(b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

## PART 980—VEGETABLES; IMPORT REGULATIONS

4. Section 980.1 is amended as follows:

a. Revise paragraphs (a)(1)(i), (a)(2)(ii), (b)(2), (e), (f), and (g)(1)(ii).

b. Redesignate paragraph (i) as paragraph (j).

c. Redesignate paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2) and revise newly designated paragraphs (i)(1) and (i)(2). The revisions read as follows:

### § 980.1 Import regulations; Irish potatoes.

* * * * *

(a) * * *

(1) * * *

(i) Grade, size, quality, and maturity regulations have been issued from time to time pursuant to the following marketing orders: No. 945 (part 945 of this chapter), No. 948 (part 948 of this chapter), No. 947 (part 947 of this chapter), No. 946 (part 946 of this chapter), and No. 953 (part 953 of this chapter).

* * * * *

(2) * * *

(ii) Imports of all other round type potatoes during the period June 5 through July 31 are in most direct competition with the marketing of the same type of potatoes produced in the Southeastern States covered by Order No. 953 (part 953 of this chapter); and during the period of August 1 through June 4 of the following year they are in most direct competition with all other round type potatoes produced in Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(2) During the period June 5 through July 31 of each marketing year, the grade, size, quality, and maturity requirements of Marketing Order No. 953 (part 953 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity requirements for imports of other round type potatoes; and during the period August 1 through the following June 4 of each year the grade, size, quality, and maturity requirements of Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those potatoes which are officially certified and tagged as seed potatoes by the Plant Health and Production Division, Plant Products Directorate, Canadian Food Inspection Agency, and which are subsequently used as seed.

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of § 608e of the Act.

(g) * * *

(1) * * *

(ii) Since inspectors may not be stationed in the immediate vicinity of a port, or point of entry, an importer of uninspected and uncertified Irish potatoes should make advance arrangements for inspection. Each importer should give at least the specified advance notice to one of the following applicable inspection offices prior to the time the Irish potatoes would be imported.

| Ports and points | Inspection offices | Advance notice (days) |
|---|---|---|
| All Maine ports and points of entry | In-Charge, Post Office Box 1058, Presque Isle, ME 04767 (PH 207–764–2100) | 1 |
| Port of Boston, MA | In-Charge, Boston Market Terminal Building, Room 1, 34 Market Street, Everett, MA 02149 (PH 617–389–2480). | 1 |
| Port of New York, NY | In-Charge, 465B New York City Terminal Market, Bronx, NY 10474 (PH 718–991–7665). | 1 |
| Port of Philadelphia, PA | In-Charge, 210 Produce Building, 3301 South Galloway Street, Philadelphia, PA 19148 (PH 215–336–0845. | 1 |
| All other ports and points of entry. | Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, Washington, DC 20250 (PH 1–800–811–2373). | 3 |

* * * * *

(i) *Definitions.* (1) For the purpose of this part potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size, as set forth in the U.S. Standards for Grades of Potatoes (§§ 51.1540 to 51.1556, inclusive of this title) may be used.

(2) *Importation* means release from the custody of the U.S. Customs Service.

* * * * *

Dated: July 17, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–18572 Filed 7–22–02; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 303

### Insurance of State Banks Chartered as Limited Liability Companies

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** One of the statutory requirements for a State-chartered bank to be eligible for Federal deposit insurance is that it be ''incorporated under the laws of any State.'' In the recent past the FDIC has received two inquiries regarding whether a State bank that is chartered as a limited liability company (LLC) could be considered to be ''incorporated'' for purposes of that requirement. The FDIC proposes to issue a regulation that would clarify that a bank that is chartered as an LLC under State law would be considered to be ''incorporated'' under State law if it meets certain criteria.

**DATES:** Written comments must be received on or before October 21, 2002.

**ADDRESSES:** Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. Send facsimile transmissions to (202) 898–3838. Comments may be submitted electronically to *comments@FDIC.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Curtis Vaughn, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6759, or Robert C. Fick, Counsel, Legal Division, (202) 898–8962, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Generally, the FDIC may grant deposit insurance only to depository institutions that are engaged in the business of receiving deposits other than trust funds.[1] The term ''depository institution'' is defined in the Federal Deposit Insurance Act (FDI Act) to mean any bank or savings association.[2] The term ''bank'' is also defined in the FDI Act to include any State bank.[3] Finally, ''State bank'' means

any bank, banking association, trust company, savings bank, industrial bank * * * or other banking institution which—

(A) is engaged in the business of receiving deposits other than trust funds * * * and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank), including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.[4]

Traditionally, the term ''incorporated'' has been applied such that only those legal entities that have been identified as corporations under State law have been considered eligible to become insured. However, recently, two banks have expressed interest in obtaining Federal deposit insurance for a State bank that would be chartered as an LLC. Proponents have argued specifically that the term ''incorporated'' should not be interpreted to preclude an LLC from becoming an insured depository institution. A common understanding of the term ''incorporated'' is ''formed or constituted as a legal corporation.'' [5] In addition, Black's Law Dictionary defines ''incorporate'' as ''to form a legal corporation.'' [6] The FDI Act provides no definition of the term ''incorporated,'' and there is no judicial guidance on the meaning of ''incorporated'' as used in the FDI Act. Consequently, in view of the arguments offered regarding LLCs and the lack of direct legislative or judicial guidance, there is some ambiguity as to the meaning of the word ''incorporated.''

## II. Corporations and Other Business Entities

At common law there were three types of business entities: proprietorships, partnerships and corporations. Proprietorships and partnerships had no existence separate and apart from their owners. Corporations, on the other hand, were created and existed by virtue of a grant of authority from the sovereign. Although there appears to be no universally accepted definition of ''corporation,'' most definitions of the term are pervaded by the notion of ''an 'artificial legal creation,' the continuance of which does not depend on that of the component persons, and the being or existence of which is owed to an act of state.'' [7] One of the earliest judicial definitions reflecting that notion is that enunciated in the 1819 case of *Trustees of Dartmouth College* v. *Woodward*.[8] In *Dartmouth College,* Chief Justice Marshall stated that

[a] corporation is an artificial being, * * * existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it * * *. Among the most important are immortality and * * * individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.[9]

### *Description of Four Corporate Attributes*

There is also no universal agreement as to the characteristics generally attributed to a modern corporation. This may have resulted from the fact that the characteristics of a modern corporation have evolved over time [10] and also possibly from the fact that the nature of a corporation was subject to the varying notions of the individual State legislatures. However, it is generally accepted that there are four attributes of a corporation that distinguish it from other forms of business entities; they are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual succession (also sometimes known as continuity of life) is not generally construed to mean immortality; rather perpetual succession means that the entity continues to exist independent of its owners. In the case of a corporation, the death or withdrawal of a shareholder does not terminate the existence of the corporation. Perpetual succession is an attribute that distinguishes corporations from partnerships because partnerships are created and exist by agreement of the partners. The death or withdrawal of a partner generally terminates the partnership.

Centralized management generally means that management of the entity is vested in a group of individuals appointed or elected by the owners; each owner, therefore, does not have the authority to directly participate in the management of the entity. In a partnership the general partner(s) manage the affairs of the partnership.

Limited liability means that an owner of the entity is generally not personally liable for the debts of the entity; rather, the maximum potential liability of an owner is generally limited to the owner's investment in the entity. In a corporation the shareholders of a corporation are generally not liable for the corporation's debts. This attribute also distinguishes a corporation from a partnership because in a partnership a general partner is fully liable for the debts of the partnership.

Free transferability of interests generally means that an owner of the entity may transfer an ownership interest in the entity without the consent or approval of the other owners. In a corporation a shareholder can generally transfer all or a part of his/her shares to another person without the consent or approval of the other shareholders. However, in closely-held

[1] *See* 12 U.S.C. 1815.

[2] *See* 12 U.S.C. 1813(c)(1).

[3] *See* 12 U.S.C. 1813(a)(1).

[4] 12 U.S.C. 1813(a)(2).

[5] The Random House Dictionary of the English Language 968 (2d ed. 1987).

[6] Black's Law Dictionary 769 (7th ed. 1999).

[7] 1 William Meade Fletcher et al., Fletcher's Cyclopedia of the Law of Private Corporations § 4 (perm. ed., rev. vol. 2001).

[8] *Trustees of Dartmouth College* v. *Woodward,* 17 U.S. (4 Wheat.) 518 (1819).

[9] *Dartmouth College,* 17 U.S. at 636.

[10] *See* Douglas Arner, *Development of the American Law of Corporations to 1832,* 55 SMU Law Review 23, 43–54, 2002.

corporations, it is a common practice for shareholders to enter into agreements requiring a selling shareholder to obtain the prior approval of the remaining shareholders. In partnerships, a partner generally cannot transfer his/her interest without the consent of the other partners. However, even when the other partners consent, the original partnership technically is terminated, and a new partnership is created.[11]

*Partnership Distinguished*

In addition to the differences noted above, there are other characteristics that distinguish a corporation from a partnership. A generally accepted definition of a partnership is an association of two or more persons to carry on as co-owners a business for profit.[12] A principal distinction between a corporation and a partnership is that generally a partnership can be created by agreement among the co-owners, whereas a corporation requires a grant of authority from the State. In addition, a partnership, unlike a corporation, is not a legal entity separate from its owners. Because of this fact, for federal income tax purposes, the partnership's income is not taxed at the partnership level, but is attributed to the partners and taxed only at the individual partners' level. This feature of a partnership is sometimes called ''pass-through tax treatment,'' and is generally considered to be a significant advantage over the tax treatment of a corporation's income. A corporation's income is said to be taxed twice, once at the corporation level, and again at the shareholders' level when the shareholders receive the corporation's income as dividends.

*Internal Revenue Service Rules*

Since the characterization of a business entity as a ''corporation'' has significant tax implications, the Internal Revenue Service (IRS) established rules to determine whether an entity would be taxed as a corporation or a partnership. Prior to its amendment in 1997, Treas. Reg. § 301.7701–2 classified an association of two or more persons who had the purpose of carrying on a business and dividing the profits as either a partnership or a corporation depending upon whether the association possessed more corporate characteristics than noncorporate characteristics. The four corporate characteristics that the IRS utilized were: continuity of life (perpetual succession), centralized management, limited liability, and free transferability of interests. Under the old IRS regulations, if an association possessed at least three of the four corporate characteristics, then it would be treated as a corporation for federal income tax purposes. As noted above, after 1996 the IRS no longer utilized the corporate characteristics test and now permits business entities that are not specifically classified as corporations in the regulation to elect partnership tax treatment.[13] In that regard, we note that one of the entities specifically classified as a corporation in the regulation is a ''[s]tate-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act.'' [14] As a result, an FDIC-insured, State bank that is chartered as an LLC would not qualify for partnership tax treatment for Federal income tax purposes.

*Subchapter S Corporations*

In August 1996 Congress amended the Internal Revenue Code to allow eligible financial institutions to elect Subchapter S status for federal income tax purposes.[15] A principal advantage of such status is that a Subchapter S corporation is taxed the same as a partnership, *i.e.,* a Subchapter S corporation is entitled to pass-through tax treatment. There are, however, limits on both the number and type of shareholders permissible for a Subchapter S corporation. The maximum number of shareholders of a Subchapter S corporation is 75, and only individuals, estates, certain trusts, and certain tax-exempt organizations may be shareholders. Also, there can only be one class of stock in a Subchapter S corporation, and no nonresident aliens may be shareholders.[16]

*Limited Liability Companies*

Generally, an LLC is a business entity that combines the limited liability of a corporation with the pass-through tax treatment of a partnership.[17] Wyoming was the first State to authorize LLCs in 1977; since that time the remaining forty-nine States and the District of Columbia have all enacted LLC statutes.[18] Generally, LLC statutes were crafted to authorize a business entity that is neither a partnership nor a corporation, but an entity that has some of the more desirable features of each form of business organization.[19] As a result, an LLC has characteristics of both a partnership and a corporation. However, because an LLC is neither a partnership nor a corporation, State partnership laws and State corporation laws generally do not apply. For example, State corporation laws that require a board of directors, that specify how ownership interests (shares) may be issued, and that impose capital requirements generally do not apply to an LLC. LLC statutes generally allow the owners broad discretion in setting up an LLC. According to some legal scholars, ''[w]hole bodies of corporate law doctrine * * * are rendered irrelevant'' when an LLC is utilized.[20]

An LLC is established by filing articles of organization with the State. These articles are roughly equivalent to a corporation's articles of incorporation. Every LLC has an operating agreement which is a contract executed by the members that sets forth the manner in which the business of the LLC will be conducted. The operating agreement establishes the rights and liabilities of the members with respect to each other and with respect to the LLC. It contains provisions detailing such matters as the LLC's management structure, capital contributions, accounting, distributions, transfers of a member's interest, and dissolution. As used in many LLC statutes, a ''member'' of an LLC is a person who owns an interest in the LLC and is roughly equivalent to a shareholder of a corporation. Furthermore, a ''member's interest'' in an LLC is generally the member's ownership interest in the LLC, and a member's interest in an LLC is sometimes evidenced by a certificate which is roughly equivalent to a stock certificate of a corporation.

*Consistency of the LLC Structure with Corporate Attributes*

Many LLC statutes authorize entities that do not exhibit all of the four corporate attributes. First, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will automatically terminate, or dissolve, or that its operations will be suspended pending the consent of the remaining members, upon the death, disability, bankruptcy, withdrawal, or expulsion of a member, or upon the happening of some other specified event. These

[11] *See* Flectcher, *supra* note 7, § 20.

[12] *See* Unif. Partnership Act, sec. 101(6) (1997), 6 U.L.A. 61 (Supp. 2002).

[13] *See* Treas. Reg. §§ 301.7701–2, 7701–3 (1997).

[14] Treas. Reg. § 301.7701–2(b)(5) (1997).

[15] *See* Small Business Job Protection Act, Pub. L. 104–188 § 1315, 26 U.S.C. 1361(b)(1996).

[16] *See Id.*

[17] *See* Mark A. Sargent & Walter D. Schwidetzky, Limited Liability Company Handbook § 1:3 (rev. 2002).

[18] *See Id.*

[19] *See* ''Unif. Limited Liability Company Act,'' Prefatory Note, (amended 1996) 6A U.L.A. 426 (Supp. 2002).

[20] *See* Sargent & Schwidetzky, *supra* note 17, § 1:3.

automatic termination/dissolution/suspension provisions are inconsistent with the notion of perpetual succession because the continued existence and operation of the entity directly depends upon the existence of its owners. Second, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will be managed solely and directly by the members. Such member-management also tends to be inconsistent with the corporate attribute of centralized management (usually a board of directors) because there is no central management group (i) that has full authority to act for the entity, and (ii) that is not so large or so small as to present operational problems for the entity. Third, members of an LLC are generally not liable for the debts of the LLC in excess of the amount of their investment in the LLC and, therefore, generally have limited liability. Finally, some State LLC statutes require, or permit LLC members to provide in the operating agreement, either that LLC members may not transfer their interests in the LLC without the consent of the remaining members, or that a member may not transfer the managerial or voting rights that accompany membership without the consent of the remaining members. Such a provision tends to be inconsistent with the concept of free transferability of interests because the requirement for prior consent restrains or prevents the transfer of an ownership interest.

**III. Interpretation of ''Incorporated''**

In resolving any ambiguity in a statute it is always helpful to try to determine what Congress intended by its choice of the particular words of the statute. In this case there is no legislative history that sheds any light on their intent. The phrase ''incorporated under the laws of any State'' first appeared in the definition of ''State bank'' with the Banking Act of 1935.[21] As noted above, there is also no judicial guidance on the meaning of ''incorporated'' as used in the FDI Act. In the absence of such guidance, the FDIC believes that it is reasonable to interpret the term ''incorporated'' in such a way as to aid the FDIC in carrying out the purposes of the FDI Act. Specifically, the FDIC believes that reviewing the corporate attributes, in light of the purposes of the FDI Act, may indicate a rational basis for applying the ''incorporated'' requirement and may further indicate which of the corporate attributes are necessary or desirable for purposes of determining which institutions qualify as ''State banks.''

Congress created the Federal Deposit Insurance Corporation in 1933 to restore and maintain public confidence in the nation's banking system. One of the principal purposes of the FDI Act is to promote the safety and soundness of the institutions whose deposits the FDIC insures.[22] Consequently, the FDIC is charged with maintaining public confidence in the nation's banking system and promoting the safety and soundness of the institutions that it insures.

As noted above, the attributes that are commonly identified as distinguishing a corporation from other forms of business organizations are: perpetual succession, centralized management, free transferability of interests, and limited liability.

*Perpetual Succession*

The first attribute, perpetual succession, is very important to the FDIC's efforts to promote public confidence in the nation's banking industry. An institution that automatically terminated, dissolved, or suspended operations upon the happening of some event would most likely have a substantial adverse effect on public confidence. A depositor in such an institution would have no way of knowing from one day to the next whether the institution will continue in existence, and whether he/she will be able to retrieve his/her money when desired. Furthermore, such an automatic termination, dissolution, or suspension feature would have a significantly adverse effect on the FDIC's efforts to resolve failed institutions. The FDIC is not only charged with promoting the safety and soundness of banking institutions, but is also charged with the duty of resolving failed institutions in an orderly, least costly manner. The FDIC would have no practical opportunity to plan and execute an orderly resolution of an institution that, without any warning or advance notice, was terminated or dissolved or whose operations were suspended. Most likely it would not be possible to arrange for a healthy institution to purchase the assets and assume the deposit liabilities of the failed institution in order to continue to serve the affected community with the least disruption. The cost of resolving such an institution would likely be significantly higher than necessary as a result. Depositors of the failed institution would be paid to the extent of their insured deposits, and then would have to open new accounts with another institution. Checks that were in transit at the time of the bank's failure, but that had not yet been paid, would be rejected. The disruption to the community would be substantial. Consequently, the FDIC believes that perpetual succession is an essential prerequisite for an insured depository institution, and that automatic termination/dissolution/suspension features are inconsistent with the FDIC's duties and the purposes of the FDI Act.

*Centralized Management*

Centralized management is also an important attribute. Centralized management in the form of a board of directors provides the FDIC with a discrete group of individuals who are capable of acting for, and representing, the institution in virtually all matters. The typical rights, liabilities, powers, and responsibilities of this group are well established. Management of an institution directly and solely by all of its owners presents a variety of problems both from an operational standpoint and from an enforcement standpoint. If there is a large group of owners, it may be excessively difficult to conduct business in a timely fashion. With a large group, activities such as coordinating meetings, providing every owner with information and notices, determining who represents the institution and the extent of his/her authority become substantial undertakings. If there are too few owners, the group may not provide sufficient management depth and expertise. Ensuring that the institution is run by experienced, competent management may be especially difficult if the owners do not happen to possess adequate banking experience and competence. Finally, removing an individual from a management position may be complicated when the manager is also an owner of the institution. Consequently, centralized management is also an important attribute for purposes of the FDI Act.

*Limited Liability*

Limited liability, of course, encourages investment in the enterprise. Potential owners are more likely to invest in an enterprise when their liability is limited to the amount of their investment. Attracting and maintaining sufficient capital helps to ensure an adequate cushion to protect an institution during periods of economic stress. Since banks and savings associations are subject to periods of economic stress just as other businesses are, the FDIC believes that the owners of banks and savings associations

[21] *See* Banking Act of 1935, Pub. L. 74–305, sec. 101, 49 Stat. 684.

[22] *See FDIC* v. *Philadelphia Gear Corp.,* 106 S. Ct. 1931, 1935 (1986).

should also have limited liability to encourage the maintenance of adequate capital.

*Free Transferability of Ownership Interests*

Finally, the free transferability of ownership interests also tends to aid in attracting and maintaining capital. Requiring the prior consent of the remaining owners in order to transfer an ownership interest impairs an institution's ability to attract additional investors. At worst, prior consent to a transfer limits the pool of available investors; at best, it delays the additional investment. While the FDIC currently insures approximately 700 mutual institutions (that issue no stock) and more than 1700 closely-held institutions (some of which may have stock-transfer restrictions in the form of shareholder agreements), the FDIC has substantial experience with their structure, operations, and capital maintenance capabilities. The FDIC has no similar experience with institutions organized as LLCs, and that lack of similar experience argues for facilitating, rather than impairing, the maintenance of a capital cushion.

In summary, the FDIC believes that all of the above four attributes that are peculiar to corporations are attributes that a State bank should have in order to be ''incorporated'' as used in the definition of ''State bank'' in the FDI Act. Therefore, a banking institution that is chartered as an LLC under the law of any State and that has all of the above four corporate attributes would be considered to be ''incorporated'' under the law of the State for purposes of the definition of ''State bank.'' Furthermore, such a banking institution would be eligible to apply for Federal deposit insurance as a State bank under section 5 of the FDI Act, 12 U.S.C. 1815.

The proposed regulation reflects these conclusions. It provides generally that a banking institution that is chartered by a State as an LLC will be deemed to be ''incorporated'' if it has each of the four corporate attributes. The proposed regulation also specifies that for purposes of the FDI Act and the FDIC's regulations, an owner of an interest in an LLC is a ''shareholder;'' a manager of an LLC is a ''director;'' an officer of an LLC is an ''officer;'' and a certificate or other evidence of an ownership interest in an LLC is both ''voting stock'' and a ''voting security.'' These provisions are intended to remove any ambiguity as to how the rest of the FDI Act and the FDIC's regulations apply to banking institutions chartered as LLCs.

## IV. Request for Comments

The FDIC's Board of Directors (Board) is seeking comment on whether the agency should permit a State bank that is organized as an LLC to obtain Federal deposit insurance; whether use of some or all of the four corporate attributes is the most appropriate method of determining whether an institution is ''incorporated;'' and if not, how the term ''incorporated'' should be interpreted. The Board invites comments on all of the following questions:

1. Should the FDIC permit a State bank that is organized as an LLC to obtain Federal deposit insurance?

2. If so, should the FDIC interpret the term ''incorporated'' utilizing some, all, or none of the traditional four corporate attributes?

3. If the FDIC should not utilize any of the four corporate attributes, how should it interpret the term ''incorporated?''

## V. Paperwork Reduction Act

The proposed rule would not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

## VI. Regulatory Flexibilty Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule describes the circumstances under which a banking institution that is chartered under State law as a limited liability company would be considered to be ''incorporated'' for purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2). It does not require any banking institution to organize as a limited liability company, and it imposes no new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

## VII. Impact on Families

The proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

## List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Foreign banking, Golden parachute payments, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 303 of Title 12 of the Code of Federal Regulations as follows:

## PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

**Authority:** 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.15 is added to subpart A to read as follows:

### § 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2), a banking institution that is chartered as a limited liability company (LLC) under the law of any State is deemed to be ''incorporated'' under the law of the State, if:

(1) The LLC's existence is independent of the life or lives of its owner(s) and specifically is not subject to automatic termination, dissolution, or suspension upon the happening of some event including the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the LLC;

(2) The LLC is managed by a board of managers or directors that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, and composition as, a board of directors of a State bank chartered as a stock corporation;

(3) Each ownership interest in the LLC, including all management rights and voting rights, is transferable without the consent of any other owner of the LLC; and

(4) Each owner of the LLC is not liable for the debts, liabilities, and obligations of the LLC in excess of the amount of the owner's investment.

(b) For purposes of the Federal Deposit Insurance Act and chapter III, title 12 of the Code of Federal Regulations:

(1) The term ''shareholder'' includes an owner of any interest in an LLC,

including a member or participant of an LLC;

(2) The term ''director'' includes a manager, director, or other person with substantially similar authority, of an LLC;

(3) The terms ''voting stock'' and ''voting securities'' each includes certificates or other evidence of ownership interests in an LLC; and

(4) The term ''officer'' includes an officer, or other person with substantially similar authority, of an LLC.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of July, 2002.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary/Supervisory Counsel.*

[FR Doc. 02–18467 Filed 7–22–02; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–47–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt and Whitney (PW) model PW4000 series turbofan engines. That AD currently requires the number of PW4000 engines with potentially reduced stability margin to be limited to no more than one engine on each airplane, and removing engines that exceed high pressure compressor (HPC) cycles-since-overhaul (CSO) or cycles-since-new (CSN) from service based on the engine's configuration and category. That AD also requires establishing a minimum build standard for engines that are returned to service, and performing cool-engine fuel spike testing (Testing-21) on engines to be returned to service after having exceeded HPC cyclic limits or after shop maintenance.

This proposal would establish requirements similar to those in the existing AD, and would introduce a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes. This proposal would also add new requirements to manage the engine configurations installed on Boeing 747 airplanes, and would require repetitive Testing-21 to be performed on certain configuration engines. This proposal would also establish criteria which would require Testing-21 on certain engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations. In addition, this proposal would re-establish high pressure compressor (HPC)-to-high pressure turbine (HPT) cycles-since-overhaul (CSO) cyclic mismatch criteria, and add criteria to address engine installation changes, engine transfers, and thrust rating changes. Also, this proposal would establish criteria to allow engine stagger without performing Testing-21 for engines over their respective limits. This proposal is prompted by investigation and evaluation of PW4000 series turbofan engines surge data, and continuing reports of surges in the PW4000 fleet. The actions specified by this AD are intended to prevent engine takeoff power losses due to HPC surge.

**DATES:** Comments must be received by August 22, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9-ane-adcomment@faa.gov''.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7133; 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, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action 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, both before and after the closing date for comments, 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 comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–47–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On December 12, 2001, the Federal Aviation Administration (FAA) issued AD 2001–25–11, Amendment 39–12564 (67 FR 1, January 2, 2002) which applies to PW model PW4000 series turbofan engines. That AD was issued as an interim action to address the engine takeoff power loss events while investigation continued. AD 2001–25–11 requires:

- Limiting the number of engines with the HPC cut-back stator (CBS) configuration to one on each airplane before further flight after the effective date of that AD.
- Limiting the number of PW4000 engines with potentially reduced stability margin, to no more than one engine on each airplane.