Law 91-224 and by other laws (33 U.S.C. 1254).

4. Section 381.38 of the poultry products inspection regulations (9 CFR 381.38) would be amended by adding a new paragraph (c) to read as follows:

§ 381.38 Overtime and holiday inspection service.

* * * * *

(c)(1) Time spent performing tasks which are compensable under the Fair Labor Standards Act, such as clothes changing and cleanup activities, knife sharpening, administrative paperwork, and drawing and securing tags, shall be treated the same as any other inspection service for the purpose of determining the cost of overtime or holiday service to be reimbursed under paragraphs (a) and (b) of this section.

(2) Not more than 15 minutes will be provided to all slaughter line inspectors and/or those inspectors required to work the slaughter line and who perform the aforementioned tasks. Not more than 5 minutes of this time will be provided prior to the inspectors' reporting time. If any of the aforementioned employees, for personal reasons, wish to spend more time on such activities, such time would not be official duty time for which they would be paid or for which reimbursement would be charged.

Done at Washington, D.C. on: May 4, 1982.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 82-12545 Filed 5-6-82; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 10, 11, 25, and 95

Revision and Clarification of Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to clarify and update the criteria and procedures used for determining the eligibility of an individual for access to Restricted Data or national security information, or an employment clearance. The amendments are in response to an indepth study and analysis to determine and recommend necessary amendments. The proposed amendments would improve the timeliness for reviewing cases by using individual Hearing Examiners and Hearing Review Examiners, clearly distinguishing "access authorization" from "clearance for employment" and presenting the hearing and administrative review procedures in a more logical, clear, and concise manner. This amendment also makes conforming changes to other parts of the Commission's regulations.

DATES: Comment period expires July 6, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments or suggestions for consideration in connection with the proposed amendments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Martin J. King, Chief, Personnel Security Branch, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 427-4474.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission adopted the former Atomic Energy Commission's 10 CFR Part 10 in March 1975. Minor clarifying and corrective amendments were made by the Nuclear Regulatory Commission in 1977.

Staff review subsequently indicated that many of the criteria were outdated and in need of revision. Also, during the rulemaking proceeding on 10 CFR Part 11 some commenters were critical that the rule contained criteria regarding homosexuality and refusal to serve in the armed forces. As a result of these and other comments, a study was undertaken to provide an overall assessment of both the criteria and the procedures for Part 10. Based on the study, the following revision to Part 10 is being proposed.

Access authorization and employment clearance have been defined separately to permit an individual to continue employment even though it may be necessary to suspend the individual's access authorization pending resolution of derogatory information which raises a question concening the individual's access eligibility.

The two separate categories of derogatory information criteria, "A" and "B", have been combined in § 10.11 with determination as to eligibility for access authorization and/or employment clearance based upon a comprehensive common-sense judgment, made after consideration of all relevant information, favorable and unfavorable.

The number of criteria listed as examples for consideration in determining eligibility have been reduced from 22 to 13 by combining several of the criteria and eliminating others. Criteria concerning "homosexuality," "refusal to serve in the Armed Forces," and family relatives "residing in a nation whose interest may be inimical to the United States" have been deleted. Also, reference to activities of the spouse have been deleted from the criteria.

Procedures for administrative review hearings have been rewritten and revised. Most significantly, the Personnel Security Board has been replaced by a single Hearing Examiner. Also, the Personnel Security Review Board was eliminated in favor of three Hearing Review Examiners who individually and independently consider the case under review. Implementation of this system is expected to improve the timeliness in which cases are administratively reviewed under Part 10. As a result of these amendments, conforming amendments to Parts 11, 25, and 95 are also being proposed.

Regulatory Flexibility Statement

This rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b). This proposed rule contains modifications to the criteria and procedures for determining the eligibility of individuals for access to Restricted Data, national security information, or an employment clearance. It should not result in any increased costs to licensees.

List of Subjects in 10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is hereby given that the adoption of the following revision to 10 CFR Parts 10, 11, 25, and 95 is contemplated.

The authority citation for Part 10 is presented in the revision of that part. The authority for the amendments to

Parts 11, 25, and 95 is Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201).

1. Part 10 is revised to read as follows:

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201, sec. 201(f) 88 Stat. 1243, 42 U.S.C. 5841; E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR, Chap. IV.

Subpart A—General Provisions

§ 10.1 Purpose.

This part establishes the criteria, procedures, and methods for resolving questions concerning: (a) the eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by Executive Director for Operations of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and (b) the eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance. This part is published to implement such Statutes and Executive Orders 10865, 25 FR 1583 (February 24, 1960), and 10450, 18 FR 2489 (April 27, 1954).

§ 10.2 Scope.

The criteria and procedures in this part shall be used in determining eligibility for NRC access authorization and/or employment clearance involving:

(a) Employees (including consultants) of contractors and agents of the Nuclear Regulatory Commission and applicants for employment;

(b) Licensees of the NRC and their employees (including consultants) and applicants for employment; and

(c) NRC employees (including consultants) and applicants for employment;

(d) Any other person designated by the Executive Director for Operations of the Nuclear Regulatory Commission.

§ 10.3 [Reserved]

§ 10.4 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its responsibility for the security of the nuclear energy program in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for access authorization and/or employment clearance and will afford those individuals described in § 10.2 the opportunity for administrative review of questions concerning their eligibility for access authorization and/or employment clearance.

§ 10.5 Definitions.

As used in this part.

(a) "Accessed authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

(b) "Hearing Examiner" means a qualified attorney appointed by the Director, Office of Administration, to conduct a hearing in accordance with this part.

(c) "Hearing Counsel" means an NRC attorney assigned by the Executive Legal Director to prepare and administer hearings in accordance with this part.

(d) "Personnel Security Review Examiners" are persons designated by the Executive Director for Operations to conduct a review of the record in accordance with this part.

(e) "Commission" means the Nuclear Regulatory Commission of five members or a quorum thereof sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, or its designee.

(f) "Employment Clearance" means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Executive Director for Operations of the NRC is eligible for employment or continued employment pursuant to subsection 145 b. of the Atomic Energy Act of 1954, as amended.

(g) "Eligible" or "Eligibility" means both initial eligibility and continued eligibility of an individual for access authorization and/or employment clearance.

(h) "National Security Information" means information that is owned by, produced for or by, or under the control of the United States Government, and that has been determined, pursuant to Executive Order 12065 or antecedent orders, to require protection against unauthorized disclosure, and is so designated.

(i) "Restricted Data" means all data concerning design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

Subpart B—Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

§ 10.10 Application of the criteria.

(a) The decision as to access authorization and/or employment clearance is a comprehensive, common-sense judgment, made after consideration of all the information, favorable or unfavorable, relevant to whether the granting of access authorization and/or employment clearance would not endanger the common defense and security and would be clearly consistent with the national interest.

(b) The criteria in § 10.11 set forth a number of the types of derogatory information used to assist in making determinations of eligibility for access authorization and/or employment clearance. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization and/or employment clearance. While there must necessarily be adherence to such critera, the NRC is not limited to them, nor precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the criteria, such information shall be regarded as derogatory and shall create a question as to the individual's eligibility for access authorization and/or employment clearance. A question concerning the eligibility of an individual for access authorization and/or employment clearance shall be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization and/or employment clearance, the following principles shall be applied by the Director, Division of Security, hearing Examiners, and Personnel Security Review Examiners:

(1) Information reasonably tending to establish the truth of one or more of the items in the criteria shall be the basis for recommending denial or revocation of access authorization and/or employment clearance unless evidence to support faith in the individual's reliability and trustworthiness is affirmatively shown.

(2) When deemed material to the deliberations, the extent of the activity, conduct, or condition, the period in which they occurred or existed, the length of time which has since elapsed, and the attitude and convictions of the individual shall be considered in determining whether the recommendation will be adverse or favorable.

§ 10.11 Criteria.

(a) The criteria for determining eligibility for access authorization and/or employment clearance shall relate, but not be limited, to the following where an individual:

(1) Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.

(2) Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(3) Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any state or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, criteria (3) and (4) will not include chance or casual meetings or contacts limited to normal business or official relations.)

(5) Deliberately misrepresented, falsified or omitted relevant and material facts from or in a personnel security questionnaire, a personal qualifications statement, a personnel security interview, or any other information submitted pursuant this part.

(6) Willfully violated or disregarded security regulations or was grossly negligent with respect thereto to a degree which could endanger the common defense and security; or by intention or gross carelessness disclosed Restricted Data or national security information to any person not authorized to receive it.

(7) Has any illness or mental condition which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the individual.

(8) Has been convicted of crimes indicating habitual criminal tendencies.

(9) Has been convicted of crime, or has a background, where the facts, circumstances, or conduct are of a nature indicating poor judgment, unreliability, or untrustworthiness.

(10) Is a user of alcohol habitually and to excess, or has been such without adequate evidence of rehabilitation.

(11) Has been, or is, a user of a drug or other substance listed in the schedules of Controlled Substances established pursuant to the Controlled Substances Act of 1970 (such as amphetamines, barbiturates, narcotics, etc.), except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, without adequate evidence of rehabilitation.

(12) Refused, without satisfactory explanation, to answer questions before a congressional committee, Federal or state court, or Federal administrative body including the NRC regarding charges relevant to the individual's eligibility for access authorization and/or employment clearance.

(13) Engaged in any other conduct or is subject to any other circumstances which tend to show that the individual is not reliable or trustworthy, or which furnishes reason to believe that the individual may be subject to coercion, influence, or pressures which may cause the individual to act contrary to the national interest.

§ 10.12 Interview and other investigation.

(a) The Director, Division of Security, Office of Administration, may authorize the granting of access authorization and/or employment clearance on the basis of the information in the possession of the NRC or may authorize the conduct of an interview with the individual, if the individual consents to be interviewed, or such other investigation as the Director deems appropriate. On the basis of such interview and/or investigation, the Director may authorize the granting of access authorization and/or employment clearance.

(b) The individual may elect on constitutional or other grounds not to participate in an interview or other investigation; however, such refusal or failure to furnish or authorize the furnishing of relevant and material information is deemed to be derogatory information pursuant to § 10.11(a)(5) and (12).

(c) If the Director, Division of Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility shall be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

Subpart C—Procedures

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for access authorization and/or employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450 and 10865, when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

§ 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for access authorization and/or employment clearance, the Director, Division of Security, through the Director, Office of Administration, shall forward to the Executive Director for Operations, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Director, Division of Security, shall consider such factors as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance shall not be suspended except by the direction of the Executive Director for Operations.

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Security, approved by the Office of the Executive Legal Director, and signed by the Director, Office of Administration, shall be presented to each individual whose eligibility for access authorization and/or employment clearance is in question. Where practicable, such letter shall be presented to the individual in person. The letter will be accompanied by a copy of this part and shall state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for access authorization and/or employment clearance;

(b) The information that creates a substantial doubt regarding the individual's eligibility for access authorization and/or employment clearance, which shall be as comprehensive and detailed as the national security permits;

(c) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter, the Director, Division of Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Executive Director for Operations on the basis of the information in the possession of the MRC.

(d) That if the individual files a written request for a hearing with the Director, Officer of Administration, the individual must file with that request a written answer under oath or affirmation which admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation.If the individual is without knowledge, he or she shall so state and that statement shall operate as a denial. The answer shall also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact shall be deemed an admission that the allegation or fact is true.

(e) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of his receipt of the notification letter, a written answer in accordance with the requirements of paragraph (d) of this section.

(f) That the procedures in § 10.24 *et seq.* shall apply to any hearing and review.

§ 10.23 Failure of individual to request a hearing.

(a) In the event the individual fails to file a written request for a hearing pursuant to § 10.22 within 20 days of his receipt of the notification letter, a recommendation as to the final action to be taken shall be made by the Director, Division of Security, through the Director, Office of Administration, to the Executive Director for Operations on the basis of the information in the possession of the NRC, including any answer filed by the individual.

(b) The Director, Office of Administration, may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer to the matters contained in the notification letter.

§ 10.24 Procedures for hearing and review.

(a) Upon receipt of a timely filed request for a hearing and answer complying with the requirements set forth in § 10.22, the Director, Office of Administration, shall forthwith appoint a Hearing Examiner, and the Executive Legal Director shall forthwith assign an NRC attorney to act as Hearing Counsel. The Director, Office of Administration, shall promptly notify the individual of the identity of the Hearing Examiner and a proposed hearing date, which shall be selected with due regard for the convenience of the parties and their representatives.

(b) Within 72 hours of being notified of the identity of the Hearing Examiner, the individual may request that the Hearing Examiner be disqualified for cause by filing with the Director, Office of Administration, a written statement of the individual's reasons for seeking disqualification. The time for filing the request may be extended by the Director, Office of Administration, for good cause shown. If the Director, Office of Administration, grants the request the procedures of paragraph (a) and this paragraph shall be followed just as though there had been no prior appointment.

(c) The individual shall have the right to appear at the hearing before the Hearing Examiner, to be represented by counsel or other representative, to introduce documentary or other evidence, and to call, examine, and cross-examine witnesses, subject to the provisions and limitations set forth in this part.

§ 10.25 NRC Hearing Counsel.

(a) Hearing Counsel assigned pursuant to § 10.24 shall, prior to the scheduling of the hearing, review the information in the case and shall request the presence of witnesses and the production of documents and other physical evidence relied upon by the Director, Division of Security, in making his or her finding that a question exists regarding the eligibility of the individual for NRC access authorization and/or employment clearance in accordance with the provisions of this part. When the presence of a witness and the production of documents and other physical evidence is deemed by the Hearing Counsel to be necessary or desirable for a determination of the issues, the Director, Division of Security, shall make arrangements for the production of such evidence and for such witnesses to appear at the hearing by subpoena or otherwise.

(b) Hearing Counsel is authorized to consult directly with individual's counsel or representative or the individual, if the individual is not so represented, for purposes of reaching mutual agreement upon arrangements for expeditious hearing of the case. Such arrangements may include clarification of issues and stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the individual and the NRC for the purposes of this part. Prior to any consultation with the individual, the Hearing Counsel shall advise the individual of his or her rights under this part, of his or her right to counsel or other representation, and of the possibility that any statements made by the individual to the Hearing Counsel may be used in subsequent proceedings.

(c) The individual is responsible for producing witnesses in his or her own behalf and/or presenting other evidence before the Hearing Examiner to support the individual's answer and defense to the allegations contained in the notification letter. When requested, however, Hearing Counsel shall assist the individual to the extent practicable and necessary. The Hearing Counsel may at his or her discretion request the Director, Division of Security, to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such assistance has been made.

§ 10.26 Appointment of Hearing Examiner.

The appointment of a Hearing Examiner, pursuant to § 10.24 of this part, shall be from a list of qualified attorneys possessing the highest degree of integrity, ability, and good judgment. To qualify, an attorney shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents or licensees. However, no employee or consultant of the NRC shall serve as Hearing Examiner hearing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Hearing Examiner hearing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Hearing Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

§ 10.27 Prehearing proceedings.

(a) After the appointment of the Hearing Examiner, he or she shall be furnished the record in the case, which shall consist of the letter of notification, the request for hearing and its supporting answer, and the notice of hearing, if it has been issued, and any stipulations agreed to by the individual and the Hearing Counsel.

(b) The Hearing Examiner may on his or her own motion, or on that of either party, convene a prehearing conference with the Hearing Counsel and the individual and his or her counsel or representative, if any, for the purpose of clarifying the issues, identifying witnesses who may be called, identifying documents and other physical evidence that may be offered into evidence, and entering into stipulations of fact.

(c) The parties will be notified by the Hearing Examiner at least ten days in advance of the hearing of the time and place of the hearing. For good cause shown, the Hearing Examiner may order postponements or continuances from time to time. If, after due notice, the individual fails to appear at the hearing, or appears but is not prepared to proceed, the Hearing Examiner shall, unless good cause is shown, return the case to the Director, Division of Security, who shall make a recommendation on final action to be taken, through the Director, Office of Administration, to the Executive Director for Operations on the basis of the information in the possession of the NRC.

§ 10.28 Conduct of hearing.

(a) The Hearing Examiner shall conduct the hearing in an orderly, impartial and decorous manner. Technical rules of evidence may be relaxed so that a full evidentiary record may be made based on all material and relevant facts. Hearsay evidence may for good cause shown be received at the discretion of the Hearing Examiner and accorded such weight as the circumstances warrant.

(b) The proceedings shall be open only to duly authorized representatives of the staff of the NRC, the individual, his or her counsel or representative, and such persons as may be officially authorized by the Hearing Examiner. Witnesses shall not testify in the presence of other witnesses except that the Hearing Examiner may, at his or her discretion, allow for expert witnesses to be present during testimony relevant to their own testimony.

(c) Witnesses, including the individual, shall be examined under oath or affirmation by the party who called them and may be cross-examined by the other. The Hearing Examiner shall rule on all evidentiary matters, may further examine any witness, and may call for additional witnesses or the production of documentary or other physical evidence if, in the exercise of his or her discretion, such additional evidence is deemed necessary to the resolution of an issue.

(d) If it appears during the hearing that Restricted Data or national security information may be disclosed, the Hearing Examiner shall assure that disclosure is made only to persons authorized to receive it.

(e) The Hearing Examiner may, at any time during the hearing, permit the Hearing Counsel to amend the notification letter to add or modify allegations to be considered. In the event of such an amendment to the notification letter, the individual shall be given an opportunity to answer the amended allegations. If the changes are of such a substantial nature that the individual cannot answer the amended allegations without additional time, the Hearing Examiner shall grant such additional time as he or she deems necessary.

(f) The Hearing Examiner may receive and consider evidence in the form of depositions or responses to interrogatories upon a showing that the witness is not available for good reason such as death, serious illness or similar cause, or in the form of depositions, interrogatories, affidavits or statements with agreement of the parties. The Hearing Examiner may take official notice at any stage of the proceeding, where appropriate, of any fact not subject to reasonable dispute in that it is either (1) generally known within the United States or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking such official notice. In the absence of prior notification the request may be made after notice is taken.

(g) Hearing Counsel shall examine and cross-examine witnesses and otherwise assist the Hearing Examiner in such a manner as to bring out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Examiner. In performing these duties, the Hearing Counsel shall avoid the attitude of a prosecutor and shall always bear in mind that the proceeding is an administrative hearing and not a trial.

(h) Hearing Counsel shall not participate in the deliberations of the Hearing Examiner, and shall express no opinion to the Hearing Examiner concerning the merits of the case. Hearing Counsel shall also, during the course of the hearing, advise the individual of his or her rights under these procedures when the individual is not represented by counsel or other representative.

(i) The individual shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the individual relating to a controverted issue except that any such statement may be received and considered by the Hearing Examiner without affording such opportunity in either of the following circumstances:

(1) The head of the department or agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would substantially harm the national interest or would endanger the well-being of the informant.

(2) The Commission has determined, after considering the information furnished by the investigative agency concerning the reliability of the person who furnished the information and the accuracy of the statement concerned, that the statement appears to be reliable and material, and that failure of the Hearing Examiner to receive and consider such statement would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify due to death, serious illness, or similar cause.

(j)(1) Whenever the procedure under paragraph (i)(1) of this section is used, the individual shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits. (2) Whenever the procedure under paragraph (i)(2) is used, the individual shall be provided the identity of the person and the information to be considered. (3) In both paragraph (i) (1) and (2) procedures, appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such informant or person.

(k) Records provided by investigative agencies that were compiled as a regular or routine procedure by the business or agency from which obtained, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that the investigative agency furnished such information to the NRC pursuant to its responsibilities in connection with assisting the NRC in determining the individual's eligibility for access authorization and/or employment clearance.

(l) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Commission has made a determination that such records or other physical evidence appears to be material;

(2) The Commission has made a determination that failure to receive and consider such records or other physical evidence would, in view of the fact that access authorization and/or employment clearance is being sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such records or other physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(m) If the Hearing Examiner determines that additional investigation of any material information is required, he or she shall request in writing that the Director, Office of Administration, arrange for the investigation and shall specify those issues upon which more evidence is requested and identify, where possible, any persons or sources that might provide the evidence sought.

(n) A written transcript of the entire proceeding shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or national security information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost.

§ 10.29 Recommendation of the Hearing Examiner.

(a) The Hearing Examiner's findings and recommendation shall be based upon the entire record consisting of the transcript of the hearing, the documentary and other evidence adduced therein, and the letter of notification and answer. The Hearing Examiner shall also consider the circumstances of the receipt of evidence pursuant to § 10.28, the individual's record of past employment, and the nature and sensitivity of the job the individual is or may be expected to perform.

(b) The Hearing Examiner shall make specific findings on each allegation in the notification letter including the reasons for his or her findings, and shall make a recommendation as to the action which should be taken in the case.

(c) The Hearing Examiner's recommendation shall be predicated upon his or her findings. If, after considering all the factors in light of the criteria in this part, the Hearing Examiner is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, a favorable recommendation shall be made; otherwise, an adverse recommendation shall be made.

(d) The Hearing Examiner shall submit his or her findings and recommendation in a signed report together with the record of the case to the Director, Office of Administration, with the least practical delay.

(e) The Hearing Examiner shall not consider the possible impact of the loss of the individual's services upon the NRC program.

§ 10.30 New evidence.

After the close of the hearing, in the event the individual discovers new evidence not previously available or known to him or her, the individual may petition the Hearing Examiner if the Hearing Examiner's recommendation has not yet been issued, or thereafter, the Director, Office of Administration, to reopen the record to receive that evidence. If the Hearing Examiner or the Director, respectively, deem it material and appropriate, the record may be reopened to accept the evidence either by stipulation, with the agreement of the Hearing Counsel, or in a reconvened hearing.

§ 10.31 Actions on the recommendations.

(a) Upon receipt of the findings and recommendation from the Hearing Examiner, and the record, the Director, Office of Administration, shall forthwith transmit it to the Executive Director for Operations who at his or her discretion may return the record to the Director, Office of Administration, for further proceedings by the Hearing Examiner with respect to specific matters designated by the Executive Director for Operations;

(b)(1) In the event of a recommendation by the hearing Examiner that an individual's access authorization and/or employment clearance by denied or revoked, the Executive Director for Operations shall immediately notify the individual in writing of the Hearing Examiner's findings with respect to each allegation contained in the notification letter, and that the individual has a right to request a review of his or her case by NRC Personnel Security Review Examiners and of the right to submit a brief in support of his or her contentions. The request for a review shall be submitted to the Executive Director for Operations within five days after the receipt of the notice. The brief shall be forwarded to the Executive Director for Operations, for transmission to the NRC Personnel Security Review Examiners, not later than 10 days after receipt of such notice.

(2) In the event the individual fails to request a review by NRC Personnel Security Review Examiners of an adverse recommendation within the prescribed time, the Executive Director for Operations may at his or her discretion request a review of the record of the case by NRC Personnel Security Review Examiners. The request shall set forth those matters at issue in the hearing on which the individual desires a review by the NRC personnel Security Review Examiners.

(c) Where the Hearing Examiner has made a recommendation favorable to the individual, the Executive Director for Operations may at his or her discretion request a review of the record of the case by NRC Personnel Security Review Examiners. If such a request is made, the Executive Director for Operations shall immediately cause the individual to be notified of that fact and of those matters at issue in the hearing on which the Executive Director for Operations desires a review by the NRC Personnel Security Review Examiners. The Executive Director for Operations shall further inform the individual that within 10 days of receipt of this notice, the individual may submit a brief concerning those matters at issue for the consideration of the NRC Personnel Security Review Examiners. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(d) In the event of a request for a review pursuant to paragraphs (b) and (c) of this section, The Hearing Counsel may file a brief within 10 days of being notified by the Executive Director for Operations that a review has been requested. The brief shall be forwarded to the Executive Director for Operations for transmissin to the NRC Personnel Security Review Examiners.

(e) The Hearing Counsel may also request a review of the case by NRC Personnel Security Review Examiners. The request for review, which shall set forth those matters at issue in the hearing on which the Hearing Counsel desires a review, shall be submitted to the Executive Director for Operations within five days after receipt of the Hearing Examiner's findings and recommendation. Within 10 days of the request for review, the Hearing Counsel may file a brief which shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners. A copy of the request for review, and a copy of any brief filed, shall be immediately sent to the individual. If the Hearing Counsel's request is for a review of a recommendation favorable to the individual, the individual may, within 10 days of receipt of a copy of the request for review, submit a brief concerning those matters at issue for consideration of the NRC Personnel Security Review Examiners. The brief shall be forwarded to the Executive Director for Operations for transmission to the NRC Personnel Security Review Examiners.

(f) The time limits imposed by this section for requesting reviews and the filing of briefs may be extended by the Executive Director for Operations for good cause shown.

(g) In the event a request is made for a review of the record by NRC Personnel Security Review Examiners, the Executive Director for Operations shall forthwith send the record, with all findings and recommendations and any briefs filed by the individual and the Hearing Counsel, to the NRC Personnel Security Review Examiners. If neither the individual, the Executive Director for Operations, nor the Hearing Counsel requests such a review, the final determination shall be made by the Executive Director for operations on the basis of the record with all findings and recommendations.

§ 10.32 Recommendation of the NRC Personnel Security Review Examiners.

(a) The Executive Director for Operations shall designate three NRC Personnel Security Review Examiners to conduct a review of the record of the case. To qualify as a Review Examiner, the person designated shall have an NRC "Q" access authorization and may be an employee of the NRC, its contractors, agents, or licensees. However, no employee or consultant of the NRC shall serve as Review Examiner reviewing the case of an employee (including a consultant) or applicant for employment with the NRC; nor shall any employee or consultant of an NRC contractor, agent or licensee serve as Review Examiner reviewing the case of an employee (including a consultant) or an applicant for employment of that contractor, agent, or licensee. No Review Examiner shall be selected who has knowledge of the case or of any information relevant to the disposition of it, or who for any reason would be unable to issue a fair and unbiased recommendation.

(b) The designated Review Examiner shall individually and independently, without consulting or otherwise communicating with one another, consider the matter under review based upon the record supplemented by any brief submitted by the individual or the Hearing Counsel. Review Examiners may request such additional briefs as any of them deems appropriate, which will be obtained by the Executive Director for Operations and provided to each Review Examiner. When a Review Examiner determines that additional evidence or further proceedings are necessary, the record may be returned to the Executive Director for Operations with a recommendation that the case be remanded to the Director, Office of Administration, for appropriate action, which may include returning the case to the Hearing Examiner and reconvening the hearing to obtain additional testimony.

(c) In conducting the review, Review Examiners shall make individual findings and recommendations as to the eligibility or continued eligibility of an individual for access authorization and/or employment clearance on the record supplemented by additional testimony or briefs as have previously been determined by a Review Examiner(s) as appropriate. When additional testimony is taken by the Hearing Examiner, a written transcript of such testimony shall be made by a person possessing appropriate NRC access authorization and/or employment clearance and, except for portions containing Restricted Data or national security information, or other lawfully withholdable information, a copy of such transcript shall be furnished the individual without cost.

(d) The Review Examiners shall not consider the possible impact of the loss of the individual's services upon the NRC program.

(e) If, after considering all the factors in light of the criteria set forth in this part, a Review Examiner is of the opinion that granting or continuing access authorization and/or employment clearance to the individual will not endanger the common defense and security and will be clearly consistent with the national interest, the Review Examiner shall make a favorable recommendation; otherwise, the Review Examiner shall make an adverse recommendation. Each Review Examiner shall individually prepare a report of his or her findings and recommendation and submit the report in writing to the Executive Director for Operations, who shall furnish a copy to the individual. The findings and recommendations shall be fully supported by stated reasons supporting the findings and recommendations.

§ 10.33 Action by the Executive Director for Operations.

(a) The Executive Director for Operations, on the basis of the record accompanied by all findings and recommendations, shall make a final determination whether access authorization and/or employment clearance shall be granted, denied, or revoked, except when the provisions of § 10.28 (i), (j), or (l) have been used and the Executive Director for Operation's determination is adverse, the Commission shall make the final agency determination.

(b) In making the determination as to whether access authorization and/or employment clearance shall be granted, denied, or revoked, the Executive Director for Operations or the Commission shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the NRC's program and the consequences of denying or revoking access authorization and/or employment clearance.

(c) In the event of an adverse determination, the Executive Director for Operations shall promptly notify the individual through the Director, Office of Administration, of his or her decision that access authorization and/or employment clearance is being denied or revoked and of his or her findings with respect to each allegation contained in the notification letter for transmittal to the individual.

(d) In the event of a favorable determination, the Executive Director for Operations shall promptly notify the individual through the Director, Office of Administration.

§ 10.34 Action by the Commission.

(a) Whenever, under the provisions of § 10.28(i), (j), or (l) an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual and an adverse recommendation has been made by the Executive Director for Operations, the Commission shall review the record and determine whether access authorization and/or employment clearance shall be granted, denied, or revoked, based upon the record.

(b) When the Commission determines to deny or revoke access authorization and/or employment clearance, the individual shall promptly be notified through the Director, Office of Administration, of its decision that access authorization and/or employment clearance is being denied or revoked and of its findings and conclusions with respect to each allegation contained in the notification letter for transmittal to the individual.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Commission to deny or revoke access to Restricted Data or national security information if the security of the nation so requires. Such authority may not be delegated and may be exercised when the Commission determines that invocation of the procedures prescribed in this part is inconsistent with the national security. Such determination shall be conclusive.

§10.35 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 10.20 through 10.34, the Executive Director for Opertions or the Commission has made a determination granting access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only when subsequent to the time of that determination, new derogatory information has been received or the scope or sensitivity of the Restricted Data or national security information to which the individual has or will have access has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

(b) Where, pursuant to these procedures, the Commission or Executive Director for Operations has made a determination denying or revoking access authorization and/or employment clearance to an individual, the individual's eligibility for access authorization and/or employment clearance may be reconsidered when there is a bona fide offer of employment and/or a bona fide need for access to Restricted Data or national security information and either material and relevant new evidence is presented, which the individual and his or her representatives are without fault in failing to present before, or there is is convincing evidence of reformation or rehabilitation. Requests for reconsideration shall be submitted in writing to the Executive Director for Operations through the Director, Office of Administration. Such requests shall be accompanied by an affidavit setting forth in detail the information referred to above. The Executive Director for Operations shall cause the individual to be notified as to whether his or her eligibility for access authorization and/ or employment clearance will be reconsidered and if so, the method by which such reconsideration will be accomplished.

(c) Where access authorization and/or employment clearance has been granted to an individual by the Director, Division of Security, without recourse to the procedures set forth in §§ 10.20 through 10.34, the individual's eligibility for access authorization and/or employment clearance shall be reconsidered only in a case where, subsequent to the granting of the access authorization and/or employment clearance, new derogatory information has been received or the scope or sensitivity of the Restricted Data or national security information, to which the individual has or will have access, has significantly increased. All new derogatory information, whether resulting from the NRC's reinvestigation program or other sources, will be evaluated relative to an individual's continued eligibility in accordance with the procedures of this part.

Subpart D—Miscellaneous

§ 10.36 Terminations.

In the event the individual is no longer an applicant for access authorization and/or employment clearance or no longer requires such, the procedures of this part shall be terminated without a final determination as to the individual's eligibility for access authorization and/or employment clearance.

§ 10.37 Attorney representation.

In the event the individual is represented by an attorney or other representative, the individual shall file with the Director, Office of Administration, a document designating such attorney or representative and authorizing such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this part.

§ 10.38 Certifications.

Whenever information is made a part of the record under the exceptions authorized by § 10.28 (i), (j), or (l), the record shall contain certificates evidencing that the required determinations have been made.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

2. In § 11.21, paragraphs (c) and (d) are revised to read as follows:

§ 11.21 Application of the criteria.

* * * * *

(c) When the reports of investigation of an individual contain information reasonably falling within one or more of the classes of derogatory information listed in § 10.11, it shall create a question as to the individual's eligibility for special nuclear material access authorization. In such cases, the application of the criteria shall be made in light of and with specific regard to whether the existence of such information supports a reasonable belief that the granting of a special nuclear material access authorization would be inimical to the common defense and security. The Director, Division of Security, may authorize the granting of special nuclear material access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of such interview and such other investigation as the Director deems appropriate, may authorize the granting of special nuclear material access authorization. Otherwise, a question concerning the eligibility of an individual for special nuclear material access authorization shall be resolved in accordance with the procedures set forth in §§ 10.20–10.38 of this chapter.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for special nuclear material access authorization by action of the Hearing Examiner,[4] the following principle shall be applied by the Examiner: Where there are grounds sufficient to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of such information supports a reasonable belief that granting access would be inimical to the common defense and security, this shall be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. In § 25.5 the definition for "Access Authorization" is revised to read as follows:

§ 25.5 Definitions.

"Access authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

* * * * *

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

4. In § 95.5 the definition for "Access authorization" is revised to read as follows:

§ 95.5 Definitions.

"Access authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

* * * * *

Dated at Bethesda, Md., this 23d day of April 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-12537 Filed 5-6-82; 8:45 am]

BILLING CODE 7590-01-M

[4] The function of the Hearing Examiner is described in Part 10 of this chapter.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 555, 561, and 570

[No. 82-310]

Home Loan Amendments; Adjusted Net Worth

Dated: April 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to simplify its regulations governing home lending by federally-chartered thrift institutions. The proposal would replace the existing regulations authorizing issuance of specific types of mortgage instruments with a general authorization to make home loans on which the interest rate, the payment, the loan balance or the term to maturity may be adjusted. Such adjustments would have to be tied to specified indices, and the proposed regulation would require associations to provide loan applicants with comprehensive written disclosure statements. The proposal would also make several technical and clarifying amendments to the real estate lending regulations and would remove the definition of adjusted net worth. These proposed admendments are intended to enhance the ability of associations and borrowers to develop a broader variety of mortgage instruments to meet their home financing needs.

DATE: Comments must be received by July 6, 1982.

ADDRESS: Send comments to the Director, Information Services, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Hall, (202-377-6466), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 545.6-2(a) of the Board's regulations authorizes federal savings and loan associations to make loans on the security of homes or combinations of homes and business property ("home loans") (12 CFR 545.6–2(a) (1981)). Paragraph (a)(1) of that section prohibits increases in the monthly payment on a home loan where the home is or is to be occupied by the borrower. Since 1979, when the Board first permitted the issuance nation-wide of variable-payment loans, each alternative mortgage instrument involving payment adjustment has been authorized as a specific exception to the prohibition in paragraph (a)(1). The loan types so authorized are the graduated payment mortgage (GPM), the variable-rate mortgage (VRM), the reverse-annuity mortgage (RAM), the renegotiable-rate mortgage (RRM), the adjustable mortgage loan (AML), the graduated payment adjustable mortgage loan (GPAML) and the balloon-payment loan. Recently, the Board received several requests to authorize the issuance of a number of new and viable types of mortgage instruments, including instruments pursuant to which the monthly payment or the loan balance would vary based on changes in an index tied to the rate of inflation.

To avoid the proliferation of new regulations that would be required to authorize such mortgage instruments, and based on its view that lenders and borrowers should have broad flexibility to use instruments suitable to their individual needs, the Board proposes to replace both the prohibition against increased payments on loans secured by borrower-occupied homes and the regulations authorizing the use of specific types of mortgage instruments with a general authorization to make home loans on which the interest rate, the payment, the loan balance and the term to maturity may be adjusted. The proposed amendments would establish basic parameters within which adjustments could take place, and would require associations to provide each loan applicant with an extensive written disclosure of the specific terms of the loan offered to the applicant. The individual amendments contemplated under the proposal are discussed below.

Adjustments to Rate, Payment, Loan Balance or Term

The proposed revision to paragraph (a)(1) of § 545.6–2 would provide a general authorization for all types of home loans and would grant an association only those rights and powers expressly incorporated in the loan contract. Proposed paragraph (a)(2) sets forth the parameters within which the interest rate, the payment, the loan balance or the loan term could be adjusted, and expressly provides that such adjustments could be made subject to limitations contained in the loan contract. Any combination of adjustments, as described below, would be permissible. The proposed regulation draws no distinction between home loans based on whether or not the security property is occupied by the borrower. Under the existing regulation, associations are not limited as to adjustment of the rate, payment or balance on loans secured by non-borrower-occupied property.

Interest-Rate Adjustment

Under the proposal, the interest rate could be increased to reflect increases in any index representative of the interest cost of borrowing money, which would include all indices currently permitted to be used under the AML regulation (12 CFR 545.6–4a; 46 FR 24148, 37625 (1981)), or representative of the rate of inflation. This provision for the first time would authorize federal associations to make loans that tie changes in the loan interest rate to actual changes in the rate of inflation. (Although associations currently are permitted to make such loans under their leeway authority (12 CFR 545.6–5(b) (1981)), no more than five percent of assets may be invested in loans made pursuant to that authority.)

The interest rate carried on such a loan is made up of two elements—one element is equivalent to what the cost of borrowing money would be if no inflation were expected, and thus would be much lower than the interest rate on a conventional mortgage; the second element is the most recent percentage change in inflation, as measured by an inflation index. The interest on this type of loan is likely to be lower than that on a conventional loan. This is because lenders are protected from the adverse effects of inflation on the value of the dollar by tying the loan interest rate to an index that reflects the actual performance of inflation rather than to a money-market index, which normally includes an inflation risk premium because of the market's uncertainty over future rates of inflation.

The proposed regulation would also permit an association to decrease the rate at any time. As with the adjustable mortgage loan, current interest-rate adjustments would have to reflect the difference between the value of an index at the time of loan commitment or loan closing and its value at the time of adjustment or as of the time notice of an adjustment must be given.

Payment Adjustment

Under the proposal, the monthly payment would be permitted to be decreased only to reflect a decrease in the interest rate or in the loan balance. This provision is intended to preclude associations from reducing the payment in a situation that, although advantageous to the association, might not be beneficial to the borrower (*e.g.*, a reduction that would lengthen the loan term and increase the borrower's total interest cost). The provision would not prohibit a decrease that is mutually agreed to at the time of the decrease by the association and the borrower.

The proposed regulation would permit a payment increase only if—

(1) The contract requires that increases be made pursuant to a schedule set forth in the contract that specifies the percentage or dollar increase per adjustment—this would permit associations to make loans under which the payments to principal would increase steadily during the loan term and, in combination with subdivision (2)(iii)(*a*) of the proposal (see discussion below), to make what currently are called graduated payment loans and graduated payment adjustable mortgage loans;

(2) The increase reflects an increase in the interest rate or in the loan balance; or

(3) The contract provides for payment increases tied to increases in a national or regional index that measures the rate of inflation, that is readily available to and verifiable by the borrower, and that is beyond the control of the association—such a provision normally would result in the payment of the principal loan balance over a shorter term than that over which the balance of a conventional loan would be paid, since the payments to principal normally would increase at an accelerated pace.

Adjustment of Loan Balance

Under paragraph (a)(2)(iii) of the proposal, the loan balance could be increased or decreased if the adjustment reflects an increase or decrease in the loan rate and the contract ties changes in the loan balance to changes in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association. In addition, the loan balance could be adjusted if the contract provides for periodic payments to the borrower at least semi-annually directly from the association.

Specifically, paragraph (a)(2)(iii)(*a*) would permit negative amortization (*i.e.*, the deferral and capitalization of interest). This is authority that federal associations already possess under the Board's alternative mortgage instrument regulations.

Paragraph (a)(2)(iii)(*b*) would authorize federal associations for the first time to make what is commonly known as a price-level adjusted mortgage (PLAM) without the requirement that such loans be carried in associations' leeway lending category (12 CFR 545.6–5(b) (1981)). A PLAM ties the loan balance to an inflation index, thus assuring the lender that the value of the loan will stay current with the value of the dollar. The interest rate carried on a PLAM is equivalent to what the cost of borrowing money would be if no inflation were expected and thus is much lower than the interest rate on a conventional mortgage.

Paragraphs (a)(1) and (a)(2)(iii)(*c*) would provide the authorization currently contained in 12 CFR 545.6–4(c) to issue reverse-annuity mortgages by permitting an association to make a rising-debt loan with payments deferred until maturity, or a loan for the purpose of purchasing an annuity from an insurance or other company with payments deferred until maturity. The proposal also would go one step beyond the existing authority by permitting a lump-sum disbursement of loan proceeds, with payments deferred until maturity. The proposal would *not* permit an association to provide a borrower with a line-of-credit secured by a home with payments deferred until maturity. Such a loan may be made only under an association's consumer lending authority (12 CFR 545.7–10 (1981)). Associations currently may offer such loans under their real estate lending authority only if the contract provides for at least semiannual payments of interest. The Board requests comment on whether such loans with payments deferred until maturity should be permitted. It is noted that the maximum 125 percent loan-to-value limitation in proposed subparagraph (a)(3) would apply to all loans permitting the deferral of payments.

Paragraph (a)(2)(iii)(*d*) would effectively authorize federal associations to make shared appreciation mortgages (SAMs). Authorization of this type of instrument was proposed by the Board on September 30, 1980 (FHLBB Res. No. 80–610; 45 FR 66801 (1980)). SAMs typically differ from other types of mortgages by permitting an association, in exchange for charging a below-market, fixed interest rate over the term of the loan, to charge contingent deferred interest based on the appreciation in value of the property securing the loan. Under the Board's 1980 proposal, contingent interest would have been payable on the earlier of maturity or payment in full of the loan or the sale or transfer of the security property. The share of appreciation payable as contingent interest would have been determined at the time of origination of the loan and would have been limited to a maximum of 40 percent of the net appreciation in value. The term of the loan would have been limited to a maximum of ten years, but the association would have been required to guarantee refinancing of the outstanding indebtedness on the loan, including contingent interest, at maturity.

The Board received approximately 350 comments on the SAM proposal. Almost two-thirds of the comment letters were from individual consumers, 51 letters were from associations, and 39 letters were from realtors. Other commenters included other real estate professionals, trade associations, consumer representatives, accountants, lawyers, title insurers and the Federal Home Loan Banks. Individual consumers opposed the proposal by a 55 to 45 percent split. While some of the negative consumer letters pointed to practical difficulties such as the accuracy of appraisals and affordability of refinancing, the majority viewed authorization for associations to share in the appreciation in value of a house as an attack on homeownership or as a means for lenders to benefit from inflation.

In contrast, consumer letters in favor of the proposal focused on the increased opportunities for homeownership resulting from the below-market rate of interest associated with the instrument. Many of these letters recognized the potential difficulties faced by first-time home buyers in an era of expensive housing and high-cost financing. A strong majority of every other class of commenters also supported the Board's proposal. While many of these comments recommended changes in the proposal, it is fair to conclude that the concept of giving mortgage lenders a share in a home's appreciation in value was well received by the public as one alternative for dealing with the high cost of mortgage financing.

After reviewing the comments, however, it was determined that further staff work was needed on several issues raised by the comments. Therefore, no final action on the proposal was taken at that time. It now appears to the Board that some of the problems raised resulted from the excess of constraints contained in the proposal, although the questions would remain of how the lender's portion of the property's appreciation in value would be treated for tax purposes and what impact the reduced cash flow inherent in SAMs would have on associations.

The current proposal would give associations and borrowers broader flexibility to structure SAMs to meet their needs. The proposal would permit a portion of the interest to be taken in the form of a share in the appreciation in value of a home, but, in contrast to the 1980 proposal, would not limit the maximum term to ten years or the maximum share in the appreciation in a home's value to 40 percent. In addition, as is the case under the existing balloon-loan regulation, associations would not be required to refinance the loan at its maturity. As with the reverse-annuity mortgage, it is believed that deletion of this requirement should add to the marketability of SAMs, although associations would not be prohibited from guaranteeing refinancing.

Adjustment to Loan Term

Paragraph (a)(2)(iv) of the proposal would permit adjustments to the loan term to reflect increases or decreases in the interest rate, the payment or the loan balance. The loan term would not be permitted to be changed independently of a change in one of these items. As under the current regulations, the total loan term could never exceed 40 years.

The Board notes that the proposed amendments would permit associations to make or otherwise deal in "call" or "demand" loans— *i.e.,* loans with long-term amortization schedules that give lenders the right to call the loan due and payable either after a specified number of years following closing or upon the occurrence of a specified event external to the loan (*e.g.,* market rates drop below X%, or the rate of inflation exceeds Y%). Currently, associations may make such loans only under their leeway authority (12 CFR 545.6–5(b) (1981)).

Notice of Adjustment

Notice of an adjustment, or of the muturity of a non- or partially-amortized loan, would have to be given at least 30 but not more than 120 days prior to the adjustment or at least 90 but nor more than 120 days prior to maturity. This should provide borrowers with sufficient advance notice of adjustments while leaving some flexibility to lenders to structure notice schedules compatible with their data-processing systems. It is noted that the proposed disclosure provision, discussed below, would require associations to indicate how far in advance of each adjustment notice will be given, thus effectively forcing associations to decide the matter prior to loan closing. The proposed regulation would also provide, however, that, where the contract states that rate changes shall occur more frequently than payment changes, notice of rate changes, or of changes to the loan balance or term resulting from rate changes, need not be given until such time as notice of a payment change is given. This provision is similar to the existing notice requirement of the Board's adjustable mortgage loan regulation (12 CFR 545.6–4a; 46 FR 24148 (1981)). In addition, if the contract sets out a schedule of adjustments to the monthly payment, such as would be possible with a graduated payment mortgage loan, which carries a fixed interest rate, then notice would not have to be given of each payment change made pursuant to that schedule.

Prepayment Penalty

The proposed amendments would permit the imposition of a penalty for the prepayment of all or any part of a loan only if the loan carried a fixed interest rate and permitted no adjustments except to the loan balance resulting from the deferral and capitalization of interest. Currently, § 545.8–5(b) (12 CFR 545.8–5(b) (1981)) authorizes associations to provide for prepayment penalties in their loan contracts, except to the extent such penalties are expressly prohibited by other regulations of the Board. The Board's existing alternative mortgage instrument regulations, except the regulation relating to fixed rate balloon-payment loans (12 CFR 545.6–2(a)(4); 46 FR 51893 (1981)), require associations to permit borrowers to prepay such loans in whole or in part at any time without penalty. In the Board's view, since under the proposal associations would have broad flexibility in shaping rate and inflation-sensitive loan instruments, borrowers should continue to be given maximum flexibility in locating alternative services of financing. Therefore, associations would not be permitted to impose a pre-payment penalty on instruments that provide the association with protection against interest-rate fluctuations.

Loan-to-Value Ratio Limitations

The proposed regulation would retain the loan-to-value ratio limitations currently set forth in the home loan regulations with one change—the loan-to-value ratio would be permitted to exceed the ratio at loan closing as long as, during the loan term, the loan balance never exceeded 125 percent of the appraised value of the property at the time of loan closing. The 125-percent limitation would replace the current requirement that the monthly payment be brought to a fully amortizing level at least once each five years, which has proven to create costly administrative and data-processing problems for some associations. The 125-percent limitation would not, however, apply to a loan made under subdivision (2)(iii)(*b*) of the proposed regulation, which would permit PLAMs, nor to a loan that provided for adjustment of the payment at least once each five years to a level sufficient to fully amortize the loan at the then-existing interest rate and loan balance.

The proposal would remove the existing restriction that individuals borrowing on the security of condominium or co-operative dwellings in the process of conversion from rental units in an amount greater than 80 percent of the value of such dwellings must certify that they intend to occupy the dwellings as their principal residences. Such a change would be consistent with the Board's proposal to eliminate from the basic 90-percent loan authority distinctions based on borrower occupancy.

Finally, the proposal would provide that associations making loans exceeding 90 percent of the value of the security property would be required to ensure only that that part of the loan exceeding 90 percent is guaranteed or insured during the time that the loan balance exceeds 90 percent. Currently, during the time the loan balance exceeds 90 percent, the regulation requires insurance of the portion of the loan exceeding 80 percent. Such a change would conform the regulatory provisions to the statutory requirement (Section 5(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(c)). The proposed regulation would not, though, prohibit associations from requiring insurance of a greater portion of the loan balance.

Pledged-Account and Other Loans

The proposed regulation would retain the existing authority to make pledged-account loans, loans to facilitate the trade-in or exchange of property, "blanket" loans on cooperatives as well as loans on individual cooperative units, and non-monthly-installment loans. The paragraph authorizing pledged-account loans would contain a minor amendment to clarify that the restrictions set out in that paragraph apply only when a loan exceeds 90 percent of the *combined* value of the security property and the pledged account.

Disclosure

The disclosure requirements in the proposed amendments are similar to the requirements contained in the Board's existing alternative mortgage instrument regulations except that associations would not be required to use a standardized format or standardized language. Given the variety of mortgage instruments that would be permissible under the proposal, it would be impossible to construct a single or even several standardized disclosures that would be fully descriptive of all possible variations. In view of the fact that the Board believes the disclosures should be as complete, informative and accurate as possible, the proposal omits standardized language in favor of comprehensive requirements as to the information each disclosure must provide.

The proposed disclosure requirements are more extensive in several respects than previous disclosures required by the Board. In addition to requiring a description and an example of how the interest rate, payment, loan balance and term to maturity may be adjusted, the proposed disclosure would require the association to explain that (1) the association and the applicant become bound by the terms of the loan contract upon signing it, (2) even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and (3) since normally the contract and mortgage (or deed of trust) alone establish the rights of the borrower, the borrower should be familiar with and understand fully every provision of the contract. The purpose of this disclosure is to alert applicants to the significance of entering the loan transaction, and to encourage both applicants and associations to ensure that all understandings reached by an applicant and an association are incorporated in the contract.

The proposed disclosure provision would also require associations to describe what information will be contained in each notice of an adjustment or, in the case of a non- or partially-amortized loan, of the loan's maturity, and of how far in advance such notice will be provided. An association offering a non- or partially-amortized loan that the association did not intend to contractually obligate itself to refinance would have to state that a large payment will be due at maturity. Associations intending to offer refinancing would have to disclose all terms and conditions applicable to the offer, such as whether the offer was on a one-time or continuing basis and borrower-eligibility standards.

Under the proposal, an association would be required to disclose all contractual contingencies under which the loan might become due or which might result in a forced sale of the home. An association would also have to describe any provision requiring escrow payments as well as the purpose of such payments and how their amount is established. Finally, the proposed disclosure would require the provision of an example showing the interaction of all variable features of the loan over a period of time, which may be of any length adequate to demonstrate how the loan would operate. The purpose of the latter requirement is to ensure the example consists of more than just one adjustment at one point in time.

The Board specifically requests comment on whether the proposed disclosure provisions would be adequate to ensure that borrowers are given the information needed to compare the mortgage programs of various lenders and to make informed decisions as to which mortgage instrument is best suited to a borrower's individual needs. The Board welcomes suggestions as to what additional disclosures, if any, should be required of associations.

Miscellaneous Amendments

Home Improvement and Manufactured Home Loans

The Board proposes to amend its regulations authorizing the issuance of home improvement and manufactured home loans (12 CFR 545.6–3 and 545.7–6, respectively) to permit the same range of adjustments that would be permissible for home loans under the proposed changes to paragraph (a) of § 545.6–2. Currently, home improvement and manufactured home loans may be structured as ballon payment loans, graduated payment loans and adjustable mortgage loans (*see* 12 CFR 545.6–3, 545.7–6; 46 Fed. Reg. 51897 (1981), 47 Fed. Reg. 10785 (1982)). The rationale for broadening associations' flexibility to make home loans appears to apply equally well to home improvement and manufactured home loans.

Leeway Authority

The Board proposes to amend paragraph (b) of § 545.6–5 of its regulations to require that any loan made thereunder must comply with the requirements of proposed paragraph (a)(2), relating to notice of adjustments, and (a)(8), relating to disclosure of loan terms, of § 545.6–2. Paragraph (b) authorizes associations to invest up to five percent of assets in loans secured by residential or commercial-farming real estate that are not otherwise authorized by the lending regulations. The regulation currently contains no requirements as to disclosure. There appears to be no justification, however, for excluding from full disclosure the terms of every residential loan made by associations.

Initial Loan Charges

The Board proposes to amend its regulations governing initial loan charges (12 CFR 545.8–2 (1981)) to confirm associations' authority to require the prepayment of a fixed amount of interest at the time a loan is made ("points"). Section 545.8–2 currently makes no express reference to this common practice. The proposed amendment would refer to such interest as an "acquisition credit," the definition of which and the accounting for which is contained in § 563.23–1(g)(2) of the Board's regulations (12 CFR 563.23–1(g)(2); 47 FR 3094 (1982)).

Escrow Accounts

The Board proposes to make two changes to its regulation governing the establishment of escrow accounts (12 CFR 545.8–3(b) (1981)). One change would conform the regulation to section 10 of the Real Estate Settlement Procedures Act of 1974 as that section was amended in 1976 (*see* 12 U.S.C. 2609 (1980)). Currently, § 545.8–3 permits federally-chartered thrift institutions to require the deposit in an escrow account, (1) on or before the date of settlement, of a sum equal to taxes, assessments, insurance premiums, and other charges applicable to the period up to the date of settlement plus one-twelfth of the charges expected to accrue during the 12-month period following settlement, plus, (2) beginning with the first month following settlement and each month thereafter, an amount equal to one-twelfth of the charges expected to accrue during the twelve-month period following the first day of each month.

Ambiguous wording, however, has resulted in some associations interpreting the regulation to permit the escrowing of a full year's worth of charges in advance. In addition, the Real Estate Settlement Procedures Act as amended permits lenders to require maintenance of a surplus in escrow equal to one-sixth of the charges expected to become due during the upcoming 12-month period. Previously, lenders were permitted to require a surplus of only one-twelfth of such charges, as is noted above.

The Board therefore proposes to amend paragraph (b) of § 545.8–3 to omit the ambiguous language and conform the regulation to the Real Estate Settlement Procedures Act, as amended. The proposed regulation would permit associations to require the setting aside in escrow, (1) on or before the date of settlement, a sum equivalent to the charges applicable to the period up to the due date of the first payment under the loan plus one-sixth of the charges expected to become due during the 12-month period following the due date of the first payment and, (2) beginning with the due date of the first payment and monthly thereafter, a sum equivalent to one-twelfth of the charges expected to become due during the 12-month perioid following the due date of the first payment. In addition, the association would be permitted to require that a surplus be maintained in escrow equivalent to one-sixth of the charges expected to become due during the following 12-month period.

The second change the Board proposes to make in its escrow account regulations would be to require associations to provide notice to a borrower of a deficiency in the amount required to be kept in escrow. Such a deficiency could arise if taxes or other charges increased. Currently, paragraph (b) of § 545.8–3 provides simply that, "if the association determines there will be a deficiency on the due date, it may require additional monthly deposits * * *" (12 CFR 545.8–3(b)(2) (1981)). This has been interpreted to permit associations to make up any deficiency in an escrow account by reducing the amount of a loan payment allocated to principal and interest due on the loan. While the vast majority of associations provide borrowers with notice of and the opportunity to make up any deficiency prior to adjusting a loan payment, it has come to the Board's attention that some associations have not done so. Therefore, the Board proposes to amend paragraph (b) to require such notice.

Appraisals

The Board also proposes to amend section 545.8–8 of its regulations (12 CFR 545.8–8 (1981)), which requires an association to obtain a signed appraisal from a qualified person designated by the association's board of directors before making a loan secured by the appraised property. The proposed amendments to paragraph (a) of § 545.6–2 would authorize associations to develop loan plans, such as the SAM or PLAM, under which it might be advantageous for an association or borrower to secure a reappraisal of the security property during the term of a loan. It appears unfair to make either party bear the costs of an appraisal desired solely by one party during the term of a loan. Therefore, the Board proposes to provide that an association must pay for any appraisal of the property during the loan term unless the borrower has requested the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan. This language would not prohibit an association from requiring a borrower to bear the cost of an appraisal undertaken at maturity of the loan, such as might be necessary if the association were entitled to a portion of the appreciation in value of the security property over the entire loan term.

Definition of Adjusted Net Worth

The Board proposes to remove § 561.14 of its regulations (12 CFR 561.14 (1981)), which defines "adjusted net worth" (*i.e.*, net worth less 15 percent of scheduled items in 1964 and net worth less 20 percent of the scheduled items thereafter). Under a previous version of the net-worth regulations (12 CFR 563.13(b) (1965)), insured institutions were required to make semiannual credits to their Federal Insurance Reserve when their adjusted net worth was less than ten percent of specified assets. This provision was deleted in 1972 (*see* 37 FR 26580 (1972)) and the term "adjusted net worth" is not used elsewhere in the regulations.

Miscellaneous Technical Amendments

The Board also proposes to make a number of technical amendments that would update its regulations. The proposed amendments are as follows:

1. Remove from paragraph (a) of § 545.6–9 the reference to section 545.6–8, which was rescinded effective November 17, 1980 (45 FR 76095 (1980));

2. Remove paragraph (d) of § 545.7–11, which references now-rescinded section 545.8–7 (*see* 45 FR 76095 (1980));

3. Change the reference in Section 555.3 from 80 to 90 percent to reflect the similar change made in paragraph (a) of § 545.6–2 in 1980 (45 FR 76095 (1980));

4. Remove § 555.6, regarding the refinancing of home improvement loans with unsecured loans, in view of associations' broadened authority to make consumer loans (*see* 12 CFR 545.7–10 (1981));

5. Change the citation in § 555.11 from § 545.6–6 to paragraph (c) of § 545.6–2, where the authority to make acquisition loans currently is located;

6. Clarify in § 545.7–9 that a collateral loan need not be secured by an assignment of secured loans, but by an assignment of any loan, whether or not secured, that the federal association could make directly; and

7. Remove § 570.9, regarding insured institutions' lending territory, in view of the previous elimination of geographical restrictions on lending (*see* 45 FR 76095 (1980)).

Commercial Real Estate Loans

Section 545.6–6 of the Board's regulations (12 CFR 545.6–6 (1981)) authorizes loans secured by first liens on "other improved real estate," defined in § 541.17(a) and (c) to be commercial real estate containing a permanent structure or improvements that make it usable by a business or industrial enterprise, or real estate used for commercial farming. The Board requests comment on whether associations should be permitted to issue commercial real estate loans that provide for negative amortization, and, if so, what restrictions, if any, to put on such loans. Currently, § 545.6–6 requires the payment of interest at least semiannually on such loans. By comparison, the Office of the Comptroller of the Currency interprets 12 U.S.C. 371(a)(1) (Supp. 1982) to permit negative amortization on any loan made by a national bank that does not exceed 75 percent of the value of the security property.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 13, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply equally to all institutions chartered by the Board.

3. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the proposal.

4. *Alternatives to the proposed rule.* To the extent that small insitutions improve future profitability and reduce interest-rate risk by using the expanded lending authority, the proposal would benefit their operations. The proposal would not have a disproportionate impact on small institutions, and there is no alternative action that would change the impact of broadened lending authority on small institutions.

List of Subjects in 12 CFR Parts 545, 555, 561 and 570

Savings and loan asssociations.

Accordingly, the Board proposes to amend Parts 545 and 555 of Subchapter C and Parts 561 and 570 of Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, to read as set forth below.

PART 545—OPERATIONS

1. Amend § 545.6–2 by revising paragraph (a), to read as follows:

§ 545.6–2 Other residential real estate loans.

(a) *Home loans*—(1) *Authorization.* A Federal association may make, sell, purchase, participate, or otherwise deal in loans on the security of homes or combinations of homes and business property (including non-amortized and partially-amortized loans) on which the interest rate, the payment, the loan balance or the term to maturity may vary, as provided in this paragraph. Such loans shall be repayable in monthly installments over a term not exceeding 40 years, except that a loan authorized by paragraph (a)(2)(iii)(*c*) of this section or a loan under which an association purchases an annuity from an insurance company on behalf of a borrower need not require any payment until maturity. An association making a home loan shall possess only such rights and powers as are expressly set forth, by incorporation or otherwise, in the loan contract.

(2) *Adjustments to rate, payment, balance or term.* Subject to such limitations on adjustments as are set forth in the loan contract, an association may adjust the interest rate, the payment, the loan balance or the term to maturity as follows:

(i) interest rate—adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of an index that measures the rate of inflation, either of which is readily available to and verifiable by the borrower and is beyond the control of the association, provided that the interest rate may be decreased at any time;

(ii) payment—the payment may be decreased to reflect a decrease in the interest rate or in the loan balance, and may be increased if (*a*) the contract requires that increases be made pursuant to a schedule set forth in the contract that specifies the percentage or dollar increase in the payment per adjustment, (*b*) the increase reflects an increase in the interest rate or the loan balance, or (*c*) the contract provides for payment increases tied to increases in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association;

(iii) loan balance (*i.e.*, principal plus deferred, capitalized interest)—the loan balance may be increased or decreased if (*a*) the contract provides for the deferral and capitalization of interest, (*b*) the contract provides that changes in the loan balance shall be tied to changes in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association, (*c*) the contract provides for lump-sum disbursement of the loan proceeds or for scheduled periodic disbursements to the borrower made directly by the association, or (*d*) the contract provides that a portion of the consideration to be received by the association in return for making the loan shall be interest in the form of a percentage, fixed at or before the time of loan closing, of the amount by which the current market value of the property (as determined in accordance with § 545.6(b) of this Part) exceeds the original appraised value; and

(iv) term to maturity—the loan term may be increased or decreased to reflect an increase or decrease in the interest rate, the payment or the loan balance. In making any of the above-described adjustments, any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan. Adjustments shall be based on the difference between the index value most recently available as of the time of loan commitment or loan closing, or, if one index is substituted for another during the loan term, the value most recently available as of the date of substitution, and its value as of the time of adjustment or as of the time within which notice of adjustment must be given. At least 30 but not more than 120 days prior to an adjustment and at least 90 but not more than 120 days prior to the maturity of a non- or partially-amortized loan, an association shall provide the borrower with notice of the adjustment or of maturity. However, where the contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, or of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. In addition, where the loan contract sets out a schedule of adjustments to the payment, notice need not be given of each payment change made pursuant to that schedule.

(3) *Loan-to-value ratio.* A home loan shall not at the time of origination exceed 90 percent of the value of the security property. During the term of a home loan, the loan-to-value ratio may increase above 90 percent if pursuant to an increase in an index set forth in paragraph (a)(2)(i) of this section. The Board will assume continued compliance with the loan-to-value-ratio limitations where the original ratio met the requirements of this paragraph (a)(3), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term of the loan unless pursuant to subdivision (2)(iii)(*b*) of this paragraph (a) or unless the loan contract provides that the payment shall be adjusted at least once each five years to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. Notwithstanding the foregoing, the loan-to-value ratio at the time of origination may be 95 percent if:

(i) The loan contract requires that, in addition to full or partial amortization of the loan, one-twelfth of estimated annual taxes and assessments on the security property be paid monthly in advance to the association;

(ii) The borrower, including a purchaser who assumes the loan, has executed a certificate stating that the borrower occupies, or in good faith intends to occupy, the property (or one dwelling on the property) as the borrower's principal residence; and

(iii) The unpaid balance of the loan exceeding 90 percent of the value of the security property is guaranteed or insured by a mortgage insurance company which the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer": *Provided,* however, that any unpaid loan balance secured by a pledged savings account shall not be required to be guaranteed or insured under this provision.

(4) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exceed 90 percent of value and shall be repayable within 18 months, with interest payable at least semi-annually.

(5) *Pledged-account loans.* Loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios specified in this paragraph (a), with such excess secured by savings accounts: *Provided,* that loans that exceed 90 percent of the value of the combined security are subject to the following restrictions:

(i) The loan shall not exceed the appraised value of the real estate:

(ii) The savings account shall consist only of funds belonging to the borrower, members of the borrower's family, or the borrower's employer; and

(iii) The association shall fully disclose to the prospective borrower the differences (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings and a loan secured by real estate alone.

(6) *Loans on cooperatives.* Such loans may be made under this paragraph (a), subject to the following requirements:

(i) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration;

(ii) *Loans on individual cooperative units.* Such loans may be made on the security of (*a*) a security interest in stock, a membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization, and (*b*) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(7) *Non-monthly-installment loans.* The term-of-years limitation shall be 15 years on loans made with interest payable less frequently than monthly but at least semi-annually and principal payable less frequently than monthly but at least annually in installments sufficient to retire the debt, both interest and principal, within the loan term, and 40 years on loans made on farm residences or combinations of farm residences and commercial farm real estate with principal and interest payable less frequently than monthly but at least annually in installments sufficient to retire the debt, both interest and principal, within the loan term.

(8) *Disclosure.* Prior to making a home loan, an association must provide each loan applicant with a written disclosure describing in plain language the specific terms of the loan offered to the applicant. The purpose of the disclosure is to ensure full understanding of the operation of the loan being offered. The disclosure shall contain such of the following information as is relevant to the type of loan being offered:

(i) A general explanation of the fact that (*a*) the association and the applicant become bound by the terms of the loan contract upon signing it, (*b*) even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and (*c*) since normally the contract and mortgage (or deed of trust) alone establish the rights of the borrower, the borrower should be familiar with and understand the provisions of the contract;

(ii) The term to maturity, and any provisions of the loan contract that would authorize the association to lengthen or shorten the term;

(iii) The initial interest rate and, if the contract provides for adjustment of either the interest rate, the payment, the loan balance or the term in accordance with changes in an index, the base index rate, or, if neither fact is known, the manner in which the initial interest rate and base index rate will be established;

(iv) The amount of the initial payment, if known, and an explanation of how the association establishes an amortization schedule for the loan, including how the association determines both the amount of each payment and what proportion of each payment is credited to interest;

(v) A full explanation of how the interest rate, the payent, the loan balance, or the term to maturity may be adjusted (including identification of the index(es) to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others;

(vi) What information will be contained in each notice of an adjustment or, in the case of non- or partially-amortized loans, of maturity, and how far in advance of an adjustment or maturity each notice will be provided;

(vii) If the loan is non- or partially-amortized and the association does not intend to contractually obligate itself to refinance the loan unless the loan is formally in default, a statement that a large payment will be due at maturity of the loan; if the loan is non- or partially-amortized and the association intends to obligate itself contractually to refinance the loan, the terms and conditions under which it will do so;

(viii) A description of all contractual contingencies under which the loan may become due or which may result in a forced sale of the home;

(ix) Whether the loan contract will provide for escrow payments, the purpose of requiring escrow payments, and how the amount of an escrow payment is established; and

(x) An example of the interaction of all variable features of the loan over any period of time.

* * * * *

2. Amend § 545.6–3 by revising the second sentence thereof, to read as follows:

§ 545.6–3 Home improvement loans.

* * * Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized under § 545.6–2(a) of this Part.

3. Remove existing §§ 545.6–4, 545.6–4a and 545.6–4b, to read as follows:

§ 545.6–4 Alternative mortgage instruments. [Removed eff.]

§ 545.6–4a Adjustable mortgage loans [Removed eff.]

§ 545.6–4b Graduated payment adjustable mortgage loans. [Removed eff.]

4. Amend § 545.6–5 by revising paragraph (b) thereof, to read as follows:

§ 545.6–5 Leeway authority for loans relating to residential real estate and farms.

* * * * *

(b) *Nonconforming secured loans.* In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding five percent of its assets in loans, advances of credit, and interests therein, secured by residential real estate or real estate used or to be used for commercial farming, which are not otherwise authorized under this Part: *Provided,* that such loans must conform to the notice and disclosure requirements of § 545.6–2(a)(2) and (8) of this Part.

§ 545.6–9 [Amended]

5. Amend paragraph (a) of § 545.6–9 by removing from the first sentence the phrase ", except limitations in § 545.6–8,".

6. Amend § 545.7–6 by revising paragraph (e)(2)(iii) thereof, to read as follows:

§ 545.7–6 Manufactured home financing.

* * * * *

(e) *Retail financing.* * * *

(2) *Conventional loans.* * * *

(iii) the manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.6–2(a) of this Part; and

7. Revise § 545.7–9, to read as follows:

§ 545.7–9 Collateral loans.

An association may make a loan secured by an assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loan(s).

§ 545.7–11 [Amended]

8. Amend § 545.7–11 by removing paragraph (d) thereof.

9. Revise § 545.8–2, to read as follows:

§ 545.8–2 Initial loan charges.

Except as provided in § 563.35(d) of this Chapter, a Federal association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs, in such reasonable amounts as the board of directors may fix. The association may collect the charges from the borrower and pay the persons rendering services. An association also may require the payment of interest at the time of loan closing in the form of "acquisition credits," as defined in § 563.23–1(g)(2) of this Chapter.

10. Amend § 545.8–3 by revising paragraph (b) thereof, to read as follows:

§ 545.8–3 Contract provisions for real estate loans.

* * * * *

(b) *Escrow accounts.* (1) An association may require that all or any part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the association, in addition to interest and principal payments on the loan, to enable the association to pay such charges as they become due. With regard to any loan on the security of a home, made in whole or in part by the association, the association shall not require that the borrower deposit in any escrow account established to assure payment of taxes, assessments, insurance premiums, and other charges, (i) before or on the date of settlement, an aggregate sum in excess of the total amount of such charges owed by the borrower and due and payable during the period ending on the due date of the first installment payment under the loan *plus* one-sixth of the estimated total amount of such charges that will become due and payable during the 12-month period beginning on the due date of the first installment payment, or (ii) in any month beginning with the due date of the first installment payment, one-twelfth of the estimated total amount of such charges that will become due and payable during the 12-month period beginning on the due date of the first installment payment *plus* such amount as is necessary to maintain the additional balance of one-sixth of the estimated total amount of such charges deposited pursuant to paragraph (b)(1) of this section. (2) If the association determines there will be a deficiency on the due date of such charges, it may require that additional deposits, sufficient to make up the deficiency, be submitted in equal amounts with each payment up to the date upon which such charges become due and payable. After giving the borrower notice of such deficiency and of the additional deposits required to make up the deficiency, the association may deduct the necessary amounts from the borrower's regularly-scheduled installment payments if the borrower fails to make the additional deposits.

11. Amend § 545.8-5 by revising paragraph (b) thereof, to read as follows:

§ 545.8-5 Loan payments.

* * * * *

(b) *Loan payments and repayments.* Payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or party to offset payments which subsequently accrue under the loan contract. A borrower on a loan secured by a home or combination of home and business property may prepay the loan without penalty unless the loan contract expressly provides for all of the following: (1) a prepayment penalty, (2) a fixed interest rate, and (3) only such increases in the loan balance as result from the deferral and capitalization of interest. The prepayment penalty for a loan secured by a home or combination of home business property shall not be more than six months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any 12-month period which exceeds 20 percent of the original principal amount of the loan.

12. Amend § 545.8-8 by adding a second sentence thereto, to read as follows:

§ 545.8-8 Appraisals.

* * *The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan unless the borrower specifically requested the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

PART 555—BOARD RULINGS

§ 555.3 [Amended]

13. Amend paragraph (b) of § 555.3 by removing "80" and inserting in its place "90".

14. Remove § 555.6, to read as follows:

§ 555.6 Refinancing unsecured loans. [Removed eff.]

§ 555.11 [Amended]

15. Amend § 555.11 by removing the term "§ 545.6-6" and inserting in its place the term "§ 545.6-2(c)".

PART 561—DEFINITIONS

16. Remove § 561.14, to read as follows:

§ 561.14 Adjusted net worth. [Removed eff.]

PART 570—BOARD RULINGS

17. Remove § 570.9 to read as follows:

§ 570.9 Lending territory; relocation of principal office. [Removed eff.]

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947; 3 C.F.R., 1943-1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

James J. McCarthy,

Acting Secretary.

[FR Doc. 82-12563 Filed 5-6-82; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6400; 34-18701; IC-12413]

Financial Statement Requirements for Registered Investment Companies; Proposed Revision of Rules

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Commission announces that it is extending for 30 days the date by which comments should be received on a proposed revision of financial statement requirements for registered investment companies. The Commission has received requests that the comment period be extended and believes that a 30-day extension will be beneficial since it will result in the receipt of additional useful comments.

DATE: Comments should be received by the Commission on or before May 30, 1982.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7-918. All comments will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Clarence M. Staubs, or John W. Albert, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION: On January 11, 1982, the Commission proposed for public comment Release No. 33-6374 (46 FR 2776) which would revise requirements for financial statements of registered investment companies. In order to receive the benefit of the comments of a greater number of interested parties, and in view of the requests received by the Commission for additional time in which to comment, the Commission has extended the comment period on this release by 30 days, until May 30, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 30, 1982.

[FR Doc 82-12532 Filed 5-6-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (New Mexico-14)]

High-Cost Gas Produced From Tight Formations; New Mexico

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New Mexico that the Dakota Formation be