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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 543, 552, and 571

[No. 94-158]

RIN 1550-AA76

“De Novo” Applications for a Federal Savings Association Charter

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today proposing a regulation incorporating, with certain changes, its current statement of policy on “*de novo*” applications for a federal savings association charter (Policy Statement). The proposed changes are intended not only to make the Policy Statement into a regulation, but also to conform it with current law and to facilitate the application process by simplifying the regulatory scheme, thereby reducing the cost of compliance.

The Federal Home Loan Bank Board (FHLBB), the OTS’s predecessor agency, originally promulgated the Policy Statement to provide specific guidance on the content of *de novo* applications. Many provisions in the current Policy Statement have, however, become obsolete or redundant, or are otherwise unnecessary, as a result of changes in federal laws and regulations addressing capital adequacy, business plans, officer and director qualifications, insider conflicts of interest and transactions with affiliates. These revised statutes and regulations now adequately address many of the issues previously covered by the Policy Statement. Because the remaining revised OTS *de novo* provisions contain requirements, not merely guidance, the OTS believes that they should be recodified as a regulation.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Send comments to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 94-158. 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. Submissions must be received by 5:00 P.M. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Gary Masters, Financial Analyst, Corporate Activities Division (202) 906-6729; Therese L. Monahan, Project Manager, Thrift Policy (202) 906-5740; or Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906-6439, Regulations and Legislation Division, Chief Counsel’s Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS today proposes a new regulation to revise and update its treatment of *de novo* applications for federal savings association charters.

The FHLBB originally promulgated the Policy Statement, which appears at section 571.6 of the OTS’s rules,¹ to explain its policies relating to the approval of insurance applications for newly created, so-called *de novo*, institutions. At that time, the FHLBB was the operating head of the Federal Savings and Loan Insurance Corporation, the insurance fund for thrifts, and *de novo* applications included not only applications for permission to organize and requests for a federal charter, but also applications for insurance of accounts.² Sweeping

statutory reforms in the past few years, particularly the Financial Institutions Reform, Recovery, and Enforcement Act of 1989³ (FIRREA), and the Federal Deposit Insurance Corporation Improvement Act of 1991⁴ (FDICIA), have effected significant changes in the structure of the agency and the scope of its mission. For example, under FIRREA, the OTS succeeded to the chartering and supervisory functions of the FHLBB, but the insurance function was transferred to the Federal Deposit Insurance Corporation (FDIC).

FIRREA and FDICIA have also rewritten much of the substantive law relevant to the OTS’s *de novo* approval process. For instance, section 32 of the Federal Deposit Insurance Act (FDIA), which was added by section 914 of FIRREA, requires officers and directors for a *de novo* to be approved by the OTS.⁵ In addition, the OTS’s regulations regarding transactions with affiliates and conflicts of interest have been substantially revised due to the incorporation, through section 11 of the Home Owners’ Loan Act (HOLA),⁶ of the substance of sections 23A, 23B, 22(g) and 22(h) of the Federal Reserve Act (FRA). Finally, the OTS’s policy concerning net worth maintenance agreements also has changed; such agreements are no longer required in the context of *de novo* applications.

Although the Policy Statement has been amended over the years to integrate some of these changes in the law,⁷ a thorough revision is now warranted to conform the OTS’s *de novo* chartering policies with the totality of significant statutory and regulatory changes that have recently occurred.

current OTS Policy Statement. The definition excludes “any entity the business of which has been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association.” See 12 CFR 571.6(g). Thus, the provisions of the Policy Statement do not apply to such conversions. The requirements of the qualified thrift lender test do, however, apply. For purposes of the qualified thrift lender test, the term “*de novo* association” includes any newly chartered thrift (including a bank that converts to a thrift charter). This result is consistent with the intent and purpose of the qualified thrift lender test. See OTS Chief Counsel’s Op., March 11, 1992.

³ Pub. L. No. 101-73, 103 Stat. 183 (1989).

⁴ Pub. L. No. 102-242, 105 Stat. 2236 (1991).

⁵ See OTS Thrift Bulletin No. 45 (April 25, 1990).

⁶ 12 U.S.C.A. 1468 (West Supp. 1994).

⁷ See 48 FR 51270 (November 7, 1983); 48 FR 54320 (December 2, 1983); 54 FR 49411 (November 30, 1989).

¹ Unless otherwise indicated, all references to specific parts and sections in text will be to title 12 of the Code of Federal Regulations.

² A bank or other depository institution that converts to a thrift charter is not a *de novo* association, as that term is defined under the

The OTS, therefore, proposes to remove obsolete statutory references, eliminate redundancy, enhance where possible consistency with the policies of other federal banking agencies, clarify the OTS's most recent policy considerations, and generally provide for more flexible standards for processing applications for the establishment of *de novo* federal savings associations. The OTS also intends to recodify these provisions as part of its regulations on the incorporation of federal savings associations.

II. Statutory and Regulatory Requirements

A. Statutory Requirements

The statutory chartering and insurance framework initially established by FIRREA provided that the FDIC could insure the accounts of a *de novo* federal savings association upon application by the savings association and upon receipt by the FDIC of a certificate issued by the Director of the OTS.⁸ The OTS, as chartering authority for federal savings associations, was required to certify to the FDIC that it had considered certain factors, set forth at section 6 of the Federal Deposit Insurance Act (FDIA), in granting a federal thrift charter. These factors included: (1) the financial history and condition of the association; (2) the adequacy of its capital structure; (3) its future earnings prospects; (4) the character and fitness of its proposed management; (5) the risk presented to the insurance fund; (6) the convenience and needs of the community to be served; and (7) whether the association's proposed corporate powers would be consistent with the purposes of the FDIA.⁹

FDICIA removed this certification requirement. Instead, a *de novo* federal savings association may obtain insurance of its accounts "upon application and examination by the [FDIC] and approval by the [FDIC] Board of Directors * * *."¹⁰ In acting on the application for insurance, the FDIC Board is required to consider the statutory factors enumerated at section 6 of the FDIA and set forth above. FDICIA made no changes to the section 6 factors. The FDIC has issued a Statement of Policy Regarding Applications for Deposit Insurance (FDIC Policy Statement) which establishes the standards used by the FDIC in granting deposit insurance and

provides guidelines for making applications for insured status.¹¹

Although the OTS is no longer required to certify to the FDIC that it has considered the factors in section 6 of the FDIA, section 5(e) of the HOLA¹² requires the OTS to make findings that resemble the section 6 factors before granting a federal charter. Section 5(e) of the HOLA requires the OTS to determine: (1) the character of the organizers; (2) the need for the association in the community to be served; (3) the reasonable probability of the association's usefulness and success; and (4) whether the association can be established without undue injury to existing local thrift and home financing institutions. In addition, pursuant to the Community Reinvestment Act of 1977¹³ (CRA), the OTS must assess the new institution's proposed CRA statement and plans for meeting the credit needs of its community (including low- and moderate-income neighborhoods) and must take that assessment into account in determining whether to grant a charter.

B. Current OTS Policy Statement

Minimum Capitalization Requirement and Business and Investment Plans. The current OTS Policy Statement sets the minimum level of capitalization for *de novo* institutions at \$3 million, with a provision that the Office will consider approving a *de novo* applicant having at least \$2 million if certain criteria are met. Among those criteria are that the applicant would be located in, and intended to serve, an area with a population not exceeding 50,000, and that the applicant will be community-oriented.

The current OTS Policy Statement provides that the Office must consider certain factors in order for an applicant to obtain insurance of accounts by the FDIC. Among the factors to be considered are the association's future earnings prospects, the general character and fitness of the association's management, and the convenience and needs of the community to be served. The Office may grant a new charter only if, among other things, in the judgment of the Director a necessity exists for such association in the community to be served.

Policies Pertaining to Management Officials. The current OTS Policy Statement requires controlling shareholders to personally agree to

maintain the association's required regulatory capital for a minimum of five years. It also contains provisions requiring the filing of a plan to identify areas where conflicts of interest and abuse of corporate opportunity may occur.

Standard Approval Conditions. Currently, standard conditions on application approvals are not listed in the policy statement. Standard conditions, however, are imposed for all approvals of *de novo* applications and are contained in the OTS's Applications Processing Handbook.

III. Description of Proposed Revisions

A. Deletion of Obsolete Statutory References and Deletion of Certain Duplicative Factors

The proposal would delete obsolete statutory references. Current § 571.6(b) contains language requiring that the OTS certify to the FDIC that it has considered the factors listed under section 5(a)(2) of the FDIA.¹⁴ Since FDICIA eliminated this certification requirement from the statute, we propose a parallel deletion from the rule. These pre-FDICIA certification requirements are also contained in §§ 543.2(g)(2) and 552.2-1(b)(2), which address the organization of federal mutual and federal stock institutions, respectively. We similarly propose to delete these sections in their entirety.

The proposal would also delete current section 571.6(b)(2), which contains language regarding certain factors considered in evaluating applications to organize a federal savings association. Among others, these factors require the agency to consider whether there is a reasonable probability of the association's usefulness and success, and whether, in the judgment of the Director of the OTS, a necessity exists for the association in the community to be served. These factors are duplicative of the factors that already appear in sections 543.2(g)(1) and 552.2-1(b)(1).

B. Other Proposed Revisions

Minimum Capitalization and Business Plan Requirements. The proposal revises the minimum capitalization and business plan requirements for *de novo* applicants. When the Policy Statement was first adopted, since *de novo* applicants did not have a proven "track record" or a supervisory history, the FHLBB believed it was appropriate to set a minimum level of capitalization for *de novo* associations. In addition, the FHLBB

¹¹ 57 FR 12825 (April 13, 1992).

¹² 12 U.S.C.A. 1464(e) (West Supp. 1994).

¹³ Community Reinvestment Act of 1977, Pub. L. No. 95-128, tit. 8, sec. 802, 91 Stat. 1147 (codified at 12 U.S.C. 2901, *et seq.* (1980)).

¹⁴ 12 U.S.C.A. 1815(a)(2) (West 1989).

⁸ 12 U.S.C.A. 1815(a)(2) (West 1989).

⁹ 12 U.S.C.A. 1816 (West 1989).

¹⁰ 12 U.S.C.A. 1815 (a)(1) (West Supp. 1994).

believed that *de novo* associations, as new companies, presented risks not associated with other institutions. These minimum capitalization requirements were intended to ensure that a *de novo* institution commenced operations in a safe and sound manner and to protect the insurance fund. To the same end, the FHLBB also required submission of detailed information on the institution's business plan for its first few years of operation, including descriptions of proposed management, management policies, investment policies and operations.

Minimum capitalization and business plan requirements remain appropriate safeguards because of the absence, in the case of a *de novo*, of any operating or supervisory history. However, those requirements would be revised by today's proposal.

Under the proposal, the standard minimum capitalization requirement would be decreased from \$3 million to \$2 million. The OTS could impose a higher or lower capital requirement on a case-by-case basis. The proposal would conform the minimum capitalization requirement to that of the insuring agency, the FDIC,¹⁵ while providing flexibility and information vital to the OTS in making its statutorily required determinations. It also would streamline the *de novo* application process and reduce the financial burden on applicants wishing to organize federal *de novo* institutions.

In securities offerings for a *de novo* institution, the OTS proposes that all securities of a particular class in the initial offering be sold at the same price. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of the securities offering.

The business plan provisions have been revised to consolidate certain provisions, to bring the requirements up-to-date, and to delete obsolete statutory references. The proposal clarifies the required elements of the business plan, including descriptions of lending, leasing and investment activity, plans for meeting the qualified thrift lender requirements, deposit, savings and borrowing activity, compliance with the CRA, continuation or succession of competent management, and information on the proposed

institution's ability to maintain required minimum regulatory capital levels.

C. Policies Pertaining to Management Officials

Capital Maintenance Requirements. The proposal would delete the current capital maintenance requirements in order to conform to the current OTS policy. Current § 571.6(d)(4) requires controlling shareholders to agree to maintain a *de novo* association's required regulatory capital level for a minimum of five years. Controlling shareholders are also prohibited from pledging more than 50% of their stock to secure borrowed funds to finance their stock purchase for a period of three years.¹⁶ Under the proposal, the provisions requiring controlling shareholders to execute capital maintenance agreements have been deleted and replaced by a new provision that requires a certification by legal counsel that the establishment of the *de novo* institution has been consummated in accordance with the provisions of all applicable laws and regulations, the application, and the Office's order. These changes will streamline the application process, conform the process to current OTS rules and policy and will reduce the burden on organizers of a federal *de novo* institution.

Since 1991, it has been the OTS's policy generally not to require prospectively the execution of capital maintenance agreements by controlling shareholders of a *de novo* institution. Under the Prompt Corrective Action provisions of section 38 of FDICIA,¹⁷ which were enacted in 1991, and as implemented by OTS regulations,¹⁸ the OTS may not approve a capital restoration plan for any "undercapitalized" institution unless each company that controls the institution guarantees the institution's compliance with the plan until it has been adequately capitalized for four consecutive quarters and unless each such company provides adequate assurances of performance of the plan. Thus, sufficient statutory and regulatory protections currently exist to assure that savings associations maintain adequate capital and to deal with capital deficiencies promptly and thoroughly.

Conflicts of Interest and Usurpation of Corporate Opportunity. The proposal would delete provisions requiring the organizers of a *de novo* to file a plan identifying areas where conflicts of interest and abuse of corporate

opportunity may occur and describing specific policies and actions that the association will institute to avoid that abuse. Existing statutory and regulatory requirements obviate the need for this information in the application process. For instance, section 571.9, the OTS's "Corporate Opportunity Statement of Policy," makes clear that directors, officers and other persons having the power to direct the management of a savings association stand in a fiduciary relationship to the association and its accountholders or shareholders that requires them to avoid conflicts of interest and self-dealing.

The Corporate Opportunity Statement of Policy prohibits usurpation of corporate opportunities by insiders, if taking advantage of a business opportunity would breach their fiduciary obligations. The purpose of the Corporate Opportunity Statement of Policy, which was intended "to codify existing common law fiduciary principles,"¹⁹ is to protect savings associations from managers and controlling parties who might divert beneficial business opportunities from their savings associations to themselves or their affiliates in violation of applicable fiduciary rules.²⁰

Concerns relating to the avoidance of conflicts of interest and usurpation of corporate opportunity are addressed not only through the Corporate Opportunity Statement of Policy, but also by the statutory requirements governing transactions between savings associations and their affiliates and insiders. Transactions with affiliates and insider transactions at savings associations have become subject to the comprehensive statutory and regulatory framework that applies to banks under sections 23A, 23B, 22(g) and 22(h) of the Federal Reserve Act²¹ (FRA). These sections of the FRA were made applicable to savings associations by provisions of FIRREA and by FDICIA. The OTS has substantially revised its regulations²² to implement the statutory restrictions of sections 23A, 23B, 22(g) and 22(h) of the FRA.

The current statutory and regulatory structure thus eliminates the need for a separate statement of these restrictions in rules governing the organization of *de novo* institutions. Therefore, the proposed regulation deletes the requirements for the filing of plans for

¹⁹ 39 FR 6696 (February 22, 1974).

²⁰ See also OTS's Statement Concerning the Responsibilities of Directors and Officers of Insured Depository Institutions (November 16, 1992).

²¹ 12 U.S.C.A. 371c, 371c-1, 375 and 375b (West 1989 and Supp. 1994). See also 12 U.S.C.A. 1468 (West Supp. 1994).

²² See 12 CFR 563.41, 563.42 and 563.43.

¹⁵ See FDIC Policy Statement, 57 FR 12822 (April 13, 1992).

¹⁶ See 12 CFR 571.6(d)(3)(iii).

¹⁷ 12 U.S.C.A. 1831o(e)(2)(C) (West Supp. 1994).

¹⁸ 12 CFR 565.5.

avoidance of conflicts of interest and usurpations of corporate opportunity.

Standard Approval Conditions. The proposed rule revises and codifies the standard approval conditions for *de novo* institutions. The OTS has generally imposed approval conditions in order to ensure compliance with its substantive regulations, to address unique supervisory concerns, and to impose subsequent oversight by the OTS regional offices. However, a number of these standard conditions, such as those imposing specific controls on insider and affiliate transactions, have become redundant or obsolete. For example, a previously imposed standard condition required the submission of extensive background material by controlling shareholders, directors and officers both prior to and after consummation of the transaction. Current statutory and policy requirements already adequately address this issue and a standard condition is not necessary.²³ However, the proposal retains a requirement that provides for the collection of information on the performance of management, which gives the OTS an additional supervisory tool for institutions without proven track records.

Recodification of Requirements. Under the proposed amendment, the requirements for creation of a *de novo* institution will be moved from part 571, Statement of Policy, to part 543, Incorporation, Organization, and Conversion of Federal Mutual Associations, and incorporated into part 552, Incorporation, Organization, and Conversion of Federal Stock Associations, by cross-reference to part 543. This recodification will make these provisions easier to locate, as they will be grouped with other federal savings association regulations rather than with policies affecting all savings associations. Recodifying these provisions as regulations should also minimize any confusion about their status as requirements, rather than only guidance.

IV. Request for Comment

The OTS requests comments from interested parties on all aspects of this proposal. In addition, the OTS is specifically soliciting comment on

²³ Section 32 of the FDIA, which was added by FIRREA, requires certain savings associations and thrift holding companies to notify the OTS and provide it with relevant information prior to adding or replacing directors or hiring senior executive officers if, among other things, the association has been chartered for less than two years. See 12 U.S.C.A. 1831i (West 1989); 58 FR 45421 (August 30, 1993) (OTS final rule implementing section 32); OTS Thrift Bulletin No. 45 (April 25, 1990).

whether or not there should be a deletion or revision of the current section 571.6(c), which contains requirements regarding the composition of the board of directors. This section was added in 1984.²⁴ It specifically provides, among other things, that a majority of the board of directors must be representative of the state in which the association is located, and that it must be diversified and composed of individuals with varied business and professional experience. The FDIC Policy Statement²⁵ and that of the Office of the Comptroller of the Currency (OCC) have similar requirements. The OCC Policy Statement states that local directors encourage "community support."²⁶ The OTS is requesting comment on whether the explicit requirements for a board of directors with diverse backgrounds and ties to the *de novo's* home state continue to serve a useful purpose. The OTS also is requesting comment on the factors currently in its Policy Statement that are to be considered in judging whether the board of directors meets these requirements.

V. Executive Order 12866

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

VI. Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The reporting requirements in this proposed rule are found in 12 CFR 543.3. The information is needed by the OTS to reduce the risk of loss to newly-chartered institutions and the Savings Association Insurance Fund.
Estimated number of respondents: 10
Estimated average burden per respondent: 110 hours
Estimated annual frequency of responses: 1
Estimated total annual reporting burden: 1100 hours

²⁴ 49 FR 41243 (October 22, 1984).

²⁵ 57 FR 12825 (April 13, 1992).

²⁶ 12 CFR 5.20(d)(3)(iv)(B).

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal does not impose additional burdens or requirements upon a small entity that files an application to become a *de novo* institution.

List of Subjects

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby proposes to amend parts 543, 552, and 571, chapter V, title 12 of the Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 543.2 [Amended]

2. Section 543.2 is amended by removing and reserving paragraph (g)(2).

3. A new § 543.3 is added to read as follows:

§ 543.3 "De Novo" applications for a Federal savings association charter.

(a) **Definitions.** For purposes of this section, the terms "*de novo* association" and "*de novo* applicant" mean any savings and loan association, savings association, or savings bank that has submitted to the Office an application for permission to organize a Federal savings association, the business of which has not been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by the *de novo* association for a period of three years.

(b) **Minimum initial capitalization.** (1) A *de novo* association must have not

less than two million dollars in initial capital stock (stock institutions) or initial pledged savings or cash (mutual institutions), except as provided in paragraph (b)(2) of this section. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of a securities offering. In securities offerings for a *de novo* institution, all securities of a particular class in the initial offering shall be sold at the same price.

(2) On a case by case basis, the Director may, for good cause, approve a *de novo* applicant that has less than two million dollars in initial capital or may require an applicant to have more than two million dollars in initial capital.

(c) *Business and investment plans of newly-chartered associations.* (1) In order for the Office to make the determinations required under section 5(e) of the Home Owners' Loan Act, a *de novo* applicant for a Federal charter shall submit a business plan describing, for the first three years of operation, the major areas of operation, including, but not limited to:

(i) Lending, leasing and investment activity, including plans for meeting Qualified Thrift Lender requirements within the timeframes established in 12 CFR 563.50(d);

(ii) Deposit, savings and borrowing activity;

(iii) Interest-rate risk management;

(iv) Internal controls and procedures;

(v) A Community Reinvestment Act statement, pursuant to 12 CFR part 563e, and plans for meeting the credit needs of the proposed *de novo*'s community (including low- and moderate- income neighborhoods);

(vi) Projected statement of condition; and

(vii) Projected statement of operations.

(2) The business plan shall provide for the continuation or succession of competent management subject to the approval of the Regional Director, and shall further provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director. The business plan shall demonstrate the proposed institution's ability to maintain required minimum regulatory capital under 12 CFR parts 565 and 567 for the duration of the plan.

(d) *Composition of the board of directors.* (1) A majority of a *de novo* association's board of directors must be representative of the state in which the

savings association is located. The Office generally will consider a director to be representative of the state if such director resides, works or maintains a place of business in the state in which the savings association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) that incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company that does not have substantial independent economic substance, the foregoing standards will be applied to the holding company.

(e) *Management Officials.* (1) Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an application for permission to organize and subsequent to issuance of a Federal savings association charter to the association by the Office, any individual or group of individuals acting in concert, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this section, shall submit a Biographical and Financial Report to the Regional Director.

(2) Each new director of a *de novo* institution shall sign an "Oath of Director for Savings Associations." The original of the document, executed, shall be submitted to the Regional Director.

(f) *Standard conditions.* The following are standard conditions that are imposed in any Office approval order relating to a *de novo* application:

(1) The *de novo* institution must receive all required regulatory approvals prior to the establishment of the *de novo* institution, with copies of all such approvals supplied to the appropriate Regional Office.

(2) The *de novo* institution must represent that there have been no substantial changes with respect to the *de novo* institution as disclosed in the information currently before the Office, including but not limited to changes in directors, shareholders, or in the business plan. The *de novo* institution must also represent that no additional information that would have a materially adverse bearing on any feature of the application has been brought to the attention of the applicant.

(3) The *de novo* institution shall provide for employment of senior executive officers who shall be charged with the full administrative and managerial responsibilities of the *de novo* institution under policies established by its board of directors. The performance of such individuals will be periodically reviewed and their continued employment will be subject to approval by the appropriate Regional Director, or his designee, for a period of three years.

(4) If applicable, the *de novo* institution shall submit to the appropriate Regional Office a list of stockholders of the *de novo* institution, and holders of any stock options and/or warrants, including each individual stockholder's name, address, amount of stock purchased, and principals of companies owning stock in the *de novo* institution, total purchase price, and any affiliation between stockholders.

(5) No later than 10 calendar days from the date of the consummation of the establishment or acquisition of the *de novo* institution, the *de novo* institution shall file, with the appropriate Regional Office, a certification by legal counsel stating the effective date(s) of its insurance and its opening, the exact number of shares of stock, if applicable, of the *de novo* institution, and that the establishment (or acquisition, if appropriate) of the *de novo* institution has been consummated in accordance with the provisions of all applicable laws and regulations, the application, and the Office's order.

(g) *Supervisory transactions.* This section does not apply to any application for a Federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes, or in connection with

applications for Federal charters for interim *de novo* associations chartered for the purpose of facilitating mergers or holding company reorganizations.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

4. The authority citation for part 552 continues to read as follows:

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

§ 552.2-1 [Amended]

5. Section 552.2-1 is amended by adding the phrase "and § 543.3" after the phrase "of 543.2" in paragraph (a), and by removing and reserving paragraph (b)(2).

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 571—STATEMENTS OF POLICY

6. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.6 [Removed]

7. Section 571.6 is removed.

Dated: August 25, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95-5315 Filed 3-3-95; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

Delegation of Authority

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The Administrator of the Federal Aviation Administration (FAA) is delegating the authority to deny a petition for rulemaking to the Office or Service that has jurisdiction over the specific parts of Federal Aviation Regulations (Title 14 of the Code of Federal Regulations) for which a petition is submitted. The Administrator will continue to be the decision point for petitions for reconsideration. This delegation will enable the FAA to respond more effectively to the large number of petitions for rulemaking submitted by the aviation community and the general public.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Joseph Hawkins, Office of Rulemaking (ARM-2), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9680.

SUPPLEMENTARY INFORMATION: The FAA has over 130 petitions for rulemaking on which it has been unable to take action primarily due to higher priorities and insufficient resources. Currently these petitions must be reviewed personally by the Administrator before action on them is complete. This involves significant participation of individuals at all levels of the agency.

In the case of a grant of a petition, personal involvement by the Administrator is appropriate, since the action of granting a petition results in the initiation of rulemaking proposing to amend a regulation. The authority to issue regulations has not been delegated below the level of the Administrator except for routine rulemaking, such as airworthiness directives and airspace actions. However, in a case where the responsible agency program office determines that a petition should be denied, it is unnecessary to require the personal involvement of the Administrator. For this reason, authority to issue the denial of a petition for rulemaking is being delegated to the head of the FAA office or service involved. This authority will be exercised with the concurrence of the Office of the Chief Counsel as to form and legality. In a case where a petitioner is not persuaded by the agency's rationale for denying the petition, the petitioner may request reconsideration of the denial by the Administrator.

Consistent with Vice President Gore's reinventing government initiatives and the National Performance Review, the Administrator is making this delegation to streamline the process for addressing petitions for rulemaking. It should achieve the following results: (1) Faster response to certain petitioners on the merits of their petitions; (2) a reduction in resources required for processing petitions by eliminating certain levels of review, unless such review becomes necessary due to special circumstances; (3) a reduction of the current backlog.

Rulemaking

The FAA also will initiate rulemaking to amend 14 CFR part 11 (General Rule-Making Procedures) to reflect this delegation of authority. This delegation, however, is being made immediately in order to begin improving the process as quickly as possible.

Delegation

Accordingly, the authority to deny a petition for rulemaking is hereby delegated to the head of the FAA office or service involved.

Issued in Washington, DC on February 14, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95-5427 Filed 3-3-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-AAL-10]

Amendment to Class E Airspace; Cordova, AK

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Cordova, AK, to accommodate Visual Flight Rules (VFR) traffic in the Cordova area, landing and departing from the Cordova Muni (CKU) airport located about 10 miles west of Merle K. "Mudhole" Smith (CDV) airport. Due to terrain limitations, VFR traffic must pass through the northern portion of the Cordova Class E surface area. When the Class E surface area is below basic VFR and Special Visual Flight Rule (SVFR) operations are being conducted, numerous delays are experienced. The area will be depicted on aeronautical charts to provide a reference for pilots operating under VFR.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, AAL-531, 222 West 7th Avenue #14, Anchorage, AK, 99513-7587; telephone: (907) 271-5898.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E surface area at Cordova, AK (60 FR 2044). The proposed action would provide required controlled airspace for Instrument Flight Rules (IFR) procedures at the Merle K. "Mudhole" Smith Airport and allow Visual Flight Rules (VFR) aircraft to proceed through the northern portion of the existing Cordova Class E surface area. The reduction in Class E surface area will segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be