Office of Thrift Supervision **December 5, 1997**
Department of the Treasury

Transmittal
TR–187

Federal Register, Vol. 62, No. 233, pp. 64138-64146 **Number: TR–187**

Applications to open a federal thrift institution branch, organize a new federal thrift institution or engage in various other transactions will be processed under new rules, under the attached final rule adopted by the Office of Thrift Supervision (OTS) and effective January 1, 1998.

The standard comment period on most of these applications increases to 25 days from the current 10 days. The final rule spells out what types of information should be included in the comment. However, OTS will consider all comments even if they do not meet all the content criteria.

Meetings — both formal and informal — between OTS, an applicant and commenters are specified in the final rule. The meetings' provisions are among several changes made since the rule was proposed in the April 9, 1997, Federal Register.

The final rule provides that OTS will conduct an informal meeting if a commenter has filed a written request and identifies the issues or facts to be discussed and the reasons why written submissions are insufficient. OTS also may arrange an informal meeting on its own initiative. Informal meetings can take any form, including face-to-face meetings or conference calls.

If issues remain unresolved following an informal meeting, OTS will hold a formal meeting before a presiding officer upon the request of anyone who participated in the informal meeting.

Another change provides that the comment period starts on the day the application is actually filed rather than, as proposed, on the day the notice of the application is published. Since the notice can be published up to seven days before the application filing, the change ensures that commenters will have access to the application for the full comment period.

The final rule was published in the December 4, 1997, edition of the *Federal Register*, Vol. 62, No. 233, pp. 64138-64146.

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Attachment

— Ellen Seidman
Director
Office of Thrift Supervision

assets reported in a bank's Call Report, has the unintended effect of double-counting at least some of the assets of the subsidiary bank.

The OCC received two comments on this issue. Both commenters suggested that subsidiary bank assets be subtracted from consolidated parent bank assets in determining the supervisory assessment base for the parent bank. The OCC agrees that it is appropriate to subtract the assets of the subsidiary bank for purposes of calculating the assessment of the parent bank. However, given the small number of banks that own other banks and the wide divergence in circumstances of these banks, the OCC has determined that it is appropriate to address this situation on a case-by-case basis instead of adopting a regulation that attempts to cover all situations. In order to ensure that these banks are assessed fairly, the OCC will inform the affected institutions in each semiannual assessment notice that they may submit information to the OCC demonstrating what the appropriate adjustment should be to the top-tier bank's total assets. The OCC then will review the information and adjust the assessment accordingly.

Removal of Annual Franchise Fees (§ 8.15)

The OCC also is removing § 8.15 from the current rule, which states that national banks that are registered or on file as municipal and/or government securities dealers shall pay an annual franchise fee covering each dealer activity. National banks engage in a wide variety of activities requiring an equally wide variety of supervisory activities. Rather than impose special fees on a few activities or, conversely, attempt to segregate and define all different types of supervisory activities and costs, the OCC has determined that it is more efficient and simpler for the industry for the OCC to recover its costs by imposing only one fee, namely, the semiannual assessment. Thus, the special fee charged to those banks that are registered as municipal and government securities dealers will be removed.

Adoption of Final Rule Removing Annual Franchise Fees

The OCC has determined that notice and comment is not required before removing § 8.15. The rule involves agency practice and procedure and thus is exempt under 5 U.S.C. 553(b)(A) from the prior notice requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). The determination of how fees are imposed is internal to the OCC, since the Comptroller is required by 12 U.S.C. 482 to recover expenses but is not required to follow specific calculations or formulae when making this determination. As a result, the OCC may revise its assessment structure as necessary to meet its expenses. In addition, the rule is exempt pursuant to 5 U.S.C. 553(b)(B) from the prior notice requirements because delaying adoption of the final rule pending receipt of comments would be unnecessary and contrary to the public interest. The rule confers a benefit on national banks that are registered as municipal and/or government securities dealers by eliminating the franchise fee.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes that certification and a short, explanatory statement in the **Federal Register** along with the final rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While the rule requires national banks, Federal branches, and Federal agencies of all sizes that receive a UFIRS or ROCA rating of 3, 4, or 5 to pay an assessment surcharge, this will not create a significant or disparate impact on small institutions. The assessments for the 69 national banks, Federal branches, and Federal agencies with total assets of under $100 million that currently are rated 3, 4, or 5 would increase, in the aggregate, by approximately $357,683 per year, which is equal to approximately $5,184 per institution. Accordingly, a regulatory flexibility analysis under section 604 of the RFA is not required.

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. The increase in the assessments of institutions rated a 3, 4, or 5 will be less than $1.0 million in the aggregate. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

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

Authority: 12 U.S.C. 93a, 481, 482, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. Section 8.2 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b) * * *

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

§ 8.15 [Removed]

3. Section 8.15 is removed.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516, 543, 545, 552, 556, 563

[No. 97-121]

RIN 1550-AA83

Application Processing

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: As a part of its on-going effort to review and streamline its regulations, the Office of Thrift Supervision (OTS) is issuing a final rule revising its comment procedures for specified applications and notices (collectively, applications). In addition to reorganizing the regulation, the OTS has expanded the comment period on these applications, set forth the information that a comment should contain, and replaced existing provisions requiring the OTS to conduct an oral argument on applications under certain circumstances, with provisions for informal and formal meetings. Under the final rule, the OTS will conduct an informal meeting ordinarily upon the request of a commenter, but also on its own initiative. Thereafter, upon the request of any participant to an informal meeting, the OTS will conduct a formal meeting. The OTS may also conduct a formal meeting on any application on its own initiative.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, Regulations and Legislation Division, (202) 906-7275, Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, (202) 906-6962, Office of Chief Counsel; or Diana L. Garmus, Director, Corporate Activities Division, (202) 906-5683, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS regulations governing applications for permission to organize a federal stock or mutual savings association, to establish or relocate a branch office of a federal savings association, and to engage in a transaction that is subject to the Bank Merger Act require applicants to follow the public comment and review procedures at existing § 543.2 (e) and (f).

Currently, § 543.2 provides an opportunity for the public to submit communications in favor or in protest of applications, and permits the applicant to respond to any protest. When a protest is timely submitted, meets specified criteria and includes a request for oral argument, or if an applicant timely requests an oral argument, the regulation requires the OTS to conduct an oral argument on the merits of the application. The OTS may also hold an oral argument in the absence of any protests, if it determines that these additional proceedings are desirable.

On April 9, 1997, the OTS published a notice of proposed rulemaking revising these procedures.[1] In addition to reorganizing the regulations, the OTS proposed to amend its existing procedures to expand the comment period on applications, prescribe the information that comments must contain in order to be considered when the OTS evaluates applications, and replace existing provisions that require the OTS to conduct an oral argument on applications under certain circumstances, with provisions for discretionary conferences. The OTS believed that these changes would make the application processing procedures easier to understand and apply. Additionally, the OTS concluded that the discretionary conference procedures would align OTS regulations more closely with those of the other federal banking agencies in accordance with section 303 of the Community Development and Regulatory Improvement Act of 1994.

II. Summary of Comments and Description of Final Rule

A. General Discussion of the Comments

The public comment period on the proposed rule closed on June 9, 1997. Eight commenters responded to the proposal: four community advocacy groups, two trade associations, one federal savings association, and one professional records and information management association.

As a general matter, the four community advocacy groups opposed the elimination of mandatory oral arguments and supported the extension of the public comment period. Conversely, the trade associations and the federal savings association supported the proposed conference procedures and opposed the extension of the public comment period. The information management association expressed unqualified support for the proposal. Specific comments are discussed where appropriate in the section by section analysis below.

B. Section by Section Analysis

The final rule adds new Subparts C and D to part 516. The new subparts use plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations more readily understandable. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of "you") and sentences in the active voice.

Although commenters did not have the opportunity to comment on the plain language format prior to its use in this final rule, the OTS believes that the benefits of the format justify its use. Moreover, the use of the plain language format has not altered the substance of the regulation. The OTS welcomes comments on the plain language format, and suggestions on how to improve this format. The OTS is committed to converting more of its regulations to the plain language format in order to reduce regulatory burden. The recently issued OTS final rule on subsidiaries uses this plain English drafting format. See 12 CFR Part 559 (1997).

Subpart C—Comment Procedures

Section 516.100—What Does This Subpart Do?

Section 516.100 of the final rule provides that Part 516, Subpart C contains the procedures governing the submission of public comments on certain types of applications or notices pending before the OTS. Subpart C applies whenever a regulation incorporates the procedures, or where otherwise required by the OTS. This section is based on § 516.5(a)(1) of the proposed rule.

Section 516.110—Who May Submit a Written Comment?

Section 516.110 provides that any person may submit a written comment supporting or opposing an application. This provision is also based on proposed § 516.5(a)(1).

Section 516.120—What Information Should I Include in My Comment?

Under the existing rules, a protest is considered "substantial" if it is submitted in writing within the

[1] 62 FR 17110 (April 9, 1997).

comment period, and states a reason for the protest that is consistent with one of the regulatory bases for denying an application. To be a substantial protest, a comment must include the specific information required at existing § 543.2(e)(2) and (4). Under the current rules, the term "substantial" serves a purely ministerial purpose—a means of separating comments that contain the required information (and, thus, may serve as the basis for a request for an oral argument) from those that do not.[2]

The proposed rule at § 516.5(a)(3) described the information that a comment must contain in order to be considered by the OTS. Under the proposed rule, the comment was required to recite all relevant facts, including any economic or financial data supporting the commenter's position. Comments opposing an application were required to address at least one of the bases for denial of the application as set forth in the relevant regulations, recite relevant facts and supporting data addressing these relevant bases, and address any adverse effects on the commenter or community that may result from approval of the application.

One commenter supported this proposed provision, noting that it provides important guidance to the public. Another commenter argued that the comment content criteria give the OTS too much discretion to reject comments that do not meet the technical content requirements. Commenters argued that these requirements should not be construed in an overly burdensome way.

The OTS will review and consider all comments it receives regardless of whether the comment meets all of the regulatory criteria. The sole intent of the proposed content requirements was to guide commenters in providing information that would assist the OTS in understanding the basis for the comment. While the OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments.

The OTS has revised the comment content provisions at § 516.120 to emphasize that the OTS will not reject a comment that does not meet all of the content criteria, and has made other changes to enhance the rule's clarity. Under the final rule, a comment should recite relevant facts, including any demographic, economic, or financial data, supporting the commenter's position. If the commenter opposes an application, the comment should also address at least one of the relevant regulatory reasons for which the OTS may deny an application, recite any relevant facts and supporting data addressing these reasons, and address how the approval of the application could harm the commenter or any community.

If a commenter wishes to request an informal meeting under the revised procedures discussed in detail below, the commenter must file a request for the meeting with the comment. To ensure that the OTS will have sufficient notice of the questions to be discussed at the informal meeting, requests should describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues. *See* final § 516.120(b).

Section 516.130—Where Do I File My Comment?

Section 516.130 provides that public commenter must file its comment with the OTS office(s) set forth at § 516.1(c). If an informal meeting is requested, the commenter must simultaneously send a copy of the request to the applicant. This provision was not included in the proposed rule, but has been added to improve the clarity of the final rule.

Section 516.140—Where Do I File My Comment?

Under the current rules, a commenter must file a comment within 10 days of the publication of a public notice of the filing of the application. This time period may extended to 17 days after publication, if a request for extension is filed within the 10-day period. Proposed § 516.5(a)(2) replaced the existing 10-day comment period with a 25-day comment period.

Three commenters supported the proposed 25-day comment period, noting that this is a clearly defined period and gives all prospective commenters an adequate time to submit appropriate comments. Two commenters urged the OTS to lengthen the comment period to 30 days arguing that a 30-day comment period is used by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the OTS in merger and acquisition applications. Two commenters thought that the comment period should be shorter. One argued that 15 days is sufficient. Another argued that the OTS should provide a 17-day comment period, at least for applications involving associations that have an "outstanding" or "satisfactory" rating under the community Reinvestment Act (CRA) and that are eligible for expedited treatment.

The OTS is adopting the proposed 25-day comment period. The OTS continues to believe that this expanded time period, without an automatic extension, is more workable and less confusing. The OTS cannot adopt a 30-day comment period without substantially revising other application processing requirements. In accordance with section 410 of the Competitive Equality Banking Act of 1987, § 516.2(c)(1) requires the OTS to request additional information, deem an application complete, or decline to process an application within 30 days of receipt of an application. The OTS believes it is necessary to have at least five days to review comments within this 30-day review period.

Under the proposed rule, the 25-day comment period would have begun on the date that the *notice* of application is published, a date that may precede the filing of the application. One commenter argued that the comment period should start on the day the application is submitted to the OTS. The commenter noted that this change would give community groups access to the application for the full comment period. The OTS agrees that commenters should have access to the application for the full comment period. Accordingly, under the final rule at § 516.140(a), the comment period begins on the date that the application is filed.

Under the proposed rule at § 516.5(a)(2), the OTS would grant extensions of the 25-day comment period on a case-by-case basis. The OTS would consider a late-filed comment if the OTS determined that the comment addressed a significant regulatory concern and, within the 25-day comment period, the commenter demonstrated good cause why it was unable to submit a timely comment. The length of any extension would be determined on a case-by-case basis.

Commenters generally supported this provision. However, several commenters urged the OTS to define good cause to include specified circumstances, to set specific time frames for extensions and to make other changes. One commenter objected that the unlimited discretion accorded to the OTS under the proposed extension provision would create procedural confusion.

The final rule continues to provide the OTS with maximum flexibility to address the unique circumstances of each extension request. For example, one commenter may need only an additional 24 hours to copy or mail documents. Another commenter may be

[2] The existing oral argument procedures and the new meeting procedures are discussed below.

awaiting pertinent public data and may require a longer opportunity to obtain and analyze the data. Accordingly, the final regulation at § 516.140 does not prescribe the duration of the extension period or the circumstances that would constitute good cause. Rather, the OTS will make these determinations on a case-by-case basis.

One commenter suggested that the OTS should encourage applicants and commenters to make joint requests for extensions of the comment period. One of the underlying purposes of the comment procedures is to promote dialogue and collaboration among the parties. Since joint extension requests will advance voluntary resolution of conflicts, the OTS encourages and generally will grant all jointly filed extension requests.

Under the existing procedures at § 543.2(e)(3), applicants may file an answer to any protest within 10 days after the last date for filing of comments. The proposed rule eliminated this provision. Instead, the OTS stated that it would generally provide an appropriate opportunity to respond by forwarding the comments to the applicant and requesting a response.

Two commenters noted that the OTS failed to set a deadline for the applicant's response. One commenter suggested that OTS should provide at least 10 days for response. The other suggested that the OTS adopt the FRB practice of requiring applicants to respond within eight business days.

It is unnecessary to establish a regulatory deadline for an applicant's response to comments. The OTS will continue to require applicants to respond to issues raised in comments the same way that it resolves other issues raised in applications. The OTS will, where appropriate, request the applicant to respond within 30 days to the issues raised in the application. See existing § 516.2(c).

Section 516.150—Will I Have Additional Opportunities to Discuss the Applications?

Under the existing rules at § 543.2(f), the OTS must conduct an oral argument if the applicant or anyone filing a substantial protest makes a timely request for the argument or if the OTS considers an oral argument desirable. The proposed rule would have replaced the mandatory oral argument provisions. Proposed § 516.5(b)(1) would have required additional proceedings only where the OTS determined that the proceedings would assist in the disposition of the application or would assist in the resolution of any issues raised by the application. Rather than an oral argument, the proposed rule permitted the OTS to arrange a conference between the applicant, commenters, and others. The proposed rule did not prescribe procedures for the conference. Instead, the proposed rule permitted the OTS to select the procedures appropriate to the application on a case-by-case basis.

Three commenters supported the conference procedures contained in the proposed rule. These commenters concluded that the conference procedures were more efficient and flexible than the current oral argument procedures.

Four community group commenters opposed the deletion of the mandatory oral argument. These commenters asserted that oral arguments: (1) Do not unduly delay the application process; (2) are conducive to fully informed decision making by the OTS; (3) are not hard to understand or apply; (4) ensure that consumer issues are adequately considered; and (5) promote dialogue and exchange between the association and commenters.[3]

The OTS continues to believe that formal oral arguments before a presiding officer are not necessary or productive in most cases.[4] More often, comments can best be resolved in a less formal setting, such as a meeting or a telephone call. Accordingly, the final rule states that the OTS generally will conduct an informal meeting on applications upon the request of any commenter.

[3] In the proposed rule, the OTS noted that the discretionary conference procedures would be more consistent with the rules of the other federal banking agencies. One commenter argued that this rationale is not convincing since the other banking regulators often have supplemental procedures for gathering information. The only such procedure cited by the commenter, however, was the OCC's policy of conducting expedited CRA examinations upon request. The OTS has addressed these targeted examinations below at Section II.D.3.

[4] Two commenters argued that the OTS's proposed deletion of the mandatory oral hearing requirement was inconsistent with congressional intent expressed in section 2612 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). This section specifically requires the FRB to hold a hearing where a bank holding company seeks to acquire a thrift. EGRPRA, however, does not provide a similar legal right when a bank holding company acquires a commercial bank. The commenters argued that EGRPRA's retention of hearings in thrift acquisitions reflects Congress' view that the agency should provide hearings in all applications involving savings associations. The OTS disagrees. The hearing requirement in section 2612 of EGRPRA, by its own terms, is limited to specified proceedings before another regulatory agency. There is no legislative history in EGRPRA mandating a broader application. If Congress intended to require hearings whenever a savings association is involved in any application proceeding before any banking regulator, the OTS believes that Congress would have manifested this intent more clearly.

Additionally, if an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, the final rule provides that the OTS will conduct a formal meeting before a presiding officer upon the filing of a request. The OTS may also conduct a formal meeting on any application on its own initiative. The new OTS informal and formal meeting procedures are based upon the OCC's related rule governing meetings and hearings at 12 CFR 5.11.

Thus, the final rule at § 516.150 states that the OTS may provide a commenter with additional opportunities to discuss the application in informal or formal meetings. The new procedures are contained in a new subpart D to part 516. The sections of this new part are discussed below.

Subpart D—Meeting Procedures

Section 516.160—What Does This Subpart Do?

Subpart D establishes the procedures governing informal and formal meetings. It applies whenever a regulation incorporates the procedures in the subpart, or when otherwise required by OTS.

Section 516.170—What Procedures Govern Informal Meetings on Applications?

Section 516.170 establishes the OTS informal meeting procedures. Under § 516.170(a), the OTS may arrange an informal meeting to clarify and narrow the issues and to facilitate the resolution of the issues. If a commenter has filed a written request containing the information described at § 516.120(b), the OTS will arrange a meeting. The OTS may also arrange a meeting upon its own initiative. The purpose of the informal meeting is to promote dialogue and to seek to achieve the voluntary resolution of issues. The OTS will inform the applicant and commenters requesting a meeting of its decision on a request for a meeting, or its decision to hold a meeting on its own initiative. See final § 516.170(b).

One commenter suggested that the final rule should require the OTS to announce its decision on the informal meeting before the expiration of applicable approval time frames specified in §§ 516.2 and 516.3. The purpose of the informal meeting is to address and resolve issues relevant to the disposition of the application. An informal meeting would, thus, be pointless if it is held after approval time frames lapse and the application is deemed approved. Because the announcement of the decision on a

meeting obviously must precede the approval of the application, the OTS has not added the suggested provision.[5]

The OTS will invite the applicant and the commenter filing the request to the informal meeting. The OTS may also invite any other interested persons to attend. The OTS will inform meeting participants of the date, time, location and format for the meeting a reasonable time in advance of the meeting. See final § 516.170(c). The OTS may select any format for the meeting. See final § 516.170(d). An informal meeting may encompass an array of forums including, but not limited to, an informal telephone conference call or a face-to-face meeting.

One commenter suggested that any announcement of additional proceedings should identify all persons invited to the conference and the substance of the comments received. The commenter asserted that this procedure would allow the applicant to prepare for, and to contact appropriate persons before the conference. The OTS does not follow a specific format for informing participants of the informal meeting. Rather, the OTS will advise participants using an appropriate method for the meeting. For example, if the OTS determines that an issue may be resolved in a telephone conference, the OTS would not necessarily issue a written notice. Instead, the OTS might place an advance telephone call informing the participants of the date and time of the conference call. By contrast, where another type of meeting is selected, the notice may include some or all of the elements identified by the commenter.

The OTS anticipates that informal meetings will be adequate to facilitate the resolution of issues in most proceedings. However, the OTS recognizes that it may encounter situations where formal meetings may be necessary. Accordingly, the final rule recognizes that an informal meeting may progress to a formal meeting before a presiding officer under § 516.180. Accordingly, within three days after the informal hearing, any participant in the informal meeting may request the OTS to hold a formal meeting. See final § 516.170(e). The participant making the request should describe the nature of the issues or facts to be presented and the reasons why a formal meeting is necessary to make an adequate presentation of the facts or issues. The request must be filed with the OTS and copies must be sent to other participants in the informal meeting.

Section 516.180—What Procedures Govern Formal Meetings on Applications?

If a participant in the informal meeting files a request for a formal meeting under § 516.170(e), the OTS will grant the request. Additionally, the OTS may hold a formal meeting on its own initiative, if it determines that written submissions and informal meetings are insufficient to adequately present issues or facts to the OTS, or that a formal meeting would otherwise benefit the decisionmaking process. The OTS may limit the issues considered at the formal meeting to issues it deems relevant or material. See final § 516.180(a).

The OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, the OTS will not grant a request for a formal meeting, unless an informal meeting has been conducted under § 516.170. However, there may be occasions where the informal meeting may be unnecessary. Under these or other circumstances, the OTS may elect to use its authority to conduct a formal meeting on its own initiative.

The OTS will announce formal meetings by issuing a Notice of Formal Meeting. The Notice will state the subject and date of the filing, the time and place of the formal meeting, and the issues to be addressed. The OTS will send the Notice to the applicant and any commenter requesting a formal meeting. The OTS may invite other interested persons to participate in the formal meeting by sending the Notice to such persons. See final § 516.180(b).

Paragraph (c) addresses who may participate in a formal meeting. A person receiving a Notice must notify the OTS of its intent to participate in the formal meeting within ten days after the OTS issues the Notice. At least five days before the formal meeting, all participants must provide the names of their witnesses and copies of their proposed exhibits to the OTS, the applicant and any other person designated by the OTS.

Section 516.180 (d) and (e) govern the conduct of the formal meeting. Under § 516.180(e), the OTS will appoint a presiding officer to conduct a formal meeting. The presiding officer is responsible for all procedural questions not governed by § 516.180. Subject to the rulings of the presiding officer, the participants may make opening statements and present witnesses, material and data. All presenters of documentary material must furnish copies of the material to the OTS and to each other participant. The OTS will arrange for a transcript of the formal meeting. Each participant must bear the cost of the transcript that it requests for its use. See final § 516.180(d). Section 516.180(e)(2) provides that certain rules governing the conduct of formal meetings and presentation of evidence do not apply to formal meetings held under § 516.180.

The rule does not address such procedural issues as whether the formal meeting will be public or private. Two commenters advocated the addition of a provision mandating public hearings whenever a public meeting is requested. These commenters noted that public hearings provide opportunities for all citizens to offer their views, including senior citizens, public housing residents and others. These commenters also noted that this change would align OTS procedures more closely to those of the other banking agencies.

Commenters have always had the ability to request public hearings on issues involving the application, and the OTS has had the discretion whether or not to hold such hearings.[6] The ability of members of the public to request public hearings, and the OTS's discretion to hold public hearings, is not affected by this final rule. The final rule would continue to permit the agency to hold a public formal meeting.

Section § 516.190—Will a Meeting Affect Application Processing Time Frames?

The proposed rule at § 516.5(b)(2) stated that if the OTS timely notifies the applicant that it intends to hold a conference, the OTS would temporarily suspend applicable time periods for automatic approval of the application. Two commenters supported this provision.

The final rule at § 516.190 adopts the proposed rule with minor editorial changes. The final rule provides for suspension of application processing time frames if the OTS has arranged an informal or formal meeting. The time periods will resume when the OTS determines that a record has been developed that sufficiently supports a determination on the issues raised in the comments.

C. Conforming Amendments to Related Provisions

The proposed rule included conforming amendments to §§ 543.2, 545.92, 545.95, 552.2–1, 552.2–2 and 556.5. Commenters had the following comments on these conforming changes.

[5] Where an application is subject to a completeness review under § 516.2(c), the OTS will generally advise applicants and commenters of the informal meeting before deeming the application complete.

[6] See Op. Chief Counsel (November 24, 1993).

1. Duplicative Publication Requirements

One commenter observed that the publication of notice provisions in proposed §§ 543.2(d)(1), 545.92(d)(1), 552.2–1(a)(1) and 563.22(e) are unnecessarily duplicative. The commenter urged the OTS to consolidate these provisions into a single regulation under Part 516. The commenter noted that this approach would streamline the OTS regulations and more closely conform OTS regulations to the procedural regulations of the other banking agencies.

The OTS agrees that the cited publication requirements are unnecessarily duplicative and has consolidated §§ 543.2(d)(1), 545.92(d)(1), 552.2–1(a)(1) and 563.22(e)(1) into a new subpart under Part 516. New Subpart B uses the same plain language drafting techniques as used in Subparts C and D.

The proposed rules would have required an applicant to publish the notice of the filing of the application no earlier than three days before and no later than the date of the filing of the application. See proposed §§ 543.2(d)(1), 545.92(d)(1) and 552.2–1(a)(1). Various commenters suggested that this three-day publication requirement should be modified to require publication as soon as possible after filing of the application, or extended to require publication within 7, 10, or 30 days of the filing of the application.

The OTS has concluded that the proposed three day requirement may be too onerous under certain circumstances, such as where local newspapers are published on a weekly basis. Unfortunately, uniformity with the other bank regulatory agencies on this issue is impossible, since each bank regulatory agency has established different publication requirements.[7] Nonetheless, the OTS has decided to adopt the FRB's practice of requiring the filing of the application within seven days after the publication of the newspaper notice. See final § 516.60. This change does not affect the 30-day comment period. As noted above, the final rule has been revised so that the comment period begins on the date that the application is filed rather than the date of the newspaper notice. See final § 516.140(a).

[7] The OCC requires publication on the date of filing or as soon as possible thereafter. 12 CFR 5.8(a). The FDIC generally requires publication no earlier than 30 days before filing, and no later than the date of filing. 12 CFR 303.6(f)(1)(ii). The FRB generally requires filing within seven days of publication. 12 CFR 262.3(b).

2. Posting Requirement

Section 545.95 addresses changes of permanent locations and redesignations of home and branch offices by federal associations. The current rule requires an applicant to post a notice of the application for 17 days from the date of the publication of the newspaper notice—a period that is equal to the extended comment period under current application processing procedures. The proposal would have required the applicant to post a notice of an application for 25 days from the date of first publication. This time period would more closely track the 25-day revised comment period.

One commenter argued that § 545.95 unnecessarily duplicates the Federal Deposit Insurance Act ("FDIA") provisions on branch closures, which require posting for 30 days and sending customer notices 90 days before closure.[8] See FDIA Section 42 (12 U.S.C. 1831r–1). The purposes of the two posting requirements differ. The posting requirement under § 545.95 is intended to allow customers the opportunity to comment on a proposed application to change an office location or redesignate a home or branch office. The FDIA posting requirement, on the other hand, is intended to provide notice to customers of the proposed date of closing of a branch and to identify where customers may obtain services following that date. Since the purposes of the two notices differ, both requirements will continue to be applicable. However, the OTS would not object if an institution were to combine the two notices, provided the combined notice clearly complies with the notification, posting and timing requirements under § 545.95 and the FDIA. Any combined posting should indicate that consummation of the transaction is contingent on OTS review.

3. Branching by Federal Savings Associations

The OTS policy statement on branching by federal savings associations is found at § 556.5. The OTS proposed to revise this section to include a cross citation indicating that the procedures for commenting on applications are set forth in Part 516 and Part 563e.

A commenter asserted that the proposed amendment was confusing and suggested the deletion of the cross-reference to Part 563e. The OTS modified this reference to specifically cite the applicable regulations at 12 CFR 563e.29 (c) and (d).

[8] This commenter also questions whether the posting requirement has any applicability for short distance relocations. The posting requirement at § 545.95(b)(1)(ii) does not apply to short distance relocations. *See* existing § 545.95(c).

D. Related Issues

1. Availability of Applications

Two commenters offered a number of suggestions designed to improve the availability of OTS information on applications. The OTS has been working on this issue for some time. The agency began publishing a list of pending applications on its web site on August 12, 1997. The list is updated daily and is available at http://www.ots.treas.gov under "Public Information" and "Industry Data." Additionally, major new applications are highlighted under the "Significant New Applications" page.

2. Publication of OTS Decisions on Applications

One commenter urged the OTS to publish its decisions on applications. The commenter noted that this change would conform the OTS practices to those of the FRB which publishes its decisions in the Federal Reserve Bulletin.

While the OTS will not publish the text of its decisions, it intends to continue its current practice of simultaneously informing the applicant and any commenters of the disposition of an application. In addition, the OTS intends to modify its web site to indicate whether applications have been granted or denied. If a commenter or any other member of the public wishes to obtain a copy of the public portion of an OTS decision, it may do so by contacting the OTS's Information Services Division.

3. Targeted CRA Exams

One commenter suggested that OTS should implement the OCC's policy of conducting targeted CRA examinations when CRA issues are raised by a commenter and the issues were not addressed in the last examination.

The OTS conducts regular CRA examinations on a set cycle. In most cases, the OTS has a timely assessment of CRA performance available in connection with processing an application. Where an applicant's CRA record is not current, however, the OTS may conduct a targeted CRA review to obtain the information necessary to access performance.

III. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a "significant regulatory

action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

The OTS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act. One commenter disagreed with this certification. The commenter argued that the proposal would make it substantially more difficult for small communities to comment on applications because these communities rarely have CRA expertise.

The OTS disagrees. The final rule should make it easier for small entities, including small communities, to comment on applications. The final rule provides guidance as to the content of the comments to be filed and expands the time period for the receipt of such comments. Thus, the final rule should provide small entities with a greater opportunity to file comments. Moreover, the rule permits commenters to participate in informal and formal meetings with the applicant and the OTS.

Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will enable the OTS to process applications received from all applicants, including small savings associations and other small entities, more expeditiously. It also allows all entities, including small entities, a longer period in which to submit comments on applications.

V. Paperwork Reduction Act of 1995

The information collection requirements contained in this rule are found at 12 CFR 516.50–80, 516.100–190, 543.2, 545.92, 545.95, 552.2–1, and 563.22. All of the collections of information, except those found in §§ 516.50–80 and §§ 516.100–190, have been previously approved by the Office of Management and Budget and the burden under them remains unchanged under this rule (OMB Control Nos. 1550–0005, 1550–0006, and 1550–0016). The requirements in new §§ 516.50–80 and §§ 516.100–190 were previously found in several of the sections mentioned above. New §§ 516.50–80 and §§ 516.100–190 do not add any additional burden and the new citations will be added to the approved packages under OMB Control Nos. 1550–0005, 1550–0006, and 1550–0016 by Paperwork Reduction Act Change Worksheet.

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

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule simplifies existing procedures and should reduce regulatory burden. The OTS has determined that the final rule will not result in expenditures by state, local or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Effective Date

Section 553(d) of the Administrative Procedure Act ("APA") requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d)(1) of the APA, however, permits an agency to waive the normal 30-day delay in effective date for good cause or when a rule relieves a restriction.

The final rule is exempt from the 30-day delayed effective date requirement. Initially, we note that the 30-day delayed effective date requirement applies only to substantive rulemaking. Today's rule is primarily a procedural rule that regulates the manner in which applicants and commenters present their viewpoints on pending applications to the OTS. Moreover, to the extent that the rule may have any impact on the rights or interest of any party, the rule relieves restrictions by streamlining the public comment process.

List of Subjects

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

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

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 563

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

Accordingly, the Office of Thrift Supervision amends title 12, chapter V, of the Code of Federal Regulations as set forth below:

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

1. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

2. Existing §§ 516.1, 516.2 and 516.3 are redesignated as subpart A, and the subpart heading is added to read as follows:

Subpart A—Application Processing Guidelines

§ 516.2 [Amended]

3. Section 516.2(c)(6) is removed and reserved.

4. Subpart B, consisting of §§ 516.50 through 516.80, is added to read as follows:

Subpart B—Publication Requirements

Sec.
516.50 Who must publish a public notice of an application?
516.60 When must I publish the public notice?
516.70 Where must I publish the public notice?
516.80 What language must I use in my publication?

Subpart B—Publication Requirements

§ 516.50 Who must publish a public notice of an application?

This subpart applies whenever an OTS regulation requires an applicant ("you") to follow the public notice procedures in this subpart.

§ 516.60 When must I publish the public notice?

You must publish a public notice of the application no earlier than seven days before and no later than the date of filing of the application.

§ 516.70 Where must I publish the public notice?

You must publish the notice in a newspaper having a general circulation in the following communities:

(a) The community in which your home office(s) are located, or if you are filing an application for permission to organize, the community in which your home office will be located; and

(b) If you are filing a branch application, the community to be served by the branch office.

§ 516.80 What language must I use in my publication?

(a) *English.* You must publish the notice in a newspaper printed in the English language.

(b) *Other than English.* If the OTS determines that the primary language of a significant number of adult residents of the community is a language other than English, the OTS may require that you simultaneously publish additional notice(s) in the community in the appropriate language(s).

5. Subpart C, consisting of §§ 516.100 through 516.150, is added to read as follows:

Subpart C—Comment Procedures

Sec.
516.100 What does this subpart do?
516.110 Who may submit a written comment?
516.120 What information should I include in my comment?
516.130 Where do I file my comment?
516.140 When do I file my comment?
516.150 Will I have additional opportunities to discuss the application?

Subpart C—Comment Procedures

§ 516.100 What does this subpart do?

This subpart contains the procedures governing the submission of public comments on certain types of applications or notices ("applications") pending before the OTS. It applies whenever a regulation incorporates the procedures in this subpart, or where otherwise required by the OTS.

§ 516.110 Who may submit a written comment?

Any person ("you") may submit a written comment supporting or opposing an application.

§ 516.120 What information should I include in my comment?

(a) Your comment should recite relevant facts, including any demographic, economic, or financial data, supporting your position. If you file a comment opposing an application, your comment should also:

(1) Address at least one of the reasons a relevant regulation lists as to why the OTS may deny an application;

(2) Recite any relevant facts and supporting data addressing these reasons; and

(3) Address how the approval of the application could harm you or any community.

(b) If you wish to request an informal meeting under § 516.170, you must file a request with your comment. You should describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

§ 516.130 Where do I file my comment?

You must file your comment with the OTS office(s) set forth at § 516.1(c). If you request an informal meeting under § 516.170, you must simultaneously send a copy of the request to the applicant.

§ 516.140 When do I file my comment?

(a) *General.* Except as provided in paragraph (b) of this section, you must file a written comment with the OTS within 25 days after the application is filed with the OTS.

(b) *Late-filed comments.* The OTS will consider your late-filed comment if:

(1) Within the comment period, you demonstrate to the OTS good cause why you could not submit a timely comment; and

(2) The OTS concludes that your comment addresses a significant regulatory concern and will assist in disposing of the application.

§ 516.150 Will I have additional opportunities to discuss the application?

The OTS may provide you with additional opportunities to discuss the application in informal or formal meetings under subpart D of this part.

6. Subpart D, consisting of §§ 516.160 through 516.190, is added to read as follows:

Subpart D—Meeting Procedures

516.160 What does this subpart do?
516.170 What procedures govern informal meetings on applications?
516.180 What procedures govern formal meetings on applications?
516.190 Will a meeting affect application processing time frames?

Subpart D—Meeting Procedures

§ 516.160 What does this subpart do?

This subpart contains informal and formal meeting procedures. It applies whenever a regulation incorporates the procedures in this subpart, or when otherwise required by the OTS.

§ 516.170 What procedures govern informal meetings on applications?

(a) *When will the OTS arrange an informal meeting?* The OTS may arrange an informal meeting with the applicant, commenters, or any other interested persons to clarify and narrow the issues and to facilitate the resolution of the issues. If a commenter has filed a written request for an informal meeting containing the information described at § 516.120(b), the OTS will arrange an informal meeting. The OTS also may arrange an informal meeting on its own initiative.

(b) *What action will the OTS take on an informal meeting request?* The OTS will inform the applicant and commenters requesting an informal meeting of the OTS decision on a request for an informal meeting, or of its decision to hold an informal meeting on its own initiative.

(c) *How will the OTS inform the informal meeting participants of the date, time, location and format for the informal meeting?* The OTS will invite the applicant and the commenter filing the request for the informal meeting. The OTS may also invite any other interested persons to attend. The OTS will inform the participants of the date, time, location, and format for the informal meeting a reasonable time in advance of the informal meeting.

(d) *What procedures will govern the conduct of the informal meeting?* The OTS may hold informal meetings in any format, including a telephone conference or face-to-face meeting.

(e) *Will there be an additional opportunity to discuss the application?* Within three days after the informal meeting, any participant in the informal meeting may request the OTS to hold a formal meeting under § 516.180. The participant should describe the nature of the issues or facts to be presented and the reasons why a formal meeting is necessary to make an adequate presentation of the facts or issues. The participant must file the request with the OTS and send copies of the request to other participants in the informal meeting.

§ 516.180 What procedures govern formal meetings on applications?

(a) *When will the OTS hold a formal meeting?* The OTS will not grant a request for a formal meeting unless an informal meeting has been conducted under § 516.170. The OTS will grant all requests for a formal meeting filed under § 516.170(e). The OTS may also

hold a formal meeting on its own initiative, if it determines that written submissions and informal meetings are insufficient to adequately present issues or facts to the OTS, or that a formal meeting would otherwise benefit the decisionmaking process. The OTS may limit the issues considered at the formal meeting to issues that the OTS deems relevant or material.

(b) *How will the OTS announce the formal meeting?* The OTS will issue a Notice of Formal Meeting that will state the subject and date of the filing, the time and place of the formal meeting and the issues to be addressed. The OTS will send the Notice to the applicant and any person requesting a formal meeting under § 516.170(e). The OTS may also invite other interested persons to participate in the formal meeting by sending the Notice to such persons.

(c) *Who may participate in the formal meeting?* A person receiving a Notice must notify the OTS of its intent to participate within ten days after the OTS issues the Notice. At least five days before the formal meeting, all participants in the formal meeting must provide the names of their witnesses and copies of proposed exhibits to the OTS, the applicant, and any other person designated by the OTS.

(d) *Will the formal meeting be transcribed?* The OTS will arrange for a transcript. Each participant must bear the cost of any copies of the transcript it requests for its use.

(e) *What procedures govern the conduct of the formal meeting?* (1) The OTS will appoint a presiding officer to conduct the formal meeting. The presiding officer is responsible for all procedural questions not governed by this section. Subject to the rulings of the presiding officer, a participant may make opening statements and present witnesses, material and data. If a participant presents documentary material, it must furnish copies of the material to the OTS and to each other participant. The OTS may keep the formal meeting record open for additional information for up to 14 days following the receipt of the transcript.

(2) The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*) and the OTS Rules of Practice and Procedure in Adjudicatory Proceedings (12 CFR part 509) do not apply to formal meetings under this section.

§ 516.190 Will a meeting affect application processing time frames?

If the OTS has arranged a meeting, it will suspend applicable application processing time frames, including the time frames for deeming an application complete and the applicable approval time frames specified in § 516.2 or 516.3. The time period will resume when the OTS determines that a record has been developed that sufficiently supports a determination on the issues raised in the comments.

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

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

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

8. In § 543.2, paragraph (c) is removed and reserved and paragraphs (d)(1), (d)(3), (d)(4), (e), (f) and (h)(1) are revised to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(d) * * *

(1) The applicant must publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

* * * * *

(3) The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(4) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(e) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(f) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

* * * * *

(h) * * *

(1) Applications for permission to organize an interim Federal savings association are not subject to paragraphs (d), (e), (f) or (g)(2) of this section.

* * * * *

PART 545—OPERATIONS

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

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

10. In § 545.92, paragraphs (d), (e) heading, (e)(2) and (f) are revised, and paragraphs (i) and (j) are removed to read as follows:

§ 545.92 Branch offices.

* * * * *

(d) *Processing of applications/notices.* Processing of applications and notices shall be subject to the following procedures:

(1) *Publication.* (i) A federal savings association must publish a public notice of the branch application or notice in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the savings association shall transmit copies of the public notice and publisher's affidavit of publication to the OTS.

(iii) The application or notice and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Submission of application or notice.* A Federal savings association must comply with § 556.5 of this chapter and shall file the application required under § 516.3(b)(2) of this chapter or the notice required under § 516.3(a) of this chapter within three days after the publication of the public notice under paragraph (d)(1) of this section.

(3) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

(e) *Approval of branch application.*

* * * * *

(2) An application shall be deemed to be approved 30 days after notification that the application is complete, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter, or the OTS objects to the application on the grounds set forth under paragraph (e)(1) of this section.

(f) *Approval of branch notice.* A notice filed by a Federal savings association that qualifies for expedited treatment shall be deemed to be approved 30 days after its filing with the OTS, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter; the OTS objects to the application on the grounds set forth in paragraph (e)(1) of this section; or the OTS determines to

process the filing as an application under § 516.3(a)(3) of this chapter. If the OTS suspends the applicable processing time frames, the savings association may not open a branch until the OTS provides a notification of its approval.

* * * * *

11. In § 545.95, paragraph (a) and paragraph (b)(1)(ii) are revised to read as follows:

§ 545.95 Change of office location and redesignation of offices.

(a) *Eligibility.* A Federal savings association may change the permanent location of its home office or any approved branch office, or redesignate a home or branch office subject to the appropriate expedited or standard treatment procedures for establishing a branch office set forth in § 545.92 of this part.

(b) * * *

(1) * * *

(ii) The applicant shall post notice of the application for 25 days from the date of first publication in a prominent location in the office to be closed or redesignated.

* * * * *

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

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

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

13. Section 552.2–1 is amended by revising paragraph (a) to read as follows:

§ 552.2–1 Procedure for organization of Federal stock association.

(a) *Application for permission to organize.* Applications for permission to organize a Federal stock association are subject to this section and to § 543.3 of this chapter. Recommendations by employees of the OTS regarding applications for permission to organize are privileged, confidential, and subject to § 510.5 (b) and (c) of this chapter. The processing of an application under this section shall be subject to the following procedures:

(1) *Publication.* (i) The applicant shall publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the applicant shall transmit copies of the public notice and publisher's affidavit of publication to the OTS in the same manner as the original filing.

(iii) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Notification to interested parties.* The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(3) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

* * * * *

14. Section 552.2–2 is amended by revising paragraph (a) to read as follows:

§ 552.2–2 Procedures for organization of interim Federal stock association.

(a) Applications for permission to organize an interim Federal savings association are not subject to subparts B, C and D of part 516 of this chapter or § 552.2–1(b)(3) of this part.

* * * * *

PART 556—STATEMENTS OF POLICY

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

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

16. Section 556.5 is amended by revising paragraph (c)(4) to read as follows:

§ 556.5 Branching by Federal savings associations.

* * * * *

(c) * * *

(4) *Comment procedures.* Comments on applications for branches must be submitted in writing and factually documented. Comment procedures are set forth in subpart C of part 516 of this chapter, § 563e.29 (c) and (d) of this chapter, the OTS Application Processing Handbook, and other supervisory guidance issued by the OTS.

* * * * *

PART 563—OPERATIONS

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

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

18. Section 563.22 is amended by revising paragraphs (e)(1), (e)(4) and (f)(3) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e)(1) Unless the OTS finds that it must act immediately in order to prevent the probable default of one of the savings associations involved, the applicant must publish a public notice of the application in accordance with the procedures specified in subpart B of part 516 of this chapter. In addition to initial publication, the applicant must publish on a weekly basis during the period allowed for furnishing reports under paragraph (e)(2) of this section.

* * * * *

(4) Commenters may submit comments on the application in accordance with the procedures set forth in subpart C of part 516 of this chapter, except that comments may be submitted at any time during the period described in paragraph (e)(2) of this section. The OTS may arrange informal or formal meetings in accordance with the procedures set forth in subpart D of part 516 of this chapter.

* * * * *

(f) * * *

(3) The OTS suspends the applicable processing time frames under § 516.190 of this chapter;

* * * * *

Dated: November 26, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

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