DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket ID: OCC–2007–0011]

RIN 1557–AD03

Special Lending Limits for Residential Real Estate Loans, Small Business Loans, and Small Farm Loans

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

ACTION: Interim rule, request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending Part 32 to permanently incorporate special lending limits for 1–4 family residential real estate loans, small business loans, and small farm loans or extensions of credit. These special lending limits have, since 2001, been available to certain eligible national banks through a lending limits pilot program (pilot program). Under the pilot program, an eligible national bank with a main office located in a state that has a lending limit for residential real estate, small business, or small farm loans that is higher than the current Federal limit may apply to take part in the pilot program and make use of the higher limit. The OCC has found that banks in the pilot program, and loans made under the program, have operated in a safe and sound manner since 2001. Accordingly, this interim rule amends Part 32 to make permanent the special limits set forth in the pilot program. This interim rule removes the expiration date for the pilot program and makes one change to the special lending limits available under the pilot program. The OCC also seeks comment on any other changes that should be considered for the final rule. As in the past, only eligible banks can use the special limits. Those banks already approved to participate in the pilot program may continue to use the special lending limits and need not submit a new application to do so.

DATES: *Effective Date:* June 7, 2007. Comments must be received by July 9, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0011'' to submit or view public comments and to view supporting and related materials for this interim rule. The ''User Tips'' link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2007–0011'' in your comment. In general, OCC will enter all comments received into the docket and publish them on Regulations.gov without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0011'' to view public comments for this interim rule.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, or Terry Howard, National Bank Examiner, Commercial Credit Risk, (303) 293–1866.

SUPPLEMENTARY INFORMATION:

Background

The percentage of capital and surplus that a bank may loan to any one borrower is limited by 12 U.S.C. 84. Section 84 and the OCC's implementing regulations, 12 CFR part 32, permit a national bank to make loans in an amount up to 15 percent of its unimpaired capital and surplus to a single borrower. A national bank may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by ''readily marketable collateral.'' [1] Part 32 refers to these lending limits as the ''combined general limit.'' The statute and regulation also provide exceptions to, and exemptions from, the combined general limit for various types of loans and extensions of credit.

Section 84 authorizes the OCC to establish lending limits ''for particular classes or categories of loans or extensions of credit'' that are different from those expressly provided by the statute's terms.[2] Effective September 10, 2001, the OCC added to Part 32 a new § 32.7, which established a three-year pilot program with special lending limits for certain residential real estate loans and small business loans or extensions of credit.[3] The OCC extended the pilot program in 2004 for an additional three years and, at the same time, expanded the scope of the program to include certain small farm loans.[4] The aim of the program is to enable community national banks to utilize a higher lending limit for certain residential real estate, small business loans, and small farm loans, where the bank is located in a state that allows state-chartered banks to apply a higher lending limit, subject to the national bank's compliance with certain conditions designed to ensure that lending under the higher limits is consistent with safety and soundness.

For purposes of the special limits, a residential real estate loan is a loan secured by a perfected first-lien security interest in 1–4 family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan is made. A small business loan is a loan ''secured by nonfarm, nonresidential properties'' or a ''commercial and industrial loan'' as those terms are described in the current

[1] *See* 12 CFR 32.2(n) (defining ''readily marketable collateral'').

[2] 12 U.S.C. 84(d).

[3] 66 FR 31114 (June 11, 2001); 12 CFR 32.7.

[4] 69 FR 51355 (August 19, 2004).

version of the instructions for preparation of the Consolidated Report of Condition and Income (Call Report), Schedule RC–C, part I, item nos. 1.e and 4 (FFIEC 031 and 041) (Loans and Lease Financing Receivables). A ''small farm loan or extension of credit'' is a loan described in the current version of the instructions for preparation of the Call Report, Schedule RC–C, part I, item nos. 1.b and 3, as ''loans secured by farmland'' and ''loans to finance agricultural production and other loans to farmers.'' [5]

The pilot program authorizes an eligible national bank to apply for approval to make residential real estate, small business, and small farm loans to a single borrower in addition to amounts that they may already lend to that borrower under the existing combined general limit in 12 CFR 32.3(a) and the limits for the particular categories of loans enumerated in 12 CFR 32.3(b). A bank is eligible for the pilot program only if it is well capitalized, as defined in 12 CFR 6.4(b)(1),[6] and has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS), with at least a rating of 2 for asset quality and for management. These criteria ensure that the program is available only to banks in good financial condition with a demonstrated record of making sound loans.

Under the pilot program, an eligible national bank may make residential loans, small business loans, and small farm loans in an additional amount up to the lesser of 10 percent of its capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available (in the state where the main office of the bank is located) for residential loans, small business loans, and small farm loans, or for unsecured loans.

The pilot program contains a number of safeguards that apply to a bank using its special lending limits. For example, the amount that a bank may lend under the pilot program's special limits is subject to an individual borrower cap and an aggregate borrower cap expressed as percentages of the bank's capital and surplus. Under the individual borrower cap, the total outstanding amount of a bank's loans to one borrower under §§ 32.3(a) and (b), together with loans made to that borrower under the special limits authorized by § 32.7, may not exceed 25 percent of the bank's capital and surplus. The aggregate cap provides that the total outstanding amount of loans made by a bank to all of its borrowers under the special limits authorized by § 32.7 may not exceed 100 percent of the bank's capital and surplus. Finally, for each loan category covered by § 32.7, a bank may not lend more than $10 million to a single borrower under the special limit.

A bank must apply and obtain the OCC's approval before it may use the special lending limits. The application includes: a certification that the bank is well capitalized and has the requisite ratings; citations to relevant state laws or regulations on lending limits; a copy of a written resolution by a majority of the bank's board of directors approving the use of the new lending authority; and a description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

The OCC stated in the preamble to its 2001 and 2004 final rules that, prior to the conclusion of the pilot program, the OCC would evaluate the performance of the program and determine whether, and under what circumstances, to extend the program or adopt it permanently.

A. Supervisory Experience, 2001–2004

As of the end of February 2004, 169 national banks headquartered in 23 states had received approval to participate in the program. At that time, the OCC compared the performance of 129 banks that participated in the program to that of comparable state-chartered banks and national banks that did not participate in the program focusing on: (1) Loan portfolio composition; (2) asset quality; (3) liquidity and capital; and (4) differences in interest expense, non-interest expense and profitability indicators between participating banks and their peers. The OCC could not attribute any statistical differences in this comparison group directly to participation in the pilot program and concluded that the program had operated in a safe and sound manner since its inception in 2001.[7] On this basis, the OCC extended the pilot program for three years, from 2004 until 2007, to collect additional data and assess whether to integrate the special lending limits provided by the program into Part 32 on a long-term or permanent basis.

B. Supervisory Experience, 2004 to 2007

As of February, 2007, the OCC had approved more than 288 national banks to participate in the pilot program, representing nearly 15% of national community banks. Banks that participate in the pilot program are headquartered in twenty-four states in the U.S. The OCC gathered supervisory data during the second phase of the pilot program to assess the performance of participating banks. The data focused on: (1) Adherence to the capital and surplus limits; (2) adherence to the $10 million cap on loans to one borrower; (3) whether loans made under the pilot program were subject to supervisory criticism and, if so, the amount of such loans and the category of supervisory criticism; (4) whether loans made under the pilot program were past due and, if so, the amount of such loans; (5) whether banks had adequate internal controls and monitoring systems to provide oversight of loans made under the pilot program; and (6) whether loans made under the pilot program were in compliance with the resolutions issued by the bank's board governing the program.

The OCC's supervisory experience between 2004 and 2007 shows that the expanded lending limits capacity has had a neutral impact on the asset quality and overall safety and soundness of participating institutions. This experience confirms our earlier observation that authorization to use higher lending limits has been consistent with the safety and soundness of participating institutions. National banks that have made use of the program have indicated to the OCC that the special lending limits allowed those banks to better serve their customers and communities.

[5] For reporting purposes, the current version of the instructions for Schedule RC–C part II of the Call Report, provides that ''loans to small farms'' should be included on that schedule only if the loans are for original amounts of $500,000 or less. This $500,000 limit is not part of the regulation's definition of ''loans to small farms.'' Therefore, it does not apply to or condition the lending authority granted under the pilot program. Similarly, the current version of the instructions for Schedule RC–C, part II of the Call Report, provides that loans ''secured by nonfarm residential property'' and ''commercial and industrial'' loans should be included on that schedule only if they are loans for original amounts of $1,000,000 or less. This $1,000,000 limit is not part of the regulation's definition of loans ''secured by nonfarm residential property'' and ''commercial and industrial'' loans. Therefore, the $1,000,000 limit does not apply to or condition the lending authority granted under the pilot program.

[6] A ''well capitalized'' bank under 12 CFR 6.4(b)(1) is one that: (i) Has a total risk-based capital ratio of 10.0 percent or greater; (ii) has a Tier 1 risk-based capital ratio of 6.0 percent or greater; (iii) has a leverage ratio of 5.0 percent or greater; and (iv) is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the Federal Deposit Insurance Act (FDI Act), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

[7] 69 FR 21978, 21980 (April 23, 2004).

Description of the Interim Rule

The interim rule incorporates the special lending limits currently authorized by the pilot program into Part 32 with one change, makes technical changes to remove references to the ''pilot program,'' and eliminates the provision in Part 32 that limits the duration, to September 10, 2007, of approvals given by the OCC to banks to lend under the program's special limits. The interim rule removes the $10 million cap on loans to one borrower for loans in each loan category covered by the interim rule. In view of the other limits and safeguards in the interim rule, and the OCC's experience with the pilot program, the OCC does not believe this restriction is necessary.

Under the interim rule, an eligible national bank will continue to be required to apply to, and receive approval by, the OCC before using the special lending limits. A newly chartered national bank may apply to use the special limits once it meets the criteria for an eligible bank. The authority given by the OCC to national banks under the special limits will not expire, but will continue to be subject to discretionary termination by the OCC based on supervisory concerns about credit quality, undue concentrations in the bank's portfolio of residential real estate, small business, or small farm loans, or concerns about the bank's overall credit risk management systems and controls. The effect of this interim rule is to make the pilot program permanent with the change noted above.

The OCC also requests comment on the interim rule and on ways in which the special lending limits could be expanded or enhanced, consistent with safety and soundness.

Administrative Procedure Act/Effective Date

The OCC finds that there is good cause to dispense with prior notice and public comment on this interim rule and with the 30-day delay of effective date generally prescribed by the Administrative Procedure Act (APA). 5 U.S.C. 553. Under section 553(b) of the APA, the OCC is not required to provide notice and an opportunity for public comment on a rule if we find, for good cause, that notice and comment are ''impracticable, unnecessary or contrary to the public interest.'' The OCC finds that notice and public comment before the interim rule takes effect are unnecessary. The OCC has previously provided the opportunity for comment on all aspects of the pilot program, in 2001 and 2004. The one change made to the program by the interim rule relieves the restriction imposed by a cap that the OCC has concluded is unnecessary based on its experience supervising institutions that have participated in the program thus far. In addition, by issuing the rule on an interim final basis, the OCC will avoid any unnecessary disruption in the operation of the program and its special limits during the pendancy of the comment period.

Under section 553(d) of the APA, the OCC must generally provide a 30-day delayed effective date for final rules. The OCC may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' The OCC finds that there is good cause to dispense with the effective date requirement because the interim rule recognizes an exemption and will prevent unnecessary disruption in the operation of the lending limits program in its current form. In addition, the purpose of the delayed effective date provision is to afford affected persons a reasonable time to comply with rule changes. The interim rule imposes no further restrictions on the substance of the existing lending limits pilot program. As such, there is no need for banks to make adjustments to their current lending under the program.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, section 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires an agency to use plain language in all proposed and final rules published. The OCC believes that the interim rule is presented in a clear and straightforward manner. We invite your comments on how to make this interim rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Solicitation of Comments on Impact on Community Banks

The OCC adopted the pilot program following a review of our regulations that focused on ways to change the regulations to respond to community bank needs. 66 FR 31114, 31115 (June 11, 2001). The purpose of the review was to explore ways in which our regulations could be modified, consistent with safety and soundness, to reflect the fact that community banks operate with more limited resources, and often different risk profiles, than larger institutions. Our goal was to identify alternative regulatory approaches to minimize the burden on community banks and promote their competitiveness.

The special lending limits in the interim rule are substantively identical to those authorized by the pilot program. The OCC seeks comments on how community banks assess the interim rule and on the impact of the proposal on community banks' current resources and available personnel with requisite expertise. The OCC also seeks comments on whether the goals of the interim rule could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is unnecessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104–4, 109 Stat. 48, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking, 2 U.S.C. 1532. As noted previously, the OCC has determined, for good cause, that notice and comment is unnecessary for this interim rule. Accordingly, the UMA does not require a budgetary impact analysis.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The interim rule does not change the information collection previously approved under control number 1557–0221 nor does it establish any new information collections.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, Part 32 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for Part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

■ 2. In § 32.7:
■ a. Remove the last sentence in paragraphs (a)(1), (a)(2), and (a)(3);
■ b. Revise the section heading;
■ c. Revise paragraph (c); and
■ d. Remove paragraph (e) and redesignate existing paragraph (f) as paragraph (e).

The revisions read as follows:

§ 32.7 Residential real estate loans, small business loans, and small farm loans.

* * * * *

(c) *Duration of approval.* Except as provided in § 32.7(d), a bank that has received OCC approval may continue to make loans and extensions of credit under the special lending limits in paragraphs (a)(1), (2), and (3) of this section, provided the bank remains an ''eligible bank.''

* * * * *

Dated: May 24, 2007.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E7–11014 Filed 6–6–07; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE269, Special Condition 23–209–SC]

Special Conditions; Op Technologies, Inc.; Cirrus Design Corporation Model SR22; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Op Technologies, Inc.; 15236 NW., Greenbrier Parkway, Beaverton, OR 97006 for a Supplemental Type Certificate for the Cirrus Design Corporation Model SR22 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model Pegasus Primary Flight Displays manufactured by Op Technologies for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is May 25, 2007. We must receive your comments on or before July 9, 2007.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE269, Room 506, 901 Locust, Kansas City, Missouri 64106. Mark all comments: Docket No. CE269. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Brady, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to take part in this rulemaking by sending such written data, views, or arguments. Identify the regulatory docket or notice number and submit two copies of comments to the address specified above. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all communications received on or before the closing date for comments, and we may change the special conditions in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE269.'' The postcard will be date stamped and returned to the commenter.

Background

On September 6, 2006, Op Technologies, Inc.; 15236 NW., Greenbrier Parkway; Beaverton, OR 97006 applied to the FAA for a new Supplemental Type Certificate for the Cirrus Design Corporation Model SR22 airplane. The Model SR22 is currently approved under TC No. A00009CH. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Op Technologies, Inc. must show that the Cirrus Design Corporation Model SR22 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Cirrus Design Corporation Model SR22: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–53, except as follows: § 23.301 through Amendment 47; §§ 23.855, 23.1326, 23.1359, not applicable. 14 CFR part 36 dated December 1, 1969, as amended by current amendment as of the date of type certification. Equivalent Levels of Safety finding (ACE–96–5) made per the