

# RESCINDED

Office of Thrift Supervision

September 9, 2003

Department of the Treasury

***Transmittal***

***TR-327***

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Federal Register, Vol. 68, No. 174, pp. 53024 - 53026

**Number TR-327**

The attached final rule Federal Savings Associations – Operations, Agency Offices; Fiduciary Powers of Savings Associations was published in the Federal Register on September 9, 2003.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 905 and 944 are amended as follows:

■ 1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

**PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA**

■ 2. Section 905.306 is amended by:

■ a. In paragraph (a), by removing under the heading “Grapefruit”, entries for “Seeded, except red” and “Seeded, red” from Table I and under the heading “Oranges” revising the entry for “Valencia and other late type”;

■ b. In paragraph (b), by removing under the heading “Grapefruit” entries for “Seeded, except red” and “Seeded, red” from Table II.

The revisions to Table I read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.**

(a) \* \* \*

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * *	* * * * *	* * * * *	* * * * *
Valencia and other late type .....	August 1 June 14 .....	U.S. No. 1, U.S. No. 2, External .....	2 <sup>8</sup> / <sub>16</sub>
	June 15 July 31 .....	U.S. No. 1, Internal .....	2 <sup>9</sup> / <sub>16</sub>
* * * * *	* * * * *	* * * * *	* * * * *

\* \* \* \* \*  
**PART 944—FRUITS; IMPORT REGULATIONS**

■ 3. In § 944.106(a), the entry for “Seeded” is removed from the table.

Dated: September 4, 2003.

A.J. Yates,  
Administrator, Agricultural Marketing Service.

[FR Doc. 03–22948 Filed 9–4–03; 3:16 pm]

BILLING CODE 3410–02–P

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 545 and 550**

[No. 2003–44]

RIN 1550–AB80

**Federal Savings Associations—Operations, Agency Offices; Fiduciary Powers of Savings Associations**

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is issuing a final rule amending its regulation governing agency offices of federal savings associations to conform that regulation to recent changes to OTS’s fiduciary activities regulations. OTS is also removing an incorrect parenthetical in 12 CFR 550.136, OTS’s regulation governing the extent to which state law

applies to the fiduciary activities of a federal savings association.

**EFFECTIVE DATE:** September 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, (202) 906–7170, Kevin Corcoran, Special Counsel, Business Transactions Division, (202) 906–6962, Office of the Chief Counsel; or Judith McCormick, Trust Specialist, Examination Policy Division, (202) 906–5636, Office of Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Discussion**

On December 12, 2002, OTS amended its regulations governing the fiduciary activities of federal savings associations, found at 12 CFR part 550.<sup>1</sup> One of those amendments was to 12 CFR 550.70, which sets out when a federal savings association must obtain OTS approval or file a notice before exercising fiduciary powers. Under that rule, if a federal savings association wants to commence fiduciary activities in a new state that are not materially different from those that OTS has already approved for the association, it need not file a new fiduciary powers application. Rather, the association needs to file, within ten days after commencing the activities in the new state, a written notice that identifies the new state, describes the fiduciary activities the association is conducting in the new

state, and provides sufficient information supporting a conclusion that those activities are permissible in the new state. If an association proposes to open an agency office in any state to perform only activities ancillary to its fiduciary business, or to open a new agency office in a state in which the association is already conducting approved fiduciary activities, no fiduciary application or notice is required.

To minimize potential confusion about applicable procedures, OTS today is conforming its agency office regulation, 12 CFR 545.96, to reflect this change in the fiduciary activities regulations. Under subparagraph (a) of § 545.96, a federal savings association may, without OTS’s approval, establish and maintain agency offices that only service and originate (but not approve) loans and contracts, or manage or sell real estate owned by the federal savings association. Subparagraph (b) of the regulation states that, except for payment on savings accounts, a federal savings association may conduct activities not listed in subparagraph (a) at an agency office with OTS approval. The regulation does not currently address fiduciary activities, nor does it indicate how it interacts with part 550.

In the preamble to the proposed amendments to § 550.70, OTS explained in detail why a new fiduciary powers application was not necessary when a federal savings association wanted to conduct already approved fiduciary activities in a new state:

<sup>1</sup> 67 FR 76293 (December 12, 2002).

When OTS reviews an initial application for fiduciary powers, it analyzes a number of factors including, among others, the federal savings association's financial and managerial resources, its history of regulatory compliance, and level of fiduciary expertise [citation omitted]. In light of this initial review, OTS believes that a new application is not always necessary to ensure safe and sound fiduciary operations when a federal savings association with existing trust powers expands its operations. \* \* \* Application and notice requirements under the proposed rule would distinguish between new activities that materially differ from previously approved fiduciary activities and other types of activities. \* \* \* [T]he proposed rule would require a federal savings association with previously approved trust powers to submit a complete trust application and obtain prior OTS approval before it may conduct fiduciary activities that are materially different from activities approved in the initial trust application. \* \* \* OTS does not believe that a federal savings association engages in materially different activities when it merely expands the geographic scope of previously approved activities. Accordingly, the proposed rule would not require a new application before the federal savings association commences such activities.

The same reasoning applies even when the association creates a new agency office to conduct previously approved fiduciary activities or activities ancillary to its fiduciary business.

Accordingly, OTS believes that it does not need to approve an agency office that a federal savings association creates to conduct these activities. OTS therefore is amending 12 CFR 545.96 to add fiduciary activities to subparagraph (a). Under the new rule, a federal savings association may, without OTS approval, establish and maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business. Under 12 CFR 550.70, of course, when an association establishes an agency office to conduct fiduciary activities in a new state, the association must file, within ten days after commencing those activities, a written notice containing the information required under 12 CFR 550.125.<sup>2</sup> Moreover, for clarification purposes, we are amending § 545.96 to change all references in the regulation from "agency" and "agencies" to

<sup>2</sup> Section 550.125 requires that the notice identify the new state, describe the fiduciary activities that the association will conduct in that state, and provide sufficient information supporting a conclusion that the activities are permissible in that state.

"agency office" and "Agency offices," respectively.

OTS is also amending 12 CFR 550.136 to remove an incorrect reference to state law. Section 550.136 did not appear in the proposed rule, published on June 11, 2002, but was adopted in response to comments on different language that had been proposed. It was published for the first time on December 12, 2002 and became effective January 1, 2003. Since the effective date, it has come to OTS's attention that one of the parenthetical descriptions in that section is incorrect.

Specifically, in the list of state laws that apply to the fiduciary operations of federal savings associations by virtue of 12 U.S.C. 1464(n), OTS included a reference to "State laws regarding \* \* \* investments in state trust companies." Section 1464(n), however, contains no reference to state laws regarding thrift investments in state trust companies. Accordingly, we are amending § 550.136(a) to remove the reference to state laws regarding investments in state trust companies.

## II. Need for an Immediately Effective Final Rule

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.<sup>3</sup> OTS believes that following those procedures in today's rulemaking would be unnecessary and contrary to public interest because the rule achieves regulatory consistency, minimizes potential confusion, and reduces regulatory burden. There is no reason to delay these results. Under the clarified rule, a federal savings association that wants to establish an agency office to conduct previously approved fiduciary activities, or activities ancillary to the association's fiduciary business, must follow only the procedures in 12 CFR part 550. The amendment to § 550.136 merely conforms the regulatory provisions to the parallel statutory provisions. These changes will not detrimentally affect savings associations or others.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.<sup>4</sup> This section does not apply because this final rule imposes no additional requirements and results in

<sup>3</sup> 5 U.S.C. 553.

<sup>4</sup> Pub. L. 103-325, 12 U.S.C. 4802.

consistency between existing regulations.

## III. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a notice of proposed rulemaking.<sup>5</sup> As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS Director certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

## IV. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

## V. Unfunded Mandates Act

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

## List of Subjects

### 12 CFR Part 545

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

### 12 CFR Part 550

Savings associations, Trusts and trustees.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

## PART 545—[AMENDED]

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

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

■ 2. Amend § 545.96, including the section heading, as follows:

■ a. Remove the words "agency" and "agencies" and add, in their place, the words "agency office" and "agency offices," respectively.

■ b. Revise paragraph (a) of § 545.96 as follows:

<sup>5</sup> 5 U.S.C. 603.

**§ 545.96 Agency office.**

(a) *General.* A Federal savings association may establish or maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the Federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with subpart A of part 550 of this chapter.

\* \* \* \* \*

**PART 550—[AMENDED]**

■ 3. Amend § 550.136(a) by revising the third sentence to read as follows:

**§ 550.136 To what extent do State laws apply to my fiduciary operations?**

\* \* \* Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section.

\* \* \* \* \*

Dated: September 2, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 03-22778 Filed 9-8-03; 8:45 am]

BILLING CODE 6720-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM263, Special Conditions No. 25-245-SC]

**Special Conditions: Sabreliner Model NA-265 Series Airplanes; High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Sabreliner Model NA-265 series airplanes, modified by Sabreliner Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the

airworthiness standards for transport category airplanes. The modification incorporates the installation of Air Data systems that perform critical functions by providing altitude, airspeed, or other critical data. The applicable airworthiness regulations do not contain adequate or appropriate safety 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 that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is August 28, 2003. Comments must be received on or before October 9, 2003.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM263, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM263.

**FOR FURTHER INFORMATION CONTACT:** Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2145; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane 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; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive

public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Background**

On May 21, 2003, Sabreliner Corporation, Pierre Laclede Center, 7733 Forsyth Boulevard, Suite 1500, St. Louis, Missouri 63105-1821, applied for a supplemental type certificate (STC) to modify Sabreliner Model NA-265 series airplanes. These airplanes are approved under Type Certificate No. A2WE. The Model NA-265 series are small transport category airplanes powered by two aft-mounted Pratt and Whitney Turbo Wasp JT12A engines, with the exception of the Model NA-265-65, which has two Air Research TFE731 turbofan engines, and the Model NA-265-80, which has two GE Model CF700 turbofan engines. These airplanes operate with a 2-pilot crew and can hold from 4 to 10 passengers depending on the model within the series. The NA-265 series have a maximum takeoff weight of 17,450 to 24,000 pounds, depending on the brake installation and model within the series.

The modification incorporates the installation of Air Data systems (combinations of Air Data Display Units, Air Computer, Air Data Sensor, and/or Altimeter) that perform critical functions by providing altitude, airspeed, or other critical data. These systems use electronics to a far greater extent than the original instrument systems, and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). The disruption of these signals could result in loss of altitude, or present misleading information to the pilot.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, Sabreliner Corporation must