposed New Part 557

OTS proposes to adopt a new Part 557 that will ultimately include all of the agency's deposit-related regulations. The agency believes that this organization will make its relevant deposit-related regulations easier to locate. The proposed deposit-related regulation is discussed below.

Section 557.1 General Authority (Proposed)

This proposed section states that new Part 557 is issued under OTS general rulemaking and supervisory authority under the HOLA. The proposed section also cites the general authority for federal savings associations' deposit-related activities. It states that a federal savings association may raise funds through deposits and issue evidence of such accounts as authorized under section 5(b) of the HOLA, the savings association's charter, and regulations issued by OTS.

Section 557.2 Applicability of Law (Proposed)

As discussed in Section II.A. above, deposit-related activities are core activities in which federal savings associations engage. Federal preemption of state laws purporting to affect deposit-related activities is critical to the agency's mandate under HOLA sections 4(a) and 5(a) to provide for the safe and sound operation of federal savings associations in accordance with the best practices of thrift institutions in the United States.

This proposed section sets forth OTS's long-standing position on the federal preemption of state laws purporting to affect the deposit-related activities of federal savings associations. This position has been developed in caselaw and legal opinions by OTS and its predecessor, the FHLBB, and is currently reflected in § 545.2. Because the deposit-related activities regulations will be moved from Part 545 and, thus, separated from § 545.2, OTS proposes to include new § 557.2 to confirm and carry forward its existing preemption position. The agency believes that the increased clarity and specificity of § 557.2 will reduce confusion and the need for frequent preemption inquiries in the future.

The proposed section on preemption has three paragraphs. Paragraph (a) explicitly states the agency's intent to occupy the field of deposit-related activities for federal thrifts and articulates the statutory and regulatory basis for this preemption. Paragraph (b) contains a list of examples of preempted state laws, drawn from case law and OTS precedent. This paragraph emphasizes that the list is not intended to be exhaustive. Paragraph (c) describes certain types of state laws that OTS does not intend to preempt. These categories include: contract and commercial law, tort law, and criminal law. Such laws will not be preempted to the extent that they only incidentally affect the deposit-related activities of federal savings associations or are otherwise consistent with the purpose of paragraph (a).

When analyzing the status of state laws under new § 557.2, the first step will be to determine whether the type of law in question is listed among the illustrative examples of preempted state laws under paragraph (b). If so, the analysis will end there; the law is preempted. If the law is not covered by paragraph (b), the next question is whether the law affects deposit-related activities. If it does, then, in accordance with paragraph (a), the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of the types of state laws that are not preempted, as described in paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

Section 557.3 Interest and Earnings (Proposed)

This proposed section states that a savings association may pay interest on a savings account at a rate or anticipated rate of return determined when the account is accepted, as provided in its charter and bylaws and the terms of the account. The rate or anticipated rate on a savings account may be fixed, or may vary according to a schedule, index, or formula specified when an account is accepted.

Section 557.4 Account Records (Proposed)

This proposed section replaces the specific recordkeeping requirements of the existing regulations with more general requirements. This section states

that each savings association should establish and maintain deposit documentation practices and records that demonstrate appropriate administration and monitoring of its deposit-related activities. A savings association's records should include adequate evidence of the ownership, balances, and transactions involving the account. Further, the proposed section provides that a federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's records.

III. Advance Notice of Proposed Rulemaking: Electronic Banking

OTS seeks comments on whether its regulations are sufficiently flexible to permit federal savings associations to engage in appropriate electronic banking activities, consistent with safety and soundness, the Truth in Lending Act,[18] Regulation E, and other relevant statutes and regulations. OTS has received numerous inquiries on electronic banking issues. For example, federal savings associations have asked whether they may provide banking services over the Internet, whether they may open accounts or issue loans from machines in remote locations, what steps must an association operating on the Internet take to comply with the Community Reinvestment Act (CRA), and whether savings associations may open accounts on the Internet for depositors living abroad.

This advance notice of proposed rulemaking requests comments on: (1) Electronic banking facilities and data processing activities; and (2) more general issues relating to electronic banking.

A. Electronic Banking Facilities and Data Processing

Three OTS regulations affect a thrift's ability to engage in electronic banking activities. Two of these regulations describe the types of facilities through which federal thrifts may deliver services to their customers. 12 CFR 545.141 (Remote service units); 545.142 (Home banking services). The third regulation, the data processing regulation, 12 CFR 545.138, provides the general authority to engage in certain electronic banking activities. To the extent that these regulations do not reflect current activities and technologies, OTS is interested in how the regulations might be updated. Each area of concern is discussed more fully below.

[18] 15 U.S.C. 1601 *et seq.*

Facilities

OTS regulations permit a federal savings association to deliver services to customers at various kinds of facilities. These include: home offices, branches, agency offices, data processing or administrative offices, remote service units (RSUs), and home banking. Recently, OTS has been asked to address whether an automated loan machine (ALM) is a branch office or some other type of facility. This issue has raised more general questions about how the agency should treat new electronic technologies.

Several associations have informed OTS that they plan to establish networks of ALMs located away from their home or branch offices. Each ALM would permit a customer to apply for a consumer loan up to a specific limit by entering certain information by keypad into a machine resembling an automated teller machine (ATM). This information would be transferred immediately by wire to the institution's main-frame computer. The main-frame computer would analyze the information under a credit-scoring program, and would check the information electronically with credit-reporting bureaus. If the information meets the credit-scoring criteria, the computer program would approve the loan. The ALM then would print out a cashier's check and appropriate loan disclosure forms. Under the proposals outlined to OTS, the loan would not be treated as closed until the check was endorsed and presented to the institution for payment. If the loan were disapproved by the computer program, the ALM would print out all necessary denial disclosures. The process is expected to take about ten minutes.

This procedure raises the question whether each ALM is a branch. This is significant because the rules governing the establishment and operation of a branch or an RSU are different. An ALM might appear to meet the definition of a "remote service unit" at 12 CFR 545.141(a), except that the regulation expressly prohibits an RSU from "establish[ing] a loan account." 12 CFR 545.141(b). A facility not covered by the RSU regulation or other specific classification is, by default, a branch. See 12 CFR 545.92(a).

The prohibition against establishing a loan account at an RSU appears to date from a judicial decision over twenty years ago. *Bloomfield Fed. Sav. & Loan Ass'n.* v. *American Community Stores Corp.*, 396 F. Supp. 384 (D. Neb. 1975). In *Bloomfield*, the plaintiff challenged the establishment of ATMs by a federal thrift by asserting that the thrift had failed to comply with the FHLBB's procedures for opening new branches. The court noted that the FHLBB held broad authority to define a branch, but had limited this definition to a full-time and permanent office at which any business of a thrift may be transacted. Since the FHLBB's regulations stated that an RSU could engage in specific activities and these activities did not include opening savings accounts or originating, processing, or approving loans, the court concluded that the planned ATMs (which were part of an RSU pilot project) were not branches. Therefore, the thrift did not have to comply with the branching procedures.

In 1981, the FHLBB simplified the RSU regulation by deleting enumerated activities for RSUs. In its place, the FHLBB added an explicit statement that an RSU could not be used to open a savings account or establish a loan account. See 46 FR 8440 (1981). This statement is found in current OTS regulations at 12 CFR 545.141(b). *Bloomfield* suggests that OTS would have to revise its regulations governing branches and other facilities to broaden the RSU regulation. OTS solicits comment on whether such revisions would be appropriate.

A review of the facility regulations also may be appropriate in the home banking context. Currently, it is not clear whether a full range of banking services may be offered under the home banking services regulation. 12 CFR 545.142. This regulation was drafted when home banking was limited to monitoring balances, transferring funds between accounts at the same institution, and directing payments from an existing checking account in lieu of sending checks by mail. Because a thrift's role in these activities was strictly clerical, the definition of home banking services was limited to "the transfer of funds of financial information" and "the performance of other transactions initiated by the customer." 12 CFR 545.142.

It is not clear whether § 545.142 would cover the opening of new accounts or the processing of credit applications. The phrase "transactions initiated by a customer" might encompass these new services, but the common meaning of that phrase may limit it to transactions involving existing accounts. With technological advances making it feasible for thrifts to make risk-based decisions on an electronic basis (e.g., credit scoring), OTS solicits comment on the appropriate scope of the home banking services definition.

Accordingly, OTS solicits comments on whether the definitions of RSUs and

home banking services are sufficient to encompass the full range of electronic banking activity. In this regard, we note that federal savings associations have specific statutory authority to establish RSUs as provided in OTS regulations pursuant to 12 U.S.C. 1464(b)(1)(F).[19] OTS is also interested in whether that statutory language raises particular issues for the industry. OTS anticipates that these comments will help the agency to better understand industry and customer expectations concerning the nature of such facilities.

Permissible Activities

OTS also solicits comment on whether its current regulations authorizing data processing activities permit a federal savings association to optimize the latest technology. The data processing activities of federal savings associations are covered by 12 CFR 545.138. This regulation was issued when data processing was limited to the non-discretionary functions of processing and storing data. Today, a financial institution can make risk-based decisions solely through electronic means. Accordingly, it may be appropriate for OTS to revise this regulation. In addition, the current OTS data processing regulation limits the ability of a federal savings association to sell or market services, software, and excess capacity. All of these restrictions may not be necessary, especially since the comparable interpretative ruling for national banks is less restrictive. See 61 FR 4849, at 4853 (February 9, 1996).

Data Processing. Under the current data processing regulation, the processing of data generally encompasses a record-keeping, rather than a risk assessment, function. This restrictive view presents difficulties in applying the OTS regulation to thrifts utilizing the emerging technologies.

This limited view of data processing originated in 1965 in the FHLBB regulation that first authorized federal thrifts to engage in data processing services. In that regulation, the FHLBB defined "data processing services" as "the *maintenance* of bookkeeping, accounting, or other records primarily by mechanical or electronic methods." See 12 CFR 545.14–2 (1966) (emphasis added). This view of data processing as an electronic form of recordkeeping continues, despite substantial revisions to the data processing regulation in 1983. These 1983 revisions expanded the kinds of data that could be processed to include data that involved "financial, economic, or related to thrift, home financing, or the activities of depository institutions."[20] The FHLBB did not, however, expand the definition of "processing" because technological improvements had not made it possible to make risk-based decisions entirely through electronic means. The current OTS data processing regulation is substantially the same as the 1983 FHLBB rule.

In a recent review of its related data processing provisions, the OCC concluded that its use of the term "data processing" failed to capture the potential of electronic banking. Recognizing that individual banks "are engaging, and will engage, in an increasing range of activities through electronic means and facilities beyond simply 'data processing'," the OCC deleted that term from its interpretative ruling. Instead, the OCC interpretative ruling refers to "electronic means and facilities."[21] This term clearly will encompass new technology that enables a depository institution to make risk-based judgments electronically.

Sales of Facilities and Software. The OTS data processing regulation provides federal savings associations with authority to provide data processing and data transmission services, to sell by-products incident to those services, and to sell excess capacity. Each authority is subject to significant constraints. Several of these constraints do not apply to national banks.

The authority to provide data processing and data transmission services is found at § 545.138(b). Under this provision, a federal savings association may perform all processing functions on data submitted by a purchaser. This authority, however, is subject to data and customer restrictions. For example, the data to be processed must be "financial, economic, or related to thrift, home financing, or the activities of depository institutions." 12 CFR 545.138(b)(1). In addition, the thrift must provide services primarily for itself, other depository institutions, parents or subsidiaries of depository institutions, or customers of the thrift. Sales of such services to others may not exceed half of the total data processing services provided by the thrift. See 12 CFR 545.138(b)(2).

Incident to its data processing authority, a federal thrift may also sell "by-products" of data processing—typically software. 12 CFR 545.138(c)(1). Again, this authority is subject to certain restrictions. For example, the software must be originally developed for the thrift's own use, and the by-products may not be substantially enhanced for purposes of marketing.

Finally, the thrift may sell its excess capacity. In connection with such sales, the thrift may only furnish access to facilities and provide necessary operating personnel. The association may not artificially create excess capacity by acquiring equipment or facilities whose capacity is substantially greater than that necessary to accommodate the thrift's present or expected future needs for providing permissible data processing services. 12 CFR 545.138(c)(2).

By contrast, national banks have broader authority to sell electronic services, products, and excess capacity. The recently promulgated OCC interpretative ruling for national banks provides:

> A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver. A national bank may also, in order to optimize the use of the bank's resources, market and sell to third parties electronic capacities acquired or developed by the bank in good faith for banking purposes.[22]

With respect to the provision of data processing or electronic services, a national bank has fewer customer restrictions.[23] As noted above, a federal thrift may only sell such services to other depository institutions, parents or subsidiaries of depository institutions, or its loan or deposit customers. The OCC interpretative ruling also does not expressly restrict the types of data that may be processed, although the limitation to services that a bank "is otherwise authorized to perform" may have an effect that is similar to OTS restrictions.

Software sales by national banks are permissible if the software is "acquired or developed * * * in good faith for banking purposes."[24] This is more expansive than the comparable authority for federal savings associations in two respects. First, the national bank's software must be developed "in good faith for banking purposes," rather than for the bank's own use. Second, nothing prohibits a national bank from substantially enhancing its software for marketing

[19] We note that banks previously had to file branch applications before establishing ATMs and remote service units. Section 2205 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Title II of Pub. L. 104–208) eliminated that requirement.

[20] 48 FR 7631 (1983).

[21] 61 FR at 4853, 4865 (February 9, 1996) (to be codified at 12 CFR 7.1019).

[22] 61 FR 4865 (to be codified at 12 CFR 7.1019).

[23] The OCC also recently has opined that a national bank may, as an action incidental to the business of banking, sell Internet access to non-customers. See OCC Legal Op. (August 19, 1996).

[24] 61 FR 4865 (to be codified at 12 CFR 7.1019).

purposes, provided the software retains its banking purpose.

National banks also appear to have broader authority to sell excess capacity. Unlike thrifts, banks are not limited to providing only access and operating personnel. In addition, the OCC interpretative ruling does not prohibit a national bank from creating excess capacity for the purpose of selling it.

Because the OCC's data processing interpretative ruling is substantially more expansive than OTS's regulation, OTS seeks comment on whether it should amend its data processing regulation to contain similar provisions.

Other Issues

Stored-Value Cards

OTS also requests comment on the appropriate regulatory response to stored-value cards. These devices provide for the storage and transfer of money on credit-card-like devices featuring a magnetic strip or embedded computer chip. The systems created to handle these cards, and the legal obligations that attach to the issuers, users, and others may vary in different situations. OTS regulations are silent on stored-value technology.[25]

These cards currently are the subject of analysis at the other banking agencies. The Federal Reserve Board is assessing the application of Regulation E to stored-value cards.[26] The Federal Deposit Insurance Corporation has released a legal opinion addressing whether the funds underlying a stored-value card are an insured deposit,[27] and has held a public hearing on other questions concerning stored-value cards and electronic banking.[28] The OCC has recently issued guidance on the risks associated with stored-value cards.[29]

Stored-value cards present a variety of issues. While OTS would like to receive comment on all aspects of this technology, commenters are requested to address the following questions: How extensively will the industry use stored-value cards? Do certain kinds of stored-value programs present greater safety and soundness concerns than others? Do stored-value cards present special issues that OTS should consider in examining the liabilities of a savings association? What kind of OTS guidance, if any, is appropriate for the industry?

Community Reinvestment Act

The "borderless" nature of electronic banking will also affect thrift responsibilities under the CRA, which encourages regulated financial institutions to help meet the credit needs of the local community in which they are chartered, consistent with safety and soundness. Comments are requested on all aspects of this issue, including the following questions. If a savings institution uses electronic banking as its sole method of customer contact and solicits deposits and loans throughout the United States, in what community is it chartered to do business for CRA purposes? If an institution has brick and mortar branches but also conducts a significant portion of its business electronically with customers beyond the jurisdiction of the branches, how should its community be defined? Should an institution's community under CRA be defined by the location of its customers, its offices, or both? How does an institution demonstrate that it is serving the credit needs of a widely dispersed customer base or when there is little or no geographic proximity between its deposit customers and its loan customers?

Additional Issues for Comment

OTS does not wish to limit comment to the above-cited issues and regulations. Rather, OTS welcomes all comments regarding any aspect of electronic banking, including the following:

(1) What OTS regulations should be eliminated or modified because they impede the use of safe and sound electronic technology?

(2) Should OTS impose any restrictions or requirements on banking operations offered over the Internet? For example, should OTS mandate a specific level of encryption, or should OTS rely on general safety and soundness principles to govern a safe system of operation?

(3) Should OTS-regulated institutions be permitted to open customer accounts over the Internet for individuals residing outside the United States or transfer funds over the Internet for account-holders to bank accounts outside the United States? What other restrictions should be imposed?

(4) What new technologies are being developed for electronic banking and how will these technologies impact the regulation of savings institutions?

(5) Should OTS address consumer protection rules in addition to the CRA in connection with a rulemaking on electronic banking?

IV. Request for Comments

OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes. Additionally, OTS seeks comments on all aspects of the ANPR.

V. Paperwork Reduction Act of 1995

The OTS invites comments on:

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

The accuracy of the agency's estimate of the burden of the proposed information collection;

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

Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting and recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the OTS, 1700 G Street, NW., Washington, D.C. 20552.

The recordkeeping requirements contained in this notice of proposed rulemaking are found at 12 CFR 557.4. The reporting requirements are found in the Federal Reserve Board's Regulation DD, 12 CFR Part 230. In part 557, OTS relies on the disclosure requirements applicable to savings associations under Regulation DD. The information is needed by the OTS in order to supervise savings associations and develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations.

Estimated number of respondents/recordkeepers: 1,343.

Estimated average annual burden hours per recordkeeper/respondent: 1484.

Estimated total annual reporting/recordkeeping burden: 1,993,459.6.

Start-up costs to respondents/recordkeepers: None.

Records are to be maintained for the period of time the account is open, plus three years.

[25] OTS has concluded that, pursuant to the incidental powers doctrine, an association may market and sell one type of stored-value card. OTS Op. Chief Counsel (August 21, 1996) (prepaid telephone cards).

[26] See 61 FR 19696 (May 2, 1996).

[27] See FDIC Gen Counsel Op. No. 8, 61 FR 40490 (Aug. 2, 1996).

[28] See 61 FR 40494 (Aug. 2, 1996).

[29] See OCC Bulletin No. 96–48 (Sept. 10, 1996).

VI. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in 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. As discussed in the preamble, this proposed rule reduces regulatory burden. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Parts 556 and 561

Savings associations.

12 CFR Part 557

Consumer protection, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend 12 CFR chapter V as follows:

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.10–545.14 [Removed]

2. Sections 545.10, 545.11, 545.12, 545.13, and 545.14 are removed.

PART 556—STATEMENTS OF POLICY

3. The authority for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§ 556.12 [Removed]

4. Section 556.12 is removed.

5. Part 557 is added to read as follows:

PART 557—DEPOSITS

Sec.
557.1 General.
557.2 Applicability of law.
557.3 Interest and earnings.
557.4 Account records.

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 557.1 General.

(a) *Authority and Scope.* This part is issued by OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*

(b) *Deposit Powers.* A federal savings association may raise funds through accounts and may issue evidence of such accounts as authorized by section 5(b)(1) of the HOLA (12 U.S.C. 1464(b)(1)), the terms of its charter, and OTS regulations.

§ 557.2 Applicability of law.

(a) *Occupation of Field.* Pursuant to sections 4(a) and 5(a) of the HOLA, 12 U.S.C. 1463(a), 1464(a), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate: to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices and without undue regulatory duplication and burden, OTS hereby occupies the entire field of deposit-related regulations for federal savings associations. OTS intends to give the federal savings associations maximum flexibility to exercise their deposit-related powers in accordance with a uniform federal scheme of regulation. Accordingly, federal savings associations may exercise their deposit-related powers as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise effect their deposit activities, except to the extent provided in paragraph (c) of this section. For purposes of this section, "state law" includes any state statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative Examples.* The types of state laws preempted by paragraph (a) of this section include, without limitation, state laws purporting to impose requirements regarding:

(1) Abandoned and dormant accounts;

(2) Checking accounts;

(3) Disclosure requirements;

(4) Funds availability;

(5) Order of withdrawal from savings accounts;

(6) Service charges and fees, including dishonored checks; and

(7) Special purpose savings services.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the deposit-related activities of federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;

(2) Tort law;

(3) Criminal law; and

(4) Any other law that OTS, upon review, finds:

(i) Furthers a vital state interest; and

(ii) Either has only an incidental effect on deposit-related activities or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

§ 557.3 Interest and earnings.

A federal savings association may pay interest on a savings account, whether in the form of a deposit or share, at a rate or anticipated rate of return determined at the time that the account is accepted, as provided in its charter and bylaws and the terms of the account. The rate or anticipated rate on a savings account either may be fixed or may vary according to a schedule, index, or formula specified at the time that an account is accepted.

§ 557.4 Account records.

(a) Each savings association should establish and maintain deposit documentation practices and records that demonstrate appropriate administration and monitoring of deposit-related activities. The savings association's records should include adequate evidence of ownership, balances, and all transactions involving the account.

(b) A federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's records.

PART 561—DEFINITIONS

6. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.42 [Amended]

7. Section 561.42 is amended by removing the phrase "§§ 563.6 and 561.16."

PART 563—OPERATIONS

8. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§§ 563.2–563.3, 563.6–563.10 [Removed]

9. Sections 563.2, 563.3, 563.6, 563.7, 563.9, and 563.10 are removed.

§ 563g.1 [Amended]

10. Section 563g.1 is amended by removing the last sentence of paragraph (a)(13).

Dated: March 24, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–8124 Filed 4–1–97; 8:45 am]

BILLING CODE 6720–01–P

Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Alamosa, Colorado, to accommodate a new ILS SIAP and a new GPS SIAP to San Luis Valley Regional/Bergman Field. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from the surface of the earth, and from 700 feet or more above the surface of the earth, are published in Paragraph 6002 and Paragraph 6005, respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM CO E2 Alamosa, CO [Revised]

Alamosa, San Luis Valley Regional/Bergman Field, CO
(Lat. 37°26'06"N, long. 105°52'01"W)
Alamosa VORTAC
(Lat. 37°20'57"N, long. 105°48'56"W)

Within a 5-mile radius of the San Luis Valley Regional/Bergman Field, and within 3 miles each side of the Alamosa VORTAC 127° and 335° radials extending from the 5-mile radius to 10.1 miles southeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Alamosa, CO [Revised]

Alamosa, San Luis Valley Regional/Bergman Field, CO
(Lat. 37°26'06"N, long. 105°52'01"W)
Alamosa VORTAC
(Lat. 37°20'57"N, long. 105°48'56"W)

That airspace extending upward from 700 feet above the surface within 8.7 miles northeast and 10.5 miles southwest of the Alamosa VORTAC 335° and 155° radials extending from 20.1 miles northwest to 10.5 miles southeast of the VORTAC, and within 1.8 miles northwest and 5.3 miles southeast of the Alamosa VORTAC 200° radial extending from the VORTAC to 14 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 37°37'00"N, long. 106°14'00"W; to lat. 37°44'00"N, long. 105°55'00"W; to lat. 37°52'00"N, long. 105°43'00"W; to lat. 37°49'00"N, long. 105°31'00"W; to lat. 37°20'30"N, long. 105°16'00"W; to lat. 37°03'30"N, long. 105°18'00"W; to lat. 37°01'30"N, long. 105°46'00"W; to lat. 37°05'25"N, long. 106°02'00"W; to lat. 37°09'00"N, long. 106°19'00"W; to lat. 37°17'00"N, long. 106°21'00"W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on March 19, 1997.

Helen Fabian Parks,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–8368 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Request for Comments Concerning Rule Governing Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.