local government entity responsible for this service.

(6) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Mobile telecommunications service is not provided at rates which render the service unaffordable to a majority of the rural persons.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

(e) RUS does not consider mobile telecommunications service facilities a duplication of existing wireline local exchange service or similar fixed-station voice facilities. RUS may finance mobile telecommunications systems designed to provide eligible services in rural areas under the Rural Electrification Act even though the services provided by the system may incidentally overlap services of existing mobile telecommunications providers.

5. Amend § 1735.14 by:

A. Removing paragraph (c)(1);

B. Redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2), respectively; and

C. Adding paragraph (d).

The addition reads as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an existing RUS telecommunications borrower providing such service.

§ 1735.17 [Amended]

6. Amend § 1735.17 by:

A. Removing paragraph (c)(3); and

B. Redesignating paragraphs (c)(4) and (c)(5) as (c)(3) and (c)(4), respectively.

Dated: February 2, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–3040 Filed 2–10–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1060]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is seeking public comment on a proposed exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the Board's Regulation Y. The proposed amendment would establish a ''safe harbor'' permitting a bank to offer a credit card that can be used to make purchases from a retailer affiliated with the bank.

DATES: Comments must be received by March 13, 2000.

ADDRESSES: Comments should refer to Docket No. R–1060, and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW) at any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information (12 CFR 261.14).

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Andrew S. Baer, Attorney (202/452–2246), Legal Division. Users of Telecommunication Device for Deaf (TTD) only, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying the availability or price of a product or service to the purchase by a customer of another product or service offered by the bank or any of its affiliates. A bank engages in a tie for purposes of section 106 by conditioning the availability of, or offering a discount on, one product or service (the ''tying product'') on the condition that the customer obtain some additional product or service (the ''tied product'') from the bank or from any of its affiliates. Violations of section 106 can be addressed by the Board through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other party through an action for damages. 12 U.S.C. 1972, 1973, and 1975.

Section 106 contains an explicit exception (the ''statutory traditional bank product exception'') that permits a bank to tie a product or service to a loan, discount, deposit, or trust service (''a traditional bank product'') offered by that bank. The Board has extended this exception by providing that a bank may condition the availability of, or vary the consideration for, any product or service on the condition that the customer obtain a traditional bank product from an affiliate of the bank (the ''regulatory traditional bank product exception'').[1] The Board adopted the regulatory traditional bank product exception in its present form because inter-affiliate transactions do not appear to pose any greater risk of anti-competitive behavior than intra-bank transactions, and because Congress had extended the statutory traditional bank product exception to cover inter-affiliate transactions for savings associations and their affiliates.[2]

Section 106 authorizes the Board to grant exceptions to its restrictions by regulation or order. On December 7, 1999, the General Counsel of the Board issued a legal interpretation indicating the Board's view that section 106 does not prohibit a credit card bank from issuing a credit card that may be used to make purchases from a retailer affiliated with the credit card bank (''private-label credit card'').[3] The Interpretation did not address the situation where a bank or its retailer affiliate offer discounts on their respective products in connection with a private-label credit card arrangement, as that situation was not presented by the request for an interpretation. The proposed exception also does not cover that situation.

Proposed Rule

The Board is proposing to use its statutory authority to grant a regulatory exemption to section 106 for private-label credit cards that may be used at a retailer affiliated with the issuing bank. The Board is proposing the exception in order to disseminate the Board's view, as reflected in the Interpretation, that such arrangements are not as a general matter anticompetitive, and to create a rule of more general applicability not limited to the facts on which the Interpretation was based.

[1] *See* 12 CFR 225.7(b)(1).

[2] *See* 62 FR 9289, 9314 (February 18, 1997), and 12 U.S.C. 1464(q)(1)(A).

[3] *See* Letter from J. Virgil Mattingly, Jr., to William S. Eckland, Esq., dated December 7, 1999 (the ''Interpretation'').

Applicability of Section 106

Because section 106 prohibits a bank from offering or discounting a product or service on the condition that the customer obtain some additional product or service from the bank or from any of its affiliates, the question arose as to whether a private-label credit card arrangement violates that restriction when credit is extended only when a customer makes a purchase from a retailer affiliated with the issuing bank. Although the extension of credit through the private-label credit card is not conditioned on any particular product being purchased, or on purchases being made from any particular retailer, the lack of a network with other retailers limits the ability of the customer to access that credit other than by purchasing a product or service from the affiliated retailer. In the private-label credit card arrangement described in the Interpretation, there is no contractual limitation on where the card can be used to make purchases. The reason why the private-label credit card can only be used at the affiliated retailer is that the retailer is the only merchant able to communicate with the issuing bank regarding whether credit should be extended on the card.

Exception

The Interpretation reflects the Board's belief that private-label credit cards issued by a bank affiliated with the relevant retailer do not generally involve the type of anticompetitive activity that section 106 was intended to address. Section 106 was intended to prevent banks from using their market power in banking products to gain an unfair competitive advantage in markets for non-banking products and services. The type of private-label credit card arrangements described in the Interpretation do not raise such concerns, however, because they do not involve a banking organization's attempt to expand into retailing, but rather a retailer's attempt to provide an additional convenience for its customers. Additionally, because the same products and services can be purchased from the retailer for the same price using payment methods other than the private-label credit card, customers wishing to purchase those products and services are not coerced into using the private-label credit card. The Interpretation also noted that such transactions are driven by the customer's desire to purchase the product or service, not by the availability or nonavailability of credit from the affiliated bank.

For these reasons, the Board is proposing to establish, through a regulatory exception, a safe harbor for private-label credit card arrangements where such cards may only be used to make purchases from a retailer affiliate of the issuing bank. The proposed safe harbor is consistent with the concerns of section 106 about anticompetitive behavior. The proposal requires that the products or services be available for purchase at the same price by means other than the private-label credit card, such as cash or credit cards issued by a third party. Furthermore, the issuing bank may not discount the credit it offers through the private-label credit card to customers who use the card to make purchases at the bank's retailer affiliate. Because a customer could purchase any product or service from the retailer for the same price, regardless of the payment method, the only incentive for the customer to use the private-label credit card is the convenience it offers as an alternative source of credit for use in making purchases from the retailer affiliate. For this reason, the Board does not believe that the proposed rule would allow coercive or anticompetitive practices, or otherwise contravene the purposes of section 106.

Finally, the Board believes that the proposed rule would benefit the public by providing consumers with alternative sources of consumer credit.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

Regulatory Flexibility Act

This proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is intended to allow affected businesses to expand the services they may offer to customers.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.7, a new paragraph (b)(4) is added to read as follows:

§ 225.7 Exceptions to tying restrictions.

(b) * * *

(4) *Safe harbor for retailer-affiliated credit card banks.* Issue credit cards that may be used to purchase products or services from a retailer affiliated with the bank, if:

(i) The products or services may be purchased from the retailer affiliate using other payment methods, including credit cards issued by other banks;

(ii) The bank does not discount the credit it offers through the credit card to customers of its retailer affiliate; and

(iii) The retailer affiliate of the bank does not discount its products or services when purchased using credit cards issued by the bank.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 7, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–3162 Filed 2–10–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–05–AD]

Airworthiness Directives; Eurocopter Deutschland GmbH (Eurocopter) Model EC 135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter Model EC 135 helicopters. This proposal would require replacing a certain oil cooler fan splined drive shaft (shaft) with a different airworthy shaft and re-identifying the part numbers on the oil cooler fans. This proposal is prompted by two incidents in which the shaft broke. The actions specified by the proposed AD are intended to prevent