Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 98–062E]

Performance Standards for On-line Antimicrobial Reprocessing of Pre-chill Poultry Carcasses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rulemaking, Performance Standards for On-line Antimicrobial Reprocessing of Pre-chill Poultry Carcasses, which was scheduled to close on January 30, 2001. At the request of the National Chicken Council and the National Turkey Federation, FSIS is granting a 60-day extension to permit the associations to collect additional data. Because the comment period included the holiday season, the requestors asked for additional time to accommodate loss of time and personnel during the holidays. The proposed rule was published on December 1, 2000 (65 FR 75187) and requested comments on the proposed performance standards for poultry products reprocessed on-line and other information and data.

DATES: Comments must be received on or before April 2, 2001.

ADDRESSES: Send one original and two copies of written comments to FSIS Docket No. 98–062P, Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation by telephone at (202) 720–5627 or by fax (202) 690–0486.

Done in Washington, DC, on January 25, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–2652 Filed 1–26–01; 2:34 pm]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 7, and 23

[Docket No. 01–01]

RIN 1557–AB94

Investment Securities; Bank Activities and Operations; Leasing

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its rules governing investment securities, bank activities and operations, and leasing. The proposed revisions to the investment securities regulations incorporate the authority to underwrite, deal in, and purchase certain municipal bonds that is provided to well capitalized national banks by the Gramm-Leach-Bliley Act (GLBA). The proposed revisions to the bank activities and operations regulations: Establish the conditions under which a school where a national bank participates in a financial literacy program is not considered a branch under the McFadden Act; revise the OCC's regulation governing bank holidays to conform it with the wording of the statute that authorizes the Comptroller to proclaim mandatory bank closings; clarify the scope of the term ''NSF fees'' for purposes of 12 U.S.C. 85, the statute that governs the rate of interest that national banks may charge; simplify the OCC's current regulation governing national banks' non-interest charges and fees; and provide that state law applies to a national bank operating subsidiary to the same extent as it applies to the parent national bank. The proposed revisions to the leasing regulations authorize the OCC to vary the percentage limit on the extent to which a national bank may rely on estimated residual value to recover its costs in personal property leasing arrangements. The purpose of these changes is to update and revise the OCC's regulations to keep pace with developments in the law and in the national banking system.

DATES: Comments must be received by April 2, 2001.

ADDRESSES: Direct your comments to: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 01–01. Comments will be available for public inspection and photocopying at the same location. In addition, you may send comments by fax to (202) 874–4448, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning proposed 12 CFR 1.2, contact Beth Kirby, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.3000, contact Stuart Feldstein, Assistant Director, or Andra Shuster, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning proposed 12 CFR 7.1021, 7.4001, 7.4002 and 7.4006, contact Mark Tenhundfeld, Assistant Director, or Andra Shuster, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090. For questions concerning 12 CFR 23.21, contact Steven Key, Attorney, Bank Activities and Structure Division, (202) 874–5300.

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to revise 12 CFR parts 1, 7, and 23 in order to address changing industry practices and recent statutory amendments. This proposal reflects the OCC's continuing commitment to assess the effectiveness of our rules and to make changes where necessary to improve our regulations.

Section-by-Section Description of the Proposal

A. Part 1—Investment Securities

Pursuant to 12 U.S.C. 24(Seventh), the total amount of investment securities of any one obligor held by a national bank for its own account generally may not exceed 10 per cent of the bank's capital

and surplus. Section 24(Seventh), however, exempts certain types of securities from this limitation and permits a bank to underwrite, deal in, and purchase them without quantitative restriction. Section 151 of the Gramm-Leach-Bliley Act (GLBA) [1] amended § 24(Seventh) to exempt certain municipal bonds from the 10 per cent limit if the national bank is well capitalized under the statutory prompt corrective action standards.[2] We propose to amend part 1 of our regulations, which implements the statutory investment securities provisions, to reflect this change in the statute.

The proposal adds new § 1.2(g), which defines the municipal bonds described in § 151 of GLBA. Thus, the term ''municipal bonds'' means obligations of a State or political subdivision other than general obligations, and includes limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986 issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State.

Part 1 classifies permissible national bank investment securities into several categories, or types.[3] Type I securities are securities—such as obligations issued by, or backed by the full faith and credit of, the United States—that a national bank may purchase, sell, deal in, and underwrite without regard to any capital and surplus limitation. The proposal amends the list of Type I securities that a national bank may underwrite, deal in, and purchase without quantitative limit, which appears in redesignated § 1.2(j) of the regulation, to add the municipal bonds as defined in new § 1.2(g), subject to the requirement that the bank be well capitalized. The regulation refers to the definition of well capitalized that the OCC uses for purposes of compliance with the prompt corrective action standards.[4]

In addition, the proposal modifies the section that defines certain Type II securities, newly designated as § 1.2(k), to make it clear that obligations issued by a State or political subdivision or agency of a State, for housing, university, or dormitory purposes are Type II securities only when they do not qualify as Type I securities (for example, when the subject bank is not well capitalized under prompt corrective action standards). The proposal also modifies the paragraph that defines Type III securities, newly redesignated as § 1.2(l), and uses municipal bonds as an example of that type, to make clear that municipal bonds are Type III securities only when they do not qualify as Type I securities. Regardless of the treatment of municipal bonds as Type I or Type III securities, a national bank must understand the fiscal condition of any municipality in whose bonds the bank invests.

B. Part 7—Bank Activities and Operations

The proposal makes five changes to part 7. First, it adds new § 7.1021, which defines the circumstances under which a school where a bank participates in a financial literacy program is not considered a branch of the bank under the McFadden Act. Second, the proposal amends § 7.3000 to conform it with the Comptroller's statutory authority to declare mandatory bank closings, as provided in 12 U.S.C. 95(b)(1). Third, the proposed rule revises current § 7.4001 to clarify the scope of the term ''NSF fees'' for purposes of 12 U.S.C. 85. Fourth, the proposal revises current § 7.4002, which governs non-interest charges and fees, to remove language that may be confusing. Finally, the proposal adds new § 7.4006, which provides that state laws apply to a national bank operating subsidiary to the same extent that they apply to the parent national bank.

Bank Participation in Financial Literacy Programs (New § 7.1021)

Proposed new § 7.1021(b) provides that a school premises or facility where a national bank participates in a financial literacy program is not a branch of the national bank under the McFadden Act if the conditions set out in the rule are satisfied.[5] Pursuant to these conditions, the bank must not ''establish and operate'' the school premises or facility. This requirement derives from the text of the statute, which describes the circumstances under which a national bank may ''establish and operate'' new branches and defines the term ''branch,'' [6] and from Federal judicial precedents determining when an off-premises location is a branch under these standards. Under those precedents, the court first determines whether the national bank has ''establish[ed] and operate[d]'' the off-premises location in question. If so, the court goes on to determine whether the off-premises location is covered by the definition of the term ''branch'' that the statute provides because it accepts deposits, pays checks, or lends money at that location.[7]

In construing the phrase ''establish and operate,'' the courts have looked at

[1] Pub. L. 106–102, § 151, 113 Stat. 1338, 1384 (November 12, 1999).

[2] 12 U.S.C. 1831*o*.

[3] *See, e.g.,* 12 CFR 1.2(i) and 1.3(a) defining Type I securities and providing that Type I securities are not subject to the 10 per cent capital and surplus limit); 12 CFR §§ 1.2(j) and 1.3 (defining Type II securities and describing the quantitative limit); and 12 CFR §§ 1.2(k) and 1.3(c) (defining Type III securities and describing the quantitative limit).

[4] *See* 12 CFR 6.4(b)(1) (defining the term ''well capitalized'').

[5] This proposal is consistent with the limitation, found in 12 U.S.C. 93a, which states that the general rulemaking authority vested in the OCC by that section ''does not apply to section 36 of [Title 12 of the United States Code].'' This limitation simply makes clear that section 93a does not expand whatever authority the OCC has pursuant to other statutes to adopt regulations affecting national bank branching. Congress clearly contemplated that the OCC would implement section 36, as is evidenced by the repeated references to obtaining the OCC's approval throughout that section (*see, e.g.,* paragraphs (b)(1), (b)(2), (c), (g), and (i) of section 36). It would be illogical to conclude that the OCC, in implementing the provisions requiring national banks to obtain the OCC's prior approval under the sections cited, cannot interpret what the terms of the statute mean or that the interpretation must be made on a case-by-case basis. This rulemaking simply clarifies a situation that falls outside the branching restrictions imposed by section 36.

[6] 12 U.S.C. 36(c) (describing the circumstances under which a national bank may ''establish and operate'' new branches); 12 U.S.C. 36(j) (defining the term ''branch'' to include ''any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.'').

[7] In First National Bank in *Plant City* v. *Dickinson,* 396 U.S. 122, 126–29, 134–37 (1969), the Supreme Court used a two-stage analysis to reach the conclusion that an armored car service was a branch within the meaning of the McFadden Act. The Court looked first at whether the off-premises facility was ''established and operated'' by the national bank. It then looked at whether the bank was using the off-premises facility to take deposits within the meaning of the McFadden Act's definition of a ''branch.'' Subsequent lower Federal court decisions using the same two-stage analysis employed by the Supreme Court in *Plant City* have concluded that certain off-premises locations are *not* branches under the McFadden Act. For example, in *Cades* v. *H & R Block, Inc.,* 43 F.3d 869, 874 (4th Cir. 1994), the U.S. Court of Appeals for the Fourth Circuit articulated the Supreme Court's two-stage analysis as a two-part test and used that test to determine that an office of the tax preparation firm H & R Block was not a branch. The court looked at key indicators of the bank's relationship with Block to determine whether the Block offices were established and operated by the bank. These indicators included the facts that the bank had no ownership or leasehold interest in the Block offices; no bank employees worked there; and the bank exercised no authority or control over Block's employees or methods of operation. The court held that, under these circumstances, the bank did not ''establish or operate'' the Block offices, that there was no need to go on to consider whether bank business—such as taking deposits—was transacted at Block offices, and that, accordingly, the Block offices were not branches.

the nature of the bank's interest in the location in question and at the degree of control the bank maintains over the employees who work at the location or the business conducted there. A bank would usually have no property interest in the school location. Its employees would typically work at the school only in connection with their participation in the financial literacy program. Finally, the bank would exercise no control over the school, its teachers, or its curriculum.

The proposed regulation also requires that the financial literacy program be principally intended to educate students. As noted in the proposal, a program would be considered principally educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, without being designed for the purpose of making profits.

Students in the financial literacy program need not be of any particular age or income background in order for the program to be eligible under this proposal. If the students are low- or moderate-income individuals, however, a bank's participation in a school savings program may also be given positive consideration under the Community Reinvestment Act as a community development service.[8]

Bank Holidays (Revised § 7.3000)

Under 12 U.S.C. 95(b)(1), in the event of natural or other emergency conditions existing in any State, the Comptroller may proclaim any day a legal holiday for national banks located in that State or affected area. In such a case, the Comptroller may require national banks to close on the day or days designated. If a State or State official designates any day as a legal holiday for ceremonial or emergency reasons, a national bank may either close or remain open unless the Comptroller directs otherwise by written order.

The OCC has issued a regulation implementing this authority that is set forth at 12 CFR 7.3000. The wording of § 7.3000 does not follow that of the statute precisely, however. Currently, § 7.3000 requires the Comptroller to issue a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a State, or a legally authorized State official declares a day to be a legal holiday due to emergency conditions, the regulation permits a national bank to choose to remain open or to close any of its banking offices in the affected geographic area.[9] Thus, unlike the statute, § 7.3000 does not authorize the Comptroller to require national banks to close in the event the Comptroller declares a legal holiday but, instead, gives national banks discretion to remain open during either a Comptroller- or State-declared holiday.

This proposed rule amends § 7.3000 to conform it with the Comptroller's statutory authority to proclaim mandatory bank closings, as provided in 12 U.S.C. 95(b)(1). It provides that if the Comptroller or a State declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices or it may choose to continue its operations *unless* the Comptroller by written order directs otherwise.

Definition of ''Interest'' for Purposes of 12 U.S.C. 85 (Revised § 7.4001(a))

The proposed rule revises current § 7.4001 to clarify the scope of the term ''NSF fees'' for purposes of 12 U.S.C. 85. Section 85 governs the interest rates that national banks may charge, but it does not define the term ''interest.'' Section 7.4001 generally defines the charges that are considered ''interest'' for purposes of section 85, then sets out a nonexclusive list of charges covered by that definition. The list includes ''NSF fees.''

The inclusion of ''NSF fees'' in the definition of ''interest'' was intended to codify a position the OCC took in an interpretive letter issued in 1988. Interpretive Letter No. 452 concluded that charges imposed by a credit card bank on its customers who paid their accounts with checks drawn on insufficient funds were ''interest'' within the meaning of section 85.[10] IL No. 452 referred to the charges in question as ''NSF charges.'' The term, however, is also commonly used to refer to fees imposed by a bank on its checking account customers whenever a customer writes a check against insufficient funds, regardless of whether the check was intended to pay an obligation due to the bank. These different uses of the term ''NSF fees'' have created ambiguity about the scope of the term as used in § 7.4001(a).

The proposal amends § 7.4001(a) to clarify that the term ''NSF fees'' includes only those fees imposed by a *creditor* bank when a borrower attempts to pay an obligation to that bank with a check drawn on insufficient funds. Fees that a bank charges for its deposit account services—including overdraft and returned check charges—are not covered by the term ''NSF fees.'' These fees are therefore not ''interest'' but, rather, are charges covered by 12 CFR 7.4002.

We also invite comment on whether the term ''NSF fees'' should also include at least some portion of the fee imposed by a national bank when it pays a check notwithstanding that its customer's account contains insufficient funds to cover the check. As a matter of practice, banks often vary the amount of the charges they impose depending on whether they honor the customer's check. A bank that pays a check drawn against insufficient funds may be viewed as having extended credit to the accountholder. Consistent with that approach, the difference between what the bank charges a customer when it pays the check and what it charges when it dishonors the check and returns it could be viewed as interest within the meaning of 12 U.S.C. 85. Currently, the OCC's regulation does not expressly resolve this issue.

National Bank Non-Interest Charges (Revised § 7.4002)

Current § 7.4002 sets out the basic authority to impose non-interest charges and fees, including deposit account service charges. It provides that the decision to do so and to determine the amounts of charges and fees is a business decision to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. It also provides that a bank ''reasonably establishes'' non-interest charges and fees if it considers, among other factors, the four factors enumerated in the regulation. The OCC construes § 7.4002 to mean that a national bank that considers at least these four factors in setting its non-interest charges and fees has satisfied the safety and soundness concerns in the regulation and faces no supervisory impediment to exercising the authority to set charges and fees that the regulation describes.[11]

[8] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, 64 FR 23, 618 (May 3, 1999) (Q and A 3 addressing 12 CFR §§ 25.12(j), 228.23(j), 345.23(j), and 563e.12(i) (examples of community development services)).

[9] The regulation also provides that when a State or a legally authorized State official designates any day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close. 12 CFR 7.3000(c). Finally, it provides that a national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied. 12 CFR 7.3000(d).

[10] Interpretive Letter No. 452 (Aug. 11, 1988), *reprinted in* [1988–89 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,676 (IL 452).

[11] *See* Brief *Amicus Curiae* of the Office of the Comptroller of the Currency in Support of National Bank Plaintiffs, *Bank of America, N.A.* v. *San*

The proposal eliminates certain ambiguities in the text of § 7.4002 without altering the substance of the regulation or the way in which the OCC intends that it operate. First, current § 7.4002(a) gives two examples of the types of non-interest charges and fees that national banks may impose: Charges on dormant accounts and fees for credit reports or investigations. We have removed these examples in the proposal, given that the explicit reference to the two types fees is unnecessary and could be misinterpreted as a limitation on a national bank's ability to charge other types of fees. We note, however, that dormant account charges and fees for credit reports and investigations continue to be permissible non-interest charges and fees even though they are no longer specifically mentioned in the rule.

We also propose to amend § 7.4002(b) to clarify what a bank's obligations are under that section. The sentence in § 7.4002(b) that currently introduces the four factors says that a bank ''reasonably establishes'' non-interest charges and fees if it considers those factors among others. This language was intended to convey that the bank must exercise sound banking judgment and rely on safe and sound banking principles in setting charges and fees. In order to clarify that intent, we have revised the sentence in § 7.4002(b) that currently introduces the four factors to say that a bank establishes non-interest charges and fees ''in accordance with safe and sound banking principles'' if it employs a decision-making process through which it considers the four factors. This revision clarifies that consideration of the four factors is a process requirement to be implemented by the bank and more clearly establishes the connection between the required process and the safety and soundness considerations that underlie it.

The four factors are the same as under the current regulation, including the factor addressing the maintenance of the bank's safety and soundness. We expect that, pursuant to this factor, a bank would consider any risks, such as reputation or litigation risk, that would be affected by the imposition of a particular fee. We note that consideration of the four factors is relevant both when establishing a new fee and when changing a fee that already has been established. The reference to factors other than the four that are enumerated in § 7.4002(b) has been retained in order to avoid creating any doubt about a national bank's ability to rely on factors in addition to those stated in the regulation.

Section 7.4002(a) is also revised to clarify that the authorization it contains to establish fees and charges necessarily includes the authorization to decide the amount and method by which they are computed. Thus, for example, fees resulting from the method the bank employs to post checks presented for payment are included within the authorization provided by § 7.4002.

Finally, current § 7.4002(d) addresses the OCC's issuance of opinions concerning whether state laws purporting to limit or prohibit national bank non-interest charges and fees are preempted. The first clause of current paragraph (d) states that the OCC evaluates on a case-by-case basis whether a national bank may establish fees pursuant to paragraphs (a) and (b) of § 7.4002; the second clause provides that, in determining whether a state law purporting to limit or prohibit such fees is preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States Constitution and applicable judicial precedent. The first clause simply underscores that a national bank's establishment of fees is governed by the preceding paragraphs of § 7.4002; the second clause was intended to convey that the law as articulated by the Supreme Court and the lower Federal courts governs issues of federal preemption. The proposal revises § 7.4002(d) to rephrase and restate these two points more directly and succinctly.

Applicability of State Law to National Bank Subsidiaries (New § 7.4006)

Proposed § 7.4006 clarifies that state laws apply to a national bank operating subsidiary to the same extent as those laws apply to the parent national bank.

Operating subsidiaries have been authorized for national banks for decades, recognizing that, under various circumstances, it may be convenient or useful for the bank to conduct activities that the bank could conduct directly, through the alternate form of a controlled subsidiary company. Thus, operating subsidiaries and the activities they conduct are an embodiment of the incidental powers of their parent bank, and often have been described as the equivalent of a department or division of their parent bank—organized for convenience in a different corporate form.

Consistent with the concept underlying this authority for operating subsidiaries, and recent legislation recognizing the status of national bank operating subsidiaries, the proposal provides that state law applies to the activities of an operating subsidiary to the same extent it would apply if those activities were conducted by its parent bank. In GLBA, for example, Congress recognized the authority of national banks to own subsidiaries that engage ''solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks.'' [12] Similarly, the OCC operating subsidiary regulation provides that an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent bank.[13] Fundamental to the description of the characteristics of operating subsidiaries in GLBA and the OCC's rule is that, unless otherwise provided by Federal law or OCC regulation, State laws apply to operating subsidiaries to the same extent as they apply to the parent national bank.

The Office of Thrift Supervision (OTS) has already taken this approach with respect to the operating subsidiaries of Federal savings associations. An OTS rule also provides that state law applies to Federal savings associations' operating subsidiaries, which are limited to engaging in activities permissible for the parent thrift, to the extent it applies to the parent thrift.[14] A Federal district court has recently upheld this OTS rule.[15]

For the reasons stated above, the OCC proposes to add a new § 7.4006, stating that, except where Federal law or an OCC rule provides otherwise, State law applies to operating subsidiaries only to the extent that the law applies to the parent bank.

Francisco, No. C 99 4817 VRW (N.D. Ca.) (citing OCC opinion letters construing and describing the operation of 12 CFR 7.4002). On July 11, 2000, the U.S. District Court for the Northern District of California granted the plaintiffs in this case permanent injunctive relief against San Francisco and Santa Monica city ordinances that purported to prohibit national banks from charging fees for providing banking services through automatic teller machines (ATMs). The case is currently pending appeal in the U.S. Court of Appeals for the Ninth Circuit.

[12] Pub. L. 106–102, § 121, 113 Stat. at 1378, *codified at* 12 U.S.C. 24a(g)(3).

[13] 12 CFR 5.34(e)(3).

[14] 12 CFR 559.3(n). *See* 61 FR 66561, 66563 (December 18, 1996) (preamble to OTS final rule adopting section 559.3(n); explaining that the basis for the OTS rule is that the operating subsidiary of a Federal savings association ''is treated as the equivalent of a department of the parent thrift for regulatory and reporting purposes'').

[15] *See WPS Financial, Inc.* v. *Dean*, No. 99 C 0345 C (W.D. Wi. Nov. 26, 1999); *Chaires* v. *Chevy Chase Bank, FSB*, 131 Md. App. 64, 748 A.2d 34, 44 (Md. Ct. Sp. App. 2000).

C. Part 23—Leasing

Estimated Residual Value for Section 24 (Seventh) Leases (Revised § 23.21)

The OCC's regulations at 12 CFR part 23 currently authorize national banks to engage in leasing activities pursuant to two distinct sources of authority: section 24 (Tenth), which expressly authorizes leasing subject to certain conditions specified in that statute, including a 10% of assets limit on the amount of the activity that the national bank can conduct; and section 24 (Seventh), which authorizes leasing as an activity that is part of the business of banking without imposing a percentage-of-assets limit.[16] The rules require that leases be ''full-payout leases.'' That term is defined to mean a lease in which the national bank reasonably expects to recover its investment in the leased property, plus its cost of financing, from rental payments, estimated tax benefits, and the estimated residual value of the leased property at the expiration of the lease term. The rules for section 24 (Seventh) leases further provide that the bank's estimate of the residual value of the leased property must be reasonable in light of the nature of the property and all the circumstances surrounding the lease transaction and that, in any event, the unguaranteed amount of residual value relied upon may not exceed 25% of the bank's original cost of the property. 12 CFR 23.3, 23.2(e), 23.21.

The OCC last revised the leasing rules in 1996. Since then, our experience supervising national banks that engage in the leasing business has suggested that the 25% residual value limit may not be appropriate for all types of personal property leasing. We are therefore proposing to modify current § 23.21 to provide that the limit on the amount of estimated residual value is either 25% or the percentage for a particular type of personal property that is specified in guidance published by the OCC. As revised, § 23.21 would permit the OCC to establish a different percentage requirement than 25% if a different limit is warranted. If the OCC does not specify a different limit, the 25% limit would continue to apply. We would apprise national banks of any different limit or limits established under this provision by publishing an OCC bulletin, which would subsequently be incorporated into the Comptroller's Handbook booklet on Lease Financing.

[16] *M&M Leasing* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (bank leasing of personal property permissible because it was functionally equivalent to loaning money on personal security).

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Specifically, we invite your comments on how to make this proposed rule easier to understand. For example:

Have we organized the material to suit your needs?

Are all the requirements in the rule clearly stated?

Does the rule contain technical language or jargon that is not clear?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

Would more (but shorter) sections be better?

What else could we do to make the rule easier to understand?

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

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

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal codifies caselaw and OCC interpretations, but adds no new requirements. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

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

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. The proposal codifies caselaw and OCC interpretations, but adds no new requirements.

Executive Order 13132

Executive Order 13132 (Order) requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' In the case of a regulation that has Federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

Executive Order 13132 imposes certain requirements when an agency issues a regulation that has federalism implications or that preempts State law. Under the Order, a regulation has federalism implications if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In general, the Order requires the agency to adhere strictly to federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

It is not clear that the Order applies to this proposal. Proposed § 7.4006

addresses the applicability of state law to national bank operating subsidiaries, but, in the opinion of the OCC, it reflects the conclusion that a federal court would reach, even in the absence of the regulation, pursuant to the Supremacy Clause and applicable federal judicial precedent. Nonetheless, the OCC plans for its final rule to satisfy the requirements of the Order. If an agency promulgates a regulation that has federalism implications and preempts State law, the Order imposes upon the agency requirements to consult with State and local officials, to publish a ''federalism summary impact statement,'' and to make written comments from State and local officials available to the Director of OMB. In the preamble to any final rule that results from our proposal, we will describe the results of our consultation with State or local officials and include a federalism summary impact statement. Moreover, we will make any written comments we receive from State or local officials available to the Director of OMB.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 23

National banks.

Authority and Issuance

For the reasons set forth in the preamble, parts 1, 7, and 23 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1, *et seq.*, 12 U.S.C. 24 (Seventh) and 93a.

2. In § 1.2, current paragraphs (g) through (m) are redesignated as (h) through (n), a new paragraph (g) is added, newly designated paragreaphs (j)(4), (k)(1), and (l) are revised to read as follows:

§ 1.2 Definitions.

* * * * *

(g) *Municipal bonds* means obligations of a State or political subdivision other than general obligations, and includes limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986 issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State.

* * * * *

(j) * * *

(4) General obligations of a State of the United States or any political subdivision thereof; and municipal bonds if the national bank is well capitalized as defined in 12 CFR 6.4(b)(1);

* * * * *

(k) * * *

(1) Obligations issued by a State, or a political subdivision or agency of a State, for housing, university, or dormitory purposes that would not satisfy the definition of Type I securities pursuant to paragraph (j) of § 1.2.

* * * * *

(l) *Type III security* means an investment security that does not qualify as a Type I, II, IV, or V security. Examples of Type III securities include corporate bonds and municipal bonds that do not satisfy the definition of Type I securities pursuant to paragraph (j) of § 1.2.

* * * * *

PART 7—BANK ACTIVITIES AND OPERATIONS

3. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 92, 92a, 93, 93a, 481, 484, 1818.

Subpart A—Bank Powers

4. A new § 7.1021 is added to read as follows:

§ 7.1021 National bank participation in financial literacy programs.

A national bank may participate in a financial literacy program on the premises of, or at a facility used by, a school. The school premises or facility will not be considered a branch of the bank if:

(a) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and

(b) The principal purpose of the financial literacy program is educational. For example, a program is educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, and is not designed for the purpose of profit-making.

5. In § 7.3000, the last sentence of paragraph (b) is removed and two sentences are added in its place to read as follows:

§ 7.3000 Bank hours and legal holidays.

* * * * *

(b) * * * When the Comptroller, a State, or a legally authorized State official declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices. Alternatively, the national bank may continue its operations unless the Comptroller by written order directs otherwise.

* * * * *

6. In § 7.4001, the second sentence of paragraph (a) is revised to read as follows:

§ 7.4001 Charging interest at rates permitted competing institutions; charging interest to corporate borrowers.

(a) * * * It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, not sufficient funds (NSF) fees that are imposed by a creditor when a borrower tenders payment on a debt with a check drawn on insufficient funds, overlimit fees, annual fees, cash advance fees, and membership fees.* * *

* * * * *

7. Section 7.4002 is revised to read as follows:

§ 7.4002 National bank charges.

(a) *Authority to impose charges and fees.* A national bank may charge its customers non-interest charges and fees, including deposit account service charges.

(b) *Considerations.* (1) All charges and fees should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.

(2) The establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A national bank establishes non-interest charges and fees in accordance with safe and sound banking principles if the bank employs a decision-making process through which it considers the following factors, among others:

(i) The cost incurred by the bank in providing the service;

(ii) The deterrence of misuse by customers of banking services;

(iii) The enhancement of the competitive position of the bank in accordance with the bank's business plan and marketing strategy; and

(iv) The maintenance of the safety and soundness of the institution.

(c) *Interest.* Charges and fees that are ''interest'' within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by this section.

(d) *State law.* Preemption principles derived from the United States Constitution, as interpreted through judicial precedent, govern determinations regarding the applicability of State law to fees described in this section.

(e) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

8. A new § 7.4006 is added to read as follows:

§ 7.4006 Applicability of State law to national bank operating subsidiaries.

Unless otherwise provided by Federal law or OCC regulation, State laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank.

PART 23—LEASING

9. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 24 (Tenth), and 93a.

Subpart C—Section 24(Seventh) Leases

10. In § 23.21, current paragraph (a)(2) is revised to read as follows:

§ 23.21 Estimated residual value.

* * * * *

(a) * * *

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank or the percentage for a particular type of property specified in published OCC guidance.

* * * * *

Dated: January 8, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–1614 Filed 1–29–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–40–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes revising an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A helicopters. That AD currently requires a one-time inspection of the tail rotor blade (blade) spar elliptical centering plug (centering plug) for disbonding and the addition of a retaining pad on the pitch change shaft between the output tail rotor gearbox flange and the inboard tail rotor spar. This action would contain the same requirements as the existing AD but would clarify that the 500-hour time-in-service (TIS) repetitive inspections, which could cause inadvertent damage, are not required. This AD would also incorporate by reference a revised alert service bulletin (ASB) that does not include the 500-hour TIS repetitive inspections. This proposal is prompted by operator confusion about whether the current AD continues to require the 500-hour TIS repetitive inspections. The proposed AD is intended to verify that the FAA has determined that the 500-hour TIS repetitive inspections are not required to prevent the centering plug from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–40–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–40–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–40–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 30, 1994, the FAA issued AD 94–14–20, Amendment 39–8969 (59 FR 41238, August 11, 1994), to require inspecting each blade centering plug for disbonding; adding a retaining pad on the pitch change shaft between the tail rotor output gearbox flange and the inboard blade spar; and removing the 500-hour repetitive inspection. That action was prompted by successful service experience and an improved bonding procedure. The requirements of that AD are intended to prevent the centering plug from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter.