1. In § 1002.77(i)(1), the words: ''published in the Federal Register and''.

2. In § 1002.77(i)(3), the words: ''approval, and shall be published in the Federal Register following such''.

In addition, the following provisions of the rules and regulations issued under the order do not need to be published in the annual Code of Federal Regulations:

3. Subpart—Conduct of Hearings Relating to Suspended Cooperative Payments (§§ 1002.300 through 1002.353).

4. Subpart—Cooperative Payment Rules and Regulations Approval of Tentative Amendment (§§ 1002.400 through 1002.444).

Findings and Determinations

This action terminates the provisions which require that in two particular situations the rules and regulations issued by the market administrator of the New York-New Jersey order (Order 2) be published in the Federal Register. Additionally, the two Order 2 subparts which contain the market administrator's rules and regulations related to cooperative payments will no longer be published in the annual Code of Federal Regulations.

The market administrator will continue to issue any specific rules and regulations that are needed to effectuate the provisions of the order regulating the handling of milk in the Order 2 marketing area. These rules and regulations are, and will continue to be, issued to facilitate the administration of the order and are updated as necessary, published, and made available to interested parties. Industry representatives may request a copy of the rules and regulations, which must be approved by the Secretary, from the market administrator at any time.

This action will not change the rules and regulations previously issued by the Order 2 market administrator and in effect now to carry out the regulatory provisions of the order. Order 2 establishes specific procedures that must be followed by the market administrator in revising the rules and regulations. It also sets forth methods whereby interested parties are informed about proposals to change the rules and regulations and how they may participate in the rulemaking process.

The printing and procedural functions involving the implementation or revision of the rules and regulations concerning cooperative payments for Order 2 are accomplished by the market administrator in the performance of his duties. These matters are being adequately performed by the Order 2 market administrator. Thus, it is not necessary to replicate the market administrator's efforts by requiring that they be published in the Federal Register or that the Order 2 subparts containing the rules and regulations be published in the Code of Federal Regulations each year. Furthermore, this action is consistent with the President's regulatory reform initiative.

Accordingly, with regard to the termination of the aforesaid provisions of the order as hereinafter set forth, it is hereby found in accordance with the Act that these provisions no longer tend to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is hereby found and determined that it is unnecessary to postpone the effective date of this action until 30 days after the publication of this document in the Federal Register because this action was previously taken on an interim basis in a document that was published in the Federal Register on December 4, 1995 (60 FR 62018). Interested parties had until January 3, 1996, to file their written comments to the interim action and no comments were received. This document concludes the proceeding.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1002 is amended as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

Accordingly, the interim final rule amending 7 CFR part 1002 which was published at 60 FR 62018 on December 4, 1995, is adopted as a final rule without change.

Dated: March 13, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–6695 Filed 3–19–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 96–06]

RIN 1557–AB48

Real Estate Lending and Appraisals

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules governing real estate lending as part of its Regulation Review Program. Consistent with the goals of the Program, the final rule modernizes and clarifies the rules, reduces unnecessary regulatory burdens, and applies regulatory requirements only where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the OCC.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT: Laura Goldman, Attorney, Bank Activities and Structure (202) 874–5300; Thomas Watson, National Bank Examiner, Credit & Management Policy (202) 874–5170; Frank R. Carbone, National Bank Examiner, Credit & Management Policy (202) 874–5170; Roland G. Ullrich, National Bank Examiner, Consumer and Fiduciary Compliance (202) 874–4866; or Mark Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090, 250 E Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC has reviewed 12 CFR part 34 as another component of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply. Consistent with these goals, the OCC intends for this final rule to reduce regulatory costs and other burdens on national banks by eliminating regulatory requirements that are neither essential to maintaining the safety and soundness of national banks nor needed to accomplish the OCC's statutory responsibilities.

The Proposal

On July 7, 1995, the OCC published a notice of proposed rulemaking (NPRM or proposal) (60 FR 35353) to revise subparts A (General), B (Adjustable-Rate Mortgages) (ARMs), and E (Other Real Estate Owned) (OREO) of 12 CFR part 34.[1] In the NPRM, the OCC proposed to

[1] As explained in the preamble to the NPRM, the OCC did not propose to amend subparts C (Appraisals) or D (Real Estate Lending Standards) because the OCC recently adopted these subparts on an interagency basis and the OCC wishes to gather additional information on their effectiveness before deciding whether to recommend an interagency effort to revise them.

permit the suspension of the disposition period for leases that are treated as OREO if a bank, acting in good faith, has entered into a non-coterminous sublease (i.e., a sublease that has a term shorter than the remainder of the master lease's term).[2] Following termination of a non-coterminous sublease, a bank would have the same amount of time in which to dispose of the property that the bank had when it entered into the sublease. The proposal also summarized the OCC's general approach to questions of Federal preemption of State laws governing real estate lending while emphasizing that this clarification did not expand the scope of State law preemption beyond what appeared in the former rule. Finally, the proposal removed redundant or otherwise unnecessary provisions from the former rule and made several other changes intended to improve the rule's clarity.

The Final Rule and Comments Received

The OCC received 12 comments. Most commenters supported the proposed changes. Comments were received from seven national banks, two bank holding companies that control national banks, two trade groups, and one law firm. Several commenters, while supporting the proposal, suggested that the OCC make additional changes, as discussed later in this preamble.

Three commenters raised issues concerning appraisals (subpart C of part 34) while two offered suggestions concerning the real estate lending standards (subpart D). The OCC will take these comments into consideration when reviewing those subparts at a later date.

One commenter suggested that section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act (12 U.S.C. 43) (Riegle-Neal Act) requires the OCC to resubmit for public comment proposed §§ 34.4, 34.5, 34.21, and 34.23, which contain statements of preemption of various State laws. Section 114 requires, *inter alia,* that the OCC publish notice of requests for the OCC to issue opinions on whether Federal law preempts certain types of State laws, or when the OCC, on its own initiative, proposes to issue such an opinion.

The OCC does not believe that section 114 applies to this rulemaking. First, no prior notice under section 114 is required for preemption issues that are essentially identical to those on which the agency previously has opined. As was explained in the NPRM, each of the sections at issue in the proposal is substantively identical to those found in the existing rule.[3] Second, the OCC has followed formal rulemaking procedures in adopting and amending part 34, giving the public ample opportunity to comment on each section. Third, the OCC is adopting a rule, not issuing a preemption opinion or interpretation. Thus, the section 114 procedures do not apply.

The following discussion summarizes the amendments to part 34 and the remaining comments.

Subpart A—General

Purpose and Scope (§ 34.1)

A national bank may make real estate loans pursuant to 12 U.S.C. 371 and 12 U.S.C. 24 (Seventh). Part 34 formerly identified (in § 34.3) loans that are not considered ''real estate loans'' for purposes of 12 U.S.C. 371 but which national banks nevertheless may make pursuant to 12 U.S.C. 24 (Seventh). The proposal removed the list in § 34.3, and eliminated cross-references in § 34.1 to that list. However, since former paragraphs (f) and (g) of § 34.3 contained an exception to the regulation's scope, the proposal incorporated the substance of those provisions into the proposed ''Scope'' section of the revised regulation. The proposal also relocated the text authorizing national banks to engage in real estate-related transactions from § 34.1(a) to proposed § 34.3. This change was proposed to conform the order of subpart A of part 34 to that of other OCC rules. Finally, the proposal set forth a statement of the purpose of part 34.

The OCC received no comments on this section, which is adopted as proposed with stylistic changes and one clarification. The final rule adds a statement clarifying that part 34 applies to national banks and their operating subsidiaries, except where otherwise noted (*see, e.g.,* 12 CFR 34.21(b)).

Definitions (§ 34.2)

The proposal placed definitions used in subpart A in one location. The definition of ''due-on-sale clause'' was moved from former § 34.4 to proposed § 34.2 without any change to the definition's substance. The proposal added definitions of ''State'' and ''State law limitations'' to avoid restating of the full scope of preemption in every section that refers to preemption.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

General Rule (§ 34.3)

The proposal set forth the general rule authorizing national banks to engage in real estate lending and related transactions, and relocated this general rule to a new section to conform the order of subpart A of part 34 to that followed in other OCC regulations.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Loans Not Constituting Real Estate Loans (former § 34.3—Removed)

Former § 34.3 listed several types of loans that are not considered real estate loans for purposes of part 34, but are permissible for national banks under 12 U.S.C. 24 (Seventh). The former provision was confusing and unnecessary. Therefore, the proposal removed § 34.3 in its entirety.

The OCC received no comments on this proposed removal, and accordingly adopts the proposed change.

Applicability of Law (§ 34.4)

The proposal retained a statement of specific areas where Federal law preempts State law in order to provide continued guidance in this area. The proposal removed the vague reminder, found at former § 34.2(b), that national banks must comply with applicable laws, but added, in § 34.4(b), a general statement of the OCC's position with respect to preemption in order to clarify that the list of areas where State law is preempted, carried over from the former rule, is not necessarily exhaustive. The proposed rule clarified that the OCC will apply traditional principles of Federal preemption when determining whether a State law affecting real estate lending is preempted. Under these principles, State laws apply to national banks unless the State law expressly or impliedly conflicts with Federal law, the State law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law, or Federal law is so comprehensive as to evidence a Congressional intent to occupy a given field.[4]

[2] Under both the former rule and the NPRM, a coterminous sublease is deemed to be an effective disposition of a lease that has been transferred to OREO.

[3] *See* 60 FR at 35354, 35355, and 35356.

[4] The Supreme Court's most recent discussion of the principles of Federal preemption may be found in *Gade* v. *National Solid Wastes Management Ass'n,* 120 L. Ed. 2d 73 (1992), in which the Court stated:

As both the majority and dissent acknowledge, we have identified three circumstances in which a federal statute pre-empts state law: First, Congress can adopt express language defining the existence and scope of pre-emption. Second, state law is pre-empted where Congress creates a scheme of federal regulation so pervasive as to leave no room for supplementary state regulation. And third, ''state law is pre-empted to the extent that it actually conflicts with federal law.'' This third form of pre-

Continued

Other than the comment summarized earlier concerning the application of section 114 of the Riegle-Neal Act (*see* text following ''The Final Rule and Comments Received,'' above), the OCC received no comments on this provision, which is adopted as proposed with minor stylistic edits.

Due-On-Sale Clauses (§ 34.5)

The proposal modified this section to improve clarity and to remove unnecessary restatements of statutory provisions. No change was proposed to the substance of those descriptions.

Other than the comment summarized above concerning the application of section 114 of the Riegle-Neal Act (*see* text following ''The Final Rule and Comments Received,'' above), the OCC received no comments on this provision. The final rule makes minor stylistic edits to the provision as proposed and removes the definition of the term ''lender,'' given that this term is not used in the final rule.

Subpart B—ARMs

Definitions (§ 34.20)

The proposal amended the definition of ''ARM loan'' by deleting the provisions, found in former § 34.5(a)(2), that exempt fixed-rate extensions of credit that are payable either on demand or without any interim amortization. The proposal made stylistic changes to the definition of ''ARM loan,'' and removed the definition of ''consumer credit'' because other changes to the rule make that definition unnecessary. In order to consolidate all definitions used in subpart B, the proposal relocated to § 34.20 the definitions of ''affiliate'' and ''subsidiary'' formerly found in § 34.6(b). Finally, the proposal used the term ''renewal'' instead of ''refinance'' as that term was used in former § 34.5(a)(2) in order to avoid creating the impression that the OCC rule applies to refinancings as that term is narrowly defined in Regulation Z (Reg. Z, 12 CFR part 226) of the Board of Governors of the Federal Reserve System (Federal Reserve).

In addition, the proposal sought comment on whether it remains necessary or appropriate to continue to exempt from the definition of ''ARM loan'' fixed-rate loans that are payable at the end of a term that, when added to all terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule. This exemption is similar, but not identical, to the treatment of variable-rate transactions in Reg. Z. Specifically, the OCC sought comment on (1) whether the difference between part 34 and Reg. Z poses an unnecessary burden, and (2) whether commenters favor amending part 34 to eliminate the difference, notwithstanding that such approach would result in more loans being subject to the requirement that a bank use an index beyond its control.

The OCC received three comments in response to the proposed changes and the request for comments. Those commenters responding to the issues raised by the exemption from the definition of ''ARM loan'' requested that the OCC retain the exemption in the final rule. One commenter noted that the highlighted difference between Reg. Z and part 34 does not pose an unnecessary burden and that the bank already has systems in place to deal with the difference. Another commenter noted that removing the exemption would add a new layer of confusion to the affected loans and would have the result of requiring banks to tie the loans to an independent index. For the reasons advanced by the commenters, and in light of the absence of any expression of problems experienced by national banks, the OCC is retaining the exemption.

Another commenter suggested that the OCC should expand the definition of ''ARM loan'' to be consistent with the definition of ''alternative mortgage transaction'' found in the Alternative Mortgage Transaction Parity Act (Parity Act) (12 U.S.C. 3801 *et seq.*).[5] The suggested change would apply the general rule stated in § 34.21 (which permits national banks to make, sell, purchase, participate in, or otherwise deal in ARM loans without regard to State law limitations on those activities) to a broader variety of loans, including home equity loans. The commenter advocating this change suggested that the former rule created a competitive disadvantage for national banks by authorizing fewer types of ARM loans than may be made by other types of lenders. No other commenter suggested that the definition of ''ARM loan'' presents a problem.

The OCC has determined not to make the suggested change to the definition of ''ARM loan.'' Historically, the OCC has confined the scope of its ARM lending rule to home-purchase loans.[6] While the OCC's ARM lending rule does not authorize home equity lending, such lending clearly is permissible under 12 U.S.C. 371, which permits any national banking association to ''make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate. * * *'' *Id.* at 371(a). Thus, national banks may make the types of loans that would be covered by the proposed expanded definition of ARM loan. If a national bank encounters a provision of State law that it believes is inappropriately restrictive, the bank may seek the OCC's opinion concerning whether Federal law preempts the provision of State law in question according to recognized principles of Federal preemption.

The final rule adopts the changes to § 34.20 as proposed in the NPRM, except that it relocates the definitions of ''affiliate'' and ''subsidiary'' from § 34.20 to § 34.21(b). This change from the proposal clarifies that only the provision concerning the purchase of loans not in compliance with part 34 (§ 34.21(b)) applies to a bank's affiliates and subsidiaries as these terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c). Generally speaking, part 34 applies to national banks and their operating subsidiaries, unless the OCC determines otherwise.

General Rule (§ 34.21)

The proposal made only minor changes to simplify the general rule, which provides that national banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in ARM loans, notwithstanding any State law to the contrary that applies to these activities. The proposal intended no change in the former rule governing preemption of State law limitations on ARM lending. A national bank may

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emption, so-called actual conflict pre-emption, occurs either ''where it is impossible for a private party to comply with both state and federal requirements * * * or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' ''

120 L. Ed. 2d at 91 (Kennedy, J., concurring; citations omitted). The plurality and dissenting opinions in Gade contain essentially the same formulation. *See id.* at 84 and 95, respectively.

[5] The Parity Act defines ''alternative mortgage transaction'' as:

[A] loan or credit sale secured by an interest in residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a residential manufactured home * * * (A) in which the interest rate or finance charge may be adjusted or renegotiated; (B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or (C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation; described and defined by applicable regulation.

12 U.S.C. 3802(1).

[6] *See, e.g.*, 46 FR 18932, 18935 (March 27, 1981) (''The intent of the regulation is to improve the availability of mortgage funds for purchasing residential property and to provide protection to home purchases. The intent is not to regulate adjustable rate loans made for other purposes.'').

purchase or participate in ARM loans that were not made in accordance with the OCC's regulations, except that, as already noted, loans purchased from an affiliate or subsidiary must comply with part 34.

As noted earlier, the final rule relocates the definitions of ''affiliate'' and ''subsidiary'' to § 34.21(b) to clarify that these broadly encompassing definitions apply only in the limited circumstances specified in that section. The final rule otherwise adopts the proposal as published.

Index (§ 34.22)

Former § 34.7 required ARM loans that are subject to 12 CFR 226.19(b) to specify an index to which changes in the interest rate shall be linked. Under that section, the index is to be readily available to, and verifiable by, the borrower and beyond the control of the lending bank. Proposed § 34.22 made no changes to the substance of the former rule.

One commenter requested that the OCC drop the requirement of an independent index altogether, and suggested that the secondary market and competitive pressures will protect the consumer. The OCC has decided to keep the independent index, because the agency believes that the requirement provides a significant protection to the consumer and that it creates only limited burden on national banks.

Another commenter expressed concern that the former and proposed rules could be construed to prohibit rate changes based on such criteria as termination of employment, discontinuance of payment by a particular method, default, or termination of certain banking relationships by the customer. The commenter suggested that the OCC clarify that a national bank may decrease the interest rate at any time and increase the rate pursuant to a formula or schedule set forth in the relevant loan documents specifying the amount of the increase and the times at which, or circumstances under which, the increase may be made. The OCC agrees with the commenter that this clarification is appropriate, and has made the suggested change along with minor stylistic edits in the final rule.

Rate Changes (Former § 34.8—Removed)

Former § 34.8 set forth the limitation found in section 1204 of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. 100–86, 100 Stat. 552 (12 U.S.C. 3806(a)), which requires a consumer credit ARM loan to include a limitation on the maximum rate of interest that may apply during the term of the loan. The proposal removed § 34.8 because it is an unnecessary and potentially confusing restatement of the statute. Moreover, CEBA vests rulemaking authority with the Federal Reserve, which has implemented section 1204 of CEBA at 12 CFR 226.30.

The OCC received no comments on the proposed change, and the section is removed as proposed.

Prepayment Fees (§ 34.23)

The proposal made no substantive change to this section (former § 34.9), which provides that national banks may impose fees for prepayments of ARM loans, notwithstanding any State law to the contrary.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Disclosure (Former § 34.10—Removed)

This section requires a national bank that offers consumer ARM loans to provide the disclosures required by the Truth-in-Lending Act (15 U.S.C. 1601, et seq.), as implemented by the Federal Reserve in Reg. Z (12 CFR part 226). The OCC believes that the reminder to comply with Reg. Z disclosures when making a consumer ARM loan was appropriate when the OCC-imposed disclosure requirements were removed, but now is unnecessary. Accordingly, the proposal removed this section in its entirety. The proposal also removed the term ''consumer credit'' from the definition section (former § 34.5(b)) since it was used only in former § 34.10.

One person commented on this proposed change, requesting that the final rule retain the reference to Reg. Z in order to remind national banks that the Federal Reserve has promulgated rules governing disclosure requirements related to ARM lending. The OCC remains of the view that a general reminder that Reg. Z applies is unnecessary, and that the presence of a reminder about the applicability of a separate regulation in one portion of an OCC rule, but not in others, is potentially confusing. Therefore, this section is removed from the final rule.

Nonfederally Chartered Commercial Banks (§ 34.24)

Section 807(b) of the Garn-St Germain Act (Pub. L. 97–320, 96 Stat. 1545 (12 U.S.C. 3801 note)) requires the OCC to identify those provisions of its ARM regulation that are inappropriate for nonfederally chartered banks. In implementing section 807(b), the OCC determined that all of the provisions of subpart B were appropriate, and so stated in former § 34.11. Proposed § 34.25 retained this statement in order to comply with the statute, and removed certain unnecessary citations to statutory authority.

The OCC received no comments on this section, which is adopted as proposed with stylistic edits.

Transition Rule (§ 34.25)

The former rule (§ 34.12) provided that national banks were authorized to make or administer loans during a ''window period'' beginning on the date the former rule was adopted (March 11, 1988) and ending October 1, 1988, if the loans complied with the OCC rules in effect before the March 11, 1988 amendment. Following October 1, 1988, all ARM loans have been required to comply with part 34, as revised. The proposal retained most of the former rule but removed what are now unnecessary references to the window period.

The OCC received no comments on this section, which is adopted as proposed with stylistic edits.

Subpart C—Appraisals

The OCC did not propose any changes to the rules governing the use of appraisals. Accordingly, subpart C is not amended.

Subpart D—Real Estate Lending Standards

The OCC did not propose any changes to the real estate lending standards. Accordingly, subpart D is not amended.

Subpart E—OREO

Definitions (§ 34.81)

Former § 34.81 contained the definitions used in subpart E. The proposal made several changes to these definitions in addition to stylistic edits. First, proposed § 34.81 defined OREO to include only ''debts previously contracted'' (DPC) real estate and former banking premises, and removed the term ''covered transactions real estate'' from the definition of OREO (thereby rendering the definition of covered transactions real estate unnecessary). The proposal also removed the term ''transaction value'' and corresponding definition.

The OCC received no comments on these proposed changes, which are adopted as proposed with stylistic edits. However, one commenter suggested that the OCC make an additional change that was not proposed in the NPRM, namely, to exempt leases from the definition of OREO. This commenter noted that the proposal, which required a bank to dispose of OREO leases after the expiration of a non-coterminous sublease, would require the bank to track properties for an extended period

of time in order to insure that the bank ultimately complied with the disposition requirements. The commenter also raised a number of questions prompted by the NPRM, such as whether the existence of a sublease is sufficient despite the fact that a subtenant is delinquent and whether the sublease must be at market rates.

The OCC believes that long-term leases of real property can present many of the same risks that are presented by ownership of a fee simple interest and, therefore, that safety and soundness reasons dictate that leases be covered by the rules governing disposition of OREO. The commenter is correct in concluding that a bank that has entered into a non-coterminous sublease must dispose of the lease within the time remaining under the OREO disposition rules once the sublease expires. However, the OCC believes that the tracking burden associated with this disposition requirement is minimal and reasonable in light of the safety and soundness benefits derived by continuing to treat leases as OREO. Questions regarding the adequacy of a particular sublease will be addressed on a case-by-case basis. However, national banks are to exercise good faith in entering into non-coterminous subleases.

Holding Period (§ 34.82)

The proposal clarified, in § 34.82(b)(2), that the holding period begins on the date that a national bank ceases to use former banking premises without relocating the business formerly conducted there to another site. The proposed rule also made changes to improve clarity and to remove provisions that are redundant in light of 12 U.S.C. 29. The proposal relocated the requirement that a national bank dispose of OREO when prudent judgment dictates from § 34.83 (which addresses the *method* of disposition) to § 34.82 (which addresses *timing* of disposition). Finally, proposed § 34.82 retained a statement regarding a bank's obligation to dispose of OREO. This statement clarified that OREO, as defined in the regulation, is subject to the divestiture provisions.

The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Disposition of Real Estate (§ 34.83)

Formerly, § 34.83(a)(5) permitted disposition of leases only through assignment or a ''coterminous sublease'' (*i.e.*, a lease with the same duration as the remainder of the master lease). Many national banks hold long-term leases and are unable either to assign them or to find a coterminous sublessee, notwithstanding the bank's best efforts to do so. As industry consolidation and technological advances further reduce the utilization of branches and back-office space, this problem likely will become more severe.

To address this problem, proposed § 34.83(a)(3) permitted the divestiture period to be suspended for the duration of a non-coterminous sublease. The proposal also made numerous stylistic changes to § 34.83 that simplify the former regulation and eliminate unnecessary repetition. The proposal modified § 34.83(b) to clarify that disposition efforts must be ongoing throughout the disposition period. Finally, as previously noted, the proposal relocated the provision in former § 34.83 (requiring disposition when prudent judgment dictates) to proposed § 34.82.

The OCC received six comments on the proposed change affecting non-coterminous subleases, and all six favored the change. In light of these comments and for the reasons stated in the preamble to the NPRM, the OCC adopts the proposed changes to this section, with the additional changes noted as follows.

Two commenters requested that the OCC permit a national bank to exercise options to extend a lease if the extension is necessary to attract prospective sublessees. These commenters noted that a third party will not enter into a sublease if the duration of the sublease is insufficient to justify making whatever expenditures are required to conform the property to the third party's business. The OCC agrees that a national bank should have the flexibility to extend a lease if the extension enables the bank to sublease the property and certain safeguards are satisfied, and has modified § 34.83(a)(3) accordingly.

Historically, the OCC has required national banks to divest of OREO as soon as possible. *See, e.g.,* OCC Interpretive Letter No. 491 (1989–1990 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 83,074 at p. 71,184 (Sept. 6, 1989) (''It should be recognized that the Bank's paramount obligation is to dispose of its interest in the lease [that has become OREO] at the earliest possible date, consistent with 12 U.S.C. § 29 * * *''). The OCC continues to require divestiture of OREO as soon as possible but in any event within the divestiture period prescribed by statute. The change proposed by the commenters is consistent with this requirement. Under the changes proposed in the NPRM and by the commenters, national banks remain obligated to take appropriate steps before the disposition period expires either to dispose of a lease outright (by assigning the lease or entering into a coterminous sublease) or to enter into a non-coterminous sublease that will suspend the running of the disposition period. The change proposed by the commenters will facilitate a bank's compliance with this obligation.

While the OCC agrees that the change proposed by the commenters is appropriate and consistent with applicable law, a national bank may not enter into an extension of a master lease for the purpose of speculating in real estate. For this reason, the final rule clarifies that the OCC reserves the right to require a national bank to take immediate steps to dispose of an extended lease if the OCC finds that the bank entered into the extension for the purpose of real estate speculation.[7] The final rule also prohibits a national bank from entering into an extension unless (1) the bank, prior to entering into an extension of the master lease, has a firm commitment from a third party to sublease the property and (2) the duration of the extension is reasonable and does not materially exceed the duration of the sublease.

The OCC also has amended § 34.83(a)(3) to clarify that the agency retains the authority to require a national bank to take appropriate steps to dispose of a lease (or extension thereof) if the OCC finds that the bank has not acted in good faith in entering into a sublease. Thus, for instance, if a bank subleases property to a related third party for a nominal amount so that the bank may retain possession of the lease and speculate on the property's future value, the bank will not have acted in good faith and the OCC will require the bank to take immediate steps to dispose of the master lease.

Future Bank Expansion (§ 34.84)

Proposed § 34.84 created a new section for the OCC's rule on future bank expansion that formerly appeared in § 34.83(c) in order to make the future bank expansion rule easier to locate.

The OCC received no comments on this section, which is adopted as proposed.

Appraisal Requirements (§ 34.85)

The proposal made no substantive change to the existing rule set forth in former § 34.84. This rule provides that a national bank should obtain either an appraisal or evaluation, as appropriate

[7] The NPRM stated that the OCC reserves this right in connection with leases in general but was silent on the question of extensions of lease.

under 12 CFR part 34, subpart C, when real estate is transferred to OREO or when OREO is sold. The former rule provided an exception to this requirement if a national bank already has a valid appraisal or evaluation for the property in question. Banks are to monitor the value of each parcel of OREO in a manner consistent with prudent banking practices.

One commenter suggested that the OCC not require appraisals every time property formerly used (or intended to be used) as bank premises is transferred to OREO. The OCC will consider this comment when the agency reviews subpart C of part 34, which sets forth the rules governing when and what type of an appraisal is required. The OCC received no other comments on this section. The final rule makes stylistic edits to the proposal and removes an unnecessary reminder in § 34.85(b) that a bank is to follow its real estate collateral evaluation policy.

Additional Expenditures and Notification (§ 34.86)

The proposal rearranged § 34.86 (former § 34.85) to improve clarity, and modified other parts of this section to simplify the procedures for informing banks of the OCC's decision regarding proposed additional expenditures. The OCC specifically sought comment on whether the standard regarding completion of OREO development or improvement projects provides sufficient guidance.

The OCC received one comment on this section. The commenter stated that the existing guidance on the development of OREO is sufficient. In light of this comment and the absence of comments requesting further guidance, the OCC adopts this section as proposed with minor stylistic edits.

Accounting Treatment (§ 34.87)

The proposal retained the former rule, which specified that OREO reporting should conform to instructions in the Consolidated Report of Condition and Income.

The OCC received one comment on the accounting treatment that should be applied to OREO. The commenter suggested that, since the leased property during the term of a non-coterminous sublease will not be an asset to be disposed of, the OCC should require national banks to account for the lease as ''premises'' and not ''held for sale.'' However, since a bank no longer uses OREO property as premises, the OCC believes that OREO property that has been subleased by a bank is appropriately accounted for as ''held for sale.'' The OCC received no other comments on this section, which is adopted as proposed with minor stylistic edits.

Application (Former § 34.87)

Former § 34.87 provided that subpart E is applicable to all OREO held by a national bank, including OREO in existence since September 17, 1993. The proposal removed this provision since it is unnecessary and potentially confusing.

The OCC received no comment on this proposed removal. Accordingly, the OCC has removed former § 34.87.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or new requirements to the first day of the first calendar quarter following publication of the final rule. The OCC believes that section 302 is not applicable to this final rule, because the effect of the regulation is to reduce burdens on national banks. The final regulation does not impose any additional reporting or other requirements not already contained in the current version of the OCC's real estate lending regulations. The effective date of this final rule is April 19, 1996.

Derivation Table

The following derivation table directs readers to the provision(s) of the former regulation, if any, upon which the final provision is based, and identifies generally the action taken.

DERIVATION TABLE

Revised section	Original section	Comments
34.1(a)		Added.
34.1(b)	34.1(b)	Modified.
34.2(a)	34.4(a)	Modified.
34.2(b)		Added.
34.2(c)		Added.
34.3	34.1(a)	Modified.
34.4(a)	34.2(a)	Modified.
34.4(b)		Added.
	34.2(b)	Removed.
	34.3	Removed.
34.5	34.4(a)	Modified.
34.5	34.4(b)	Modified.
34.20	34.5(a)	Modified.
	34.5(b)	Removed.
34.21(a)	34.6(a)	Modified.
34.21(b)	34.6(b)	Modified.
34.22	34.7	Modified.
	34.8	Removed.
34.23	34.9	Modified.
	34.10	Removed.
34.24	34.11	Modified.
34.25	34.12	Modified.
34.81(a)		Added.
	34.81(b)	Removed.
34.81(b)	34.81(c)	No change.
34.81(c)	34.81(d)	No change.
34.81(d)	34.81(e)	No change.
34.81(e)	34.81(a)	Modified.

DERIVATION TABLE—Continued

Revised section	Original section	Comments
34.81(f)	34.81(f)	No change.
	34.81(g)	Removed.
34.82(a)	34.82(a)	Modified.
34.82(b)	34.82(b)	Modified.
34.82(c)	34.82(c)	Modified.
34.82(a)	34.83(a)	Modified.
34.83(a)(1)(i)	34.83(a)(1)	Modified.
34.83(a)(1)(ii)	34.83(a)(2)	Modified.
34.83(a)(1)(iii)	34.83(a)(3)	Modified.
34.83(a)(2)	34.83(a)(4)	Modified.
34.83(a)(3)	34.83(a)(5)	Modified.
34.83(a)(4)	34.83(a)(6)	Modified.
34.83(b)	34.83(b)	Modified.
34.84	34.83(c)	No change.
34.85(a)	34.84(a)	Modified.
34.85(b)	34.84(b)	Modified.
34.85(c)	34.84(c)	Modified.
34.86(a)(1)	34.85(a)(2)(i)	No change.
34.86(a)(2)	34.85(a)(2)(ii)	No change.
34.86(a)(3)	.....	Added.
34.86(b)	34.85(b)	Modified.
34.86(b)(1)	34.85(a)(1)	Modified.
34.87	34.86	No change.
	34.87	Removed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying former regulatory requirements.

Executive Order 12866

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

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating an NPRM likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating an NPRM. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the final rule will reduce unnecessary burdens on national banks seeking to engage in real estate lending.

List of Subjects in 12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

2. Part 34 is amended by revising subparts A, B, and E to read as follows:

Subpart A—General

Sec.
34.1 Purpose and scope.
34.2 Definitions.
34.3 General rule.
34.4 Applicability of State law.
34.5 Due-on-sale clauses.

Subpart B—Adjustable-Rate Mortgages

34.20 Definitions.
34.21 General rule.
34.22 Index.
34.23 Prepayment fees.
34.24 Nonfederally chartered commercial banks.
34.25 Transition rule.

Subpart C—Appraisals

* * * * *

Subpart D—Real Estate Lending Standards

* * * * *

Subpart E—Other Real Estate Owned

34.81 Definitions.
34.82 Holding period.
34.83 Disposition of real estate.
34.84 Future bank expansion.
34.85 Appraisal requirements.
34.86 Additional expenditures and notification.
34.87 Accounting treatment.

Subpart A—General

§ 34.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth standards for real estate-related lending and associated activities by national banks.

(b) *Scope.* This part applies to national banks and their operating subsidiaries as provided in 12 CFR 5.34. For the purposes of 12 U.S.C. 371 and subparts A and B of this part, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, land sales contracts, and construction project loans. Construction project loans are not subject to subparts A and B of this part, however, if they have a maturity not exceeding 60 months and are made to finance the construction of either:

(1) A building where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the

bank's loan upon completion of the building; or

(2) A residential or farm building.

§ 34.2 Definitions.

(a) *Due-on-sale clause* means any clause that gives the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise.

(b) *State* means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam.

(c) *State law limitations* means any State statute, regulation, or order of any State agency, or judicial decision interpreting State law.

§ 34.3 General rule.

A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate, subject to terms, conditions, and limitations prescribed by the Comptroller of the Currency by regulation or order.

§ 34.4 Applicability of State law.

(a) *Specific preemption.* A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to State law limitations concerning:

(1) The amount of a loan in relation to the appraised value of the real estate;

(2) The schedule for the repayment of principal and interest;

(3) The term to maturity of the loan;

(4) The aggregate amount of funds that may be loaned upon the security of real estate; and

(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) *General standards.* The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other aspects of real estate lending by national banks.

§ 34.5 Due-on-sale clauses.

A national bank may make or acquire a loan or interest therein, secured by a lien on real property, that includes a due-on-sale clause. Except as set forth in 12 U.S.C. 1701j–3(d) (which contains a list of transactions in which due-on-sale clauses may not be enforced), due-on-sale clauses in loans, whenever originated, will be valid and enforceable, notwithstanding any State law limitations to the contrary. For the purposes of this section, the term real property includes residential dwellings such as condominium units, cooperative housing units, and residential manufactured homes.

Subpart B—Adjustable-Rate Mortgages

§ 34.20 Definitions.

Adjustable-rate mortgage (ARM) loan means an extension of credit made to finance or refinance the purchase of, and secured by a lien on, a one-to-four family dwelling, including a condominium unit, cooperative housing unit, or residential manufactured home, where the lender, pursuant to an agreement with the borrower, may adjust the rate of interest from time to time. An ARM loan does not include fixed-rate extensions of credit that are payable at the end of a term that, when added to any terms for which the bank has promised to renew the loan, is shorter than the term of the amortization schedule.

§ 34.21 General rule.

(a) *Authorization.* A national bank and its subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any State law limitations on those activities.

(b) *Purchase of loans not in compliance.* A national bank may purchase or participate in ARM loans that were not made in accordance with this part, except that loans purchased, in whole or in part, from an affiliate or subsidiary must comply with this part. For purposes of this paragraph, the terms affiliate and subsidiary have the same meaning as in 12 U.S.C. 371c.

§ 34.22 Index.

If a national bank makes an ARM loan to which 12 CFR 226.19(b) applies (*i.e.,* the annual percentage rate of a loan may increase after consummation, the term exceeds one year, and the consumer's principal dwelling secures the indebtedness), the loan documents must specify an index to which changes in the interest rate will be linked. This index must be readily available to, and verifiable by, the borrower and beyond the control of the bank. A national bank may use as an index any measure of rates of interest that meets these requirements. The index may be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period. A national bank also may increase the interest rate in accordance with applicable loan documents specifying the amount of the increase and the times at which, or circumstances under which, it may be made. A national bank may decrease the interest rate at any time.

§ 34.23 Prepayment fees.

A national bank offering or purchasing ARM loans may impose fees for prepayments notwithstanding any State law limitations to the contrary. For purposes of this section, prepayments do not include:

(a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or

(b) Principal payments, in excess of those necessary to retire the outstanding debt over the remaining loan term at the then-current interest rate, that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.24 Nonfederally chartered commercial banks.

Pursuant to 12 U.S.C. 3803(a), a State chartered commercial bank may make ARM loans in accordance with the provisions of this subpart. For purposes of this section, the term ''State'' shall have the same meaning as set forth in § 34.2(b).

§ 34.25 Transition rule.

If, on October 1, 1988, a national bank had made a loan or binding commitment to lend under an ARM loan program that complied with the requirements of 12 CFR part 29 in effect prior to October 1, 1988 (see 12 CFR Parts 1 to 199, revised as of January 1, 1988) but would have violated any of the provisions of this subpart, the national bank may continue to administer the loan or binding commitment to lend in accordance with that loan program. All ARM loans or binding commitments to make ARM loans that a national bank entered into after October 1, 1988, must comply with all provisions of this subpart.

Subpart C—Appraisals

* * * * *

Subpart D—Real Estate Lending Standards

* * * * *

Subpart E—Other Real Estate Owned

§ 34.81 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital as calculated under the OCC's risk-based capital standards set out in appendix A to part 3 of this chapter based upon the bank's Consolidated

Report of Condition and Income filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(b) *Debts previously contracted (DPC) real estate* means real estate (including capitalized and operating leases) acquired by a national bank through any means in full or partial satisfaction of a debt previously contracted.

(c) *Former banking premises* means real estate (including capitalized and operating leases) for which banking use no longer is contemplated. This includes real estate originally acquired for future expansion that no longer will be used for expansion or other banking purposes.

(d) *Market value* means the value determined in accordance with subpart C of this part.

(e) *Other real estate owned (OREO)* means:

(1) DPC real estate; and

(2) Former banking premises.

(f) *Recorded investment amount* means:

(1) For loans, the recorded loan balance, as determined by generally accepted accounting principles; and

(2) For former banking premises, the net book value.

§ 34.82 Holding period.

(a) *Holding period for OREO.* A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(b) *Commencement of holding period.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank;

(2) A bank completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating; or

(3) A bank decides not to use real estate acquired for future bank expansion.

(c) *Effect of statutory redemption period.* For DPC real estate that is subject to a redemption period imposed under State law, the holding period begins at the expiration of that redemption period.

§ 34.83 Disposition of real estate.

(a) *Disposition.* A national bank may comply with its obligation to dispose of real estate under 12 U.S.C. 29 in the following ways:

(1) With respect to OREO in general:

(i) By entering into a transaction that is a sale under generally accepted accounting principles;

(ii) By entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a Federally-sponsored instrumentality that purchases loans; or

(iii) By selling the property pursuant to a land contract or a contract for deed;

(2) With respect to DPC real estate, by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate;

(3) With respect to a capitalized or operating lease:

(i) By obtaining an assignment or a coterminous sublease. If a national bank enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. A national bank holding a lease as OREO may enter into an extension of the lease that would exceed the holding period referred to in § 34.82 if the extension meets the following criteria:

(A) The extension is necessary in order to sublease the master lease;

(B) The national bank, prior to entering into the extension, has a firm commitment from a prospective subtenant to sublease the property; and

(C) The term of the extension is reasonable and does not materially exceed the term of the sublease;

(ii) Should the OCC determine that a bank has entered into a lease, extension of a lease, or a sublease for the purpose of real estate speculation in violation of 12 U.S.C. 29 and this part, the OCC will take appropriate measures to address the violation, which may include requiring the bank to take immediate steps to divest the lease or sublease; and

(4) With respect to a transaction that does not qualify as a disposition under paragraphs (a)(1) through (3) of this section, by receiving or accumulating from the purchaser an amount in a down payment, principal and interest payments, and private mortgage insurance totalling at least 10 percent of the sales price, as measured in accordance with generally accepted accounting principles.

(b) *Disposition efforts and documentation.* A national bank shall make diligent and ongoing efforts to dispose of each parcel of OREO, and shall maintain documentation adequate to reflect those efforts.

§ 34.84 Future bank expansion.

A national bank normally should use real estate acquired for future bank expansion within five years. After holding such real estate for one year, the bank shall state, by resolution of the board of directors or an appropriately authorized bank official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by national bank examiners.

§ 34.85 Appraisal requirements.

(a) *General.* (1) Upon transfer to OREO, a national bank shall substantiate the parcel's market value by obtaining either:

(i) An appraisal in accordance with subpart C of this part; or

(ii) An appropriate evaluation when the recorded investment amount is equal to or less than the threshold amount in subpart C of this part.

(2) A national bank shall develop a prudent real estate collateral evaluation policy that allows the bank to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice.

(b) *Exception.* If a national bank has a valid appraisal or an appropriate evaluation obtained in connection with a real estate loan and in accordance with subpart C of this part, then the bank need not obtain another appraisal or evaluation when it acquires ownership of the property.

(c) *Sales of OREO.* A national bank need not obtain a new appraisal or evaluation when selling OREO if the sale is consummated based on a valid appraisal or an appropriate evaluation.

§ 34.86 Additional expenditures and notification.

(a) *Additional expenditures on OREO.* For OREO that is a development or improvement project, a national bank may make advances to complete the project if the advances:

(1) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount;

(2) Are not made for the purpose of speculation in real estate; and

(3) Are consistent with safe and sound banking practices.

(b) *Notification procedures.* (1) A national bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO when the sum of the plan's estimated cost and the bank's current

recorded investment amount (including any unpaid prior liens on the property) exceeds 10 percent of the bank's capital and surplus. A national bank need notify the OCC under this paragraph (b)(1) only once. A national bank need not notify the OCC that the bank intends to re-fit an existing building for new tenants or to make normal repairs and incur maintenance costs to protect the value of the collateral.

(2) The required notification must demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraph (a) of this section.

(3) Unless informed otherwise, the bank may implement the proposed plan on the thirty-first day (or sooner, if notified by the OCC) following receipt by the OCC of the bank's notification, subject to any conditions imposed by the OCC.

§ 34.87 Accounting treatment.

A national bank shall account for OREO, and sales of OREO, in accordance with the Instructions for the preparation of the Consolidated Reports of Condition and Income.

Dated: March 7, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–6481 Filed 3–19–96; 8:45 am]

BILLING CODE 4810–33–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB52

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts amendments to the regulations governing disclosure of loan information. The FCA removes the requirement that Farm Credit institutions give borrowers 10 days prior notification of a change in the interest rate on their variable rate loans and replaces it with a 10-day post notification for interest rate changes for administered rate loans and a 30-day notice if the loan is tied to an external index. The current requirement to notify borrowers of a decrease in interest rate no later than on the day of the decrease has been changed to the same standard as an increase. This action would reduce the burden on institutions of a delay in interest rate changes while still providing borrowers with timely notice of a change. The final regulation also deletes reference to eligible borrower stock as a technical amendment.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Robert Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy E. Strickland, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4019, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On November 24, 1995 (60 FR 57962), the FCA Board published for comment a proposed amendment to § 614.4367(c)(3). The existing regulation requires Farm Credit institutions to provide notification to borrowers of an increase in the borrowers' interest rates 10 days prior to the effective date of the change and implements section 4.13 of the Farm Credit Act of 1971, as amended (Act). The proposed regulation would have permitted a rate change notification 10 days after the effective date of the rate change. The FCA received nine comments in response to the proposed regulations. Commenters included the Farm Credit Council (FCC), seven Farm Credit institutions, and a state agriculture department.

Subsequent to the FCA Board's adoption of the proposed regulation, section 4.13 of the Act was amended by the Farm Credit System Reform Act of 1996, Pub. L. 104–105 (Feb. 10, 1996). Section 4.13 of the Act now provides that notice to the borrower of a change in interest rate may be made within a reasonable time after the effective date of an increase or decrease in the interest rate. The FCA believes that the proposed regulations were consistent with the recently enacted legislation and that the final regulation implements the requirements of the legislation. The following discussion contains a summary of the comments and the final amendment to § 614.4367(c)(3).

I. Summary of Comments

The FCC and several Farm Credit institutions expressed their general support of the proposed regulation and some commented that if adopted, the regulation would provide additional flexibility to Farm Credit institutions in making interest rate changes without any significant disadvantage to borrowers. The individual Farm Credit institution commenters, however, urged the FCA to provide institutions with even greater flexibility in making interest rate changes than was proposed. Four institutions commented that the notification of an increase in interest rates should be extended to 30 days after the effective date of the change for all loans, including those loans not tied to an external index. Three of those institutions also suggested that no notice is necessary for decreases in interest rates, while the other commented that the notification should be the same regardless of the direction of the change in rates.

In support of a 30-day post notification, the institutions stated that they would be able to reduce mailing costs by including the notice in the regular monthly billing notices. They also noted that it is unlikely that borrowers would attempt to fix their rates or re-finance their loans if notified of rate increases within 10 days as proposed. Even if some borrowers might desire to do this, the lenders indicated that such action could rarely be accomplished within 10 days. The institutions felt that it is more likely that borrowers use the rate change notification to monitor the trends in lenders' rates and will take action after observing the trend in rates. For this reason, the institutions asserted that a 30-day post notification is just as useful to borrowers as a 10-day notification, and the 30-day notice results in much less work and cost for the lenders.

The institutions' basis for requesting no notification for a decrease in rates is that most lenders will likely take actions necessary to promote and preserve customer relations. Thus, lenders would want to notify borrowers of decreases in rates regardless of FCA disclosure requirements. Such notification could be in combination with notices of news about the interest rate market, a marketing opportunity, or information on a new program or service.

Three institutions commented that there should be no regulatory requirements for notification of a change in interest rates. One institution noted that a notification requirement is too onerous for loans tied to an external index, and that other non-System lenders are not required to notify borrowers of rate changes on similar loan products priced to LIBOR (London Interbank Offered Rate) or prime indexes. Another institution commented that notification serves no purpose and