determine that such institutions have been identified and notified.

(d) During the FDIC's consideration of the request for review, the amount of credit in dispute shall not be available for use by any institution.

(e) Within 30 days of being notified of the filing of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (c) does not submit a response to the request for review, that institution may not:

(1) Subsequently dispute the information submitted by other institutions on the transaction(s) at issue in the review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(f) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(g) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance, (or his or her designee), notifying the requesting and affected institutions of the determination of the Director as to whether the requested change is warranted. Notice of the procedures applicable to appeals under paragraph (h) of this section will be included with the Director's written determination. Whenever feasible, the FDIC will provide the institution with the aforesaid written response the later of:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information.

(h) Subject to paragraph (e) of this section, the insured depository institution that requested review under this section, or an insured depository institution materially affected by the Director's determination, that disagrees with that determination may appeal to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals under this section will be included with the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

(i) Any adjustment to an institution's credits resulting from a determination by the Director of the FDIC's Assessment Appeals Committee shall be reflected in the institution's next assessment invoice. The adjustment to credits shall affect future assessments only and shall not result in a retroactive adjustment of assessment amounts owed for prior periods.

Dated at Washington, DC, this 10th day of October, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–17305 Filed 10–17–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD07

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to implement the dividend requirements of the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Amendments Act) for an initial two-year period. The final rule will take effect on January 1, 2007, and sunset on December 31, 2008. During this period the FDIC expects to initiate a second, more comprehensive notice-and-comment rulemaking on dividends beginning with an advanced notice of proposed rulemaking to explore alternative methods for distributing future dividends after this initial two-year period.

EFFECTIVE DATE: January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Munsell W. St.Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349.

SUPPLEMENTARY INFORMATION:

I. Background

In May of this year, the FDIC published a proposed rule (the proposed rule) to implement the dividend requirements of the Reform Act. 71 FR 28804 (May 18, 2006). The Reform Act requires the FDIC to prescribe final regulations, within 270 days of enactment, to implement the assessment dividend requirements, including regulations governing the method for the calculation, declaration, and payment of dividends and administrative appeals of individual dividend amounts. See sections 2107(a) and 2109(a)(3) of the Reform Act.[1]

Section 7(e)(2) of the Federal Deposit Insurance Act (FDI Act), as amended by the Reform Act, requires that the FDIC, under most circumstances, declare dividends from the Deposit Insurance Fund (DIF or fund) when the reserve ratio at the end of a calendar year exceeds 1.35 percent, but is no greater than 1.5 percent. In that event, the FDIC must generally declare one-half of the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.35 percent as dividends to be paid to insured depository institutions. However, the FDIC's Board of Directors (Board) may suspend or limit dividends to be paid, if the Board determines in writing, after taking a number of statutory factors into account, that:

1. The DIF faces a significant risk of losses over the next year; and

2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed to grow without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent or exceeds 1.5 percent.[2]

In addition, the statute requires that the FDIC, absent certain limited circumstances (discussed in footnote 2), declare a dividend from the DIF when the reserve ratio at the end of a calendar

[1] The Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 9, which was signed into law by the President on February 8, 2006. Section 2109 of the Reform Act also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the one-time assessment credit, and assessments. The final rule on deposit insurance coverage was published on September 12, 2006, 71 FR 53547. The final rule on the one-time assessment credit is being published on the same day as this final rule. Final rules on the remaining matters are expected to be published in the near future.

[2] This provision would allow the FDIC's Board to suspend or limit dividends in circumstances where the reserve ratio has exceeded 1.5 percent, if the Board made a determination to continue a suspension or limitation that it had imposed initially when the reserve ratio was between 1.35 and 1.5 percent.

year exceeds 1.5 percent. In that event, the FDIC must declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent as dividends to be paid to insured depository institutions.

If the Board decides to suspend or limit dividends, it must submit, within 270 days of making the determination, a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Committee on Financial Services of the House of Representatives. The report must include a detailed explanation for the determination and a discussion of the factors required to be considered.[3]

The FDI Act directs the FDIC to consider each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance fund) when calculating such institution's share of any dividend. More specifically, when allocating dividends, the Board must consider:

1. The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date;

2. The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the DIF (and any predecessor fund);[4]

3. That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by the institution; and

4. Such other factors as the Board deems appropriate.

The statute does not define the term ''predecessor'' for purposes of the distribution of dividends to insured depository institutions. Predecessor deposit insurance funds are the BIF and the SAIF, as those were the deposit insurance funds in existence after 1996 and prior to enactment of the Reform Act, and which merged into the DIF. That merger was effective on March 31, 2006.

The statute expressly requires the FDIC to prescribe by regulation the method for calculating, declaring, and paying dividends. As with the one-time assessment credit, the dividend regulation must include provisions allowing a bank or thrift a reasonable opportunity to challenge administratively the amount of dividends it is awarded. Any review by the FDIC pursuant to these administrative procedures is final and not subject to judicial review.

II. The Proposed Rule

In May, the FDIC proposed a temporary rule for dividends that would sunset after two years, which would allow the FDIC to undertake a more comprehensive rulemaking that would not be subject to the 270-day deadline. The proposed rule: Described a process for the Board's annual determination of whether a declaration of a dividend is required and consideration, to the extent appropriate, of whether circumstances indicate that a dividend should be limited or suspended; set forth the procedures for calculating the aggregate amount of any dividend, allocating that aggregate amount among insured depository institutions considering the statutory factors provided, and paying such dividends to individual insured depository institutions; and provided insured depository institutions with a reasonable opportunity to challenge the amount of their dividends.

The FDIC proposed that the Board announce its determination regarding dividends by May 15th of each year, which would allow for the Board's consideration of the dividend determination using complete data for the reserve ratio for the preceding December 31st. Absent a Board determination that dividends should be limited or foregone, the aggregate amount of a dividend would be calculated as set forth in the statute.[5]

With respect to allocation of the aggregate dividend amount, the FDIC proposed adopting initially a simple system that would remain in place for two years with a definite sunset date (December 31, 2008). During the two-year lifespan of the initial dividend regulations, the FDIC plans to undertake another rulemaking, beginning with the issuance of an advance notice of proposed rulemaking, seeking industry comment on more comprehensive alternatives for allocating future dividends.

Specifically, after considering and weighing all the statutory factors, including other factors the Board deemed appropriate, the FDIC proposed that, during the life of this rule, any dividends be awarded simply in proportion to an institution's 1996 assessment base ratio (including any predecessors' 1996 ratios). This factor essentially parallels the basis for distribution of the one-time assessment credit, and institutions' 1996 assessment base ratios will have been determined under the final rule for the one-time assessment credit. The ratio will continue in effect for dividend purposes, subject to subsequent adjustments for transactions that result in the combination of insured depository institutions, thereby recognizing ''predecessor'' institutions as time goes by.

As noted above, the statute also requires that the FDIC consider other factors in allocating dividends—the total amount of assessments paid after 1996; the portion of those assessments paid that reflects higher levels of risk; and other factors that the Board may deem appropriate. Because no institution while in the lowest risk category (sometimes referred to as ''the 1A category'') has paid any deposit insurance assessments since the end of 1996, all assessments paid since then have reflected higher levels of risk. Moreover, within the proposed initial two-year period, any assessments that institutions pay that do not reflect higher levels of risk are likely to be small in comparison to the assessments that institutions paid over time to capitalize the deposit insurance funds, for which the 1996 assessment base is intended to act as a proxy. As a result, the FDIC proposed that payments since 1996 should not be included in the proposed temporary allocation method.[6]

In the FDIC's view, other factors supported an initially simple allocation based upon institutions' 1996 ratio. As a practical matter, it appears quite unlikely that the reserve ratio of the DIF

[3] See section 5 of the Amendments Act. Public Law 109–173, 119 Stat. 3601, which was signed into law by the President on February 15, 2006.

[4] This factor is limited to deposit insurance assessments paid to the DIF (or previously to the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) and does not include assessments paid to the Financing Corporation (FICO) used to pay interest on outstanding FICO bonds, although the FDIC collects those assessments on behalf of FICO. Beginning in 1997, the FDIC collected separate FICO assessments from both SAIF and BIF members.

[5] In most circumstances, if the reserve ratio exceeds 1.5 percent, the FDIC would declare a dividend of the amount in excess of the amount required to maintain the reserve ratio at 1.5 percent, as determined by the FDIC. At the same time, the FDIC would generally expect to declare a dividend of one-half of the amount necessary to maintain the reserve ratio at 1.35 percent, unless the Board makes a determination that suspension or limitation of that dividend is justified under section 7(e)(2)(E) of the FDI Act. That might happen, for example, if based on its consideration of the various statutory factors, the Board determines that it is appropriate, in light of foreseen risks cited in the statute, for the reserve ratio to rise to 1.5 percent and set assessments to maintain the reserve ratio at that level. Sections 2104(a) and 2105(a) of the Reform Act (to be codified at 12 U.S.C. 1817(b)(2) and (3), respectively).

[6] It is in large part because post-2006 payments may become material over time that the FDIC proposed adoption of a transitional rule, with the expectation that in 2007 the process of developing a more comprehensive long-term rule will begin.

will equal or exceed 1.35 percent in the near future.

The FDI Act does not define the term ''predecessor'' for purposes of the distribution of dividends to individual insured depository institutions. In addition, unlike the term ''successor'' used in the context of the one-time assessment credit, the FDI Act does not expressly charge the FDIC with defining ''predecessor.'' Nonetheless, in order to implement the dividend requirements, the FDIC must define ''predecessor'' for these purposes when it is used in connection with an insured depository institution and the distribution of dividends.

The FDIC proposed a definition of ''predecessor'' that is consistent with general principles of corporate law and the proposed definition of ''successor'' in the one-time assessment credit proposed rulemaking. Therefore, a ''predecessor'' would be defined as an institution that combined with another institution through merger or consolidation and did not survive as an entity.

The FDIC proposed that the FDIC advise each institution of its dividend amount as soon as practicable after the Board's declaration of a dividend on or before May 15th. Depending on circumstances, notification would take place through a special notice of dividend or, at the latest, with the institution's next assessment invoice. To allow time for requests for review of dividend amounts, the FDIC proposed that the individual dividend amounts be paid to insured depository institutions at the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend and offset each institution's assessment amount. Under the proposed rule, the settlement would be handled through the Automated Clearing House consistent with existing procedures for underpayment or overpayment of assessments. Thus, in the event that the institution owes assessments in excess of the dividend amount, there would be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owes an additional dividend amount in excess of the assessment to the institution, there would be a net credit (resulting in payment from the FDIC).

As it does for the regulations governing the one-time assessment credit, the FDI Act requires the FDIC to include in its dividend regulations provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of its dividend. The FDIC's determination under such procedures is to be final and not subject to judicial review.

The proposed rule largely paralleled the procedures for requesting revision of computation of a quarterly assessment payment as shown on the quarterly invoice. Requests for review of dividend amounts would be considered by the Director of the Division of Finance, and appeals of those decisions would be made to the FDIC's Assessment Appeals Committee. As with the one-time credit notice of proposed rulemaking, the FDIC proposed shorter timeframes in the dividend appeals process so that requests for review could be resolved by the time payment of dividends is due, to the extent possible. The FDIC further proposed to freeze temporarily the distribution of the dividend amount in dispute for the institutions involved in a request for review or appeal until the request for review or appeal is resolved. If an institution prevails on its request for review or appeal, then any additional amount of dividend would be remitted to the institution, with interest for the period of time between the payment of dividends that were not in dispute and the resolution of the dispute.

The comment period for this proposed rule was extended to August 16, 2006, to allow all interested parties to consider the proposed rule while proposed rules on the designated reserve ratio and risk-based assessments were pending.

III. Comments on the Proposed Rule

We received ten comment letters, six from insured depository institutions, one from a coalition of seven institutions, and three from banking industry trade associations. Commenters focused on the proposed temporary allocation method, the definition of ''predecessor,'' and the timing for dividend declaration and payment. Three institutions and three trade groups supported the proposed temporary allocation method for dividends during the life of the rule; whereas, four letters from institutions opposed it, instead supporting an allocation method that immediately takes into account payments made under the new assessments system. One trade association recommended that, if a dividend becomes likely in the next two years, the FDIC accelerate the adoption of the planned, more comprehensive rule.

Three institutions and one trade association supported the proposed definition of predecessor, which relied on whether the resulting institution acquired another institution through merger or consolidation. One trade association favored a ''follow-the-deposits'' approach to the definition. A number of commenters indicated that the definition of ''predecessor'' essentially should parallel the definition of ''successor'' for purposes of the one-time assessment credit rule.

One institution suggested that the declaration of dividends could be moved earlier to March 31st. A trade association commented that the FDIC should provide for the payment of dividends prior to the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend. It further commented that requests for review should not delay the payment of dividends.

All of the comment letters have been considered and are available on the FDIC's Web site, *http://www.fdic.gov/regulations/laws/federal/propose.html.*

IV. The Final Rule

Upon considering the comments, the FDIC has adopted a final rule similar to the proposed rule with changes to the provisions for the payment of dividends, the definition of *predecessor* and the time period for appealing an FDIC decision on a request to review a dividend determination, as well as minor technical changes. Consistent with the proposal, this rule is temporary; it will take effect on January 1, 2007, and will sunset on December 31, 2008.

As proposed, the FDIC will determine annually whether the reserve ratio at the end of the prior year equals or exceeds 1.35 percent of estimated insured deposits or exceeds 1.5 percent, thereby triggering a dividend requirement. At the same time, if a dividend is triggered, the FDIC will determine whether it should limit or suspend the payment of dividends based on the statutory factors. Any determination to limit or suspend dividends would be reviewed annually and would have to be justified to renew or make a new determination to limit or suspend dividends. Each decision to limit or suspend dividends must be reported to Congress. Any declaration with respect to dividends will be made on or before May 15th for the preceding calendar year. This timing allows for the Board's consideration of final data for the end of the preceding year regarding the reserve ratio of the DIF, as well as analysis of what amount is necessary to maintain the fund at the required level and whether circumstances warrant limiting or suspending the payment of dividends.

If the FDIC does not limit or suspend the payment of dividends or does not renew such a determination, then the aggregate amount of the dividend will be determined as provided by the statute. When the reserve ratio equals or exceeds 1.35 percent, then the FDIC generally is required to declare the amount that is equal to one-half the amount in excess of the amount required to maintain the reserve ratio at 1.35 as the aggregate amount of dividends to be paid to the insured depository institutions. When the reserve ratio exceeds 1.5 percent, the FDIC generally is required to declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent as dividends to be paid to institutions.

Consistent with the proposal, the FDIC is adopting a simple system for allocating any dividends that might be declared during this two-year period. Any dividends awarded before January 1, 2009, will be distributed simply in proportion to an institution's 1996 assessment base ratio, as determined pursuant to the one-time assessment credit rule. (See 12 CFR part 327, subpart B.) By cross referencing the determination under the credit rule, the FDIC will be able to recognize subsequent changes to an institutions 1996 ratio due to acquisitions by merger or consolidation with another eligible insured depository institution or transfers.

Four commenters suggest that this approach does not consider all the statutory factors. The FDIC disagrees. As reflected in the proposed rule, the FDIC considered all the statutory factors for distribution, including payments made since year-end 1996. Because of statutory constraints, deposit insurance assessment payments since that date reflect higher levels of risk. In addition, payments to be made under the new risk-based assessments system during the limited life of this rule are likely to be small when compared to the payments made by the industry before 1997. Also, the FDIC does not believe that it is likely that the reserve ratio of the DIF will trigger a dividend over the next two years. However, the FDIC expects to consider again all payments made, including payments under the new system from its inception, as part of the more comprehensive rulemaking to be undertaken next year.

As indicated by the comments, another significant issue for this rulemaking was the definition of ''predecessor.'' The FDIC is adopting a definition of ''predecessor'' that simply cross references the definition of ''successor'' for purposes of the one-time assessment credit rule. In effect, a predecessor is the mirror image of successor. As noted above, a number of commenters agreed that the definitions of ''predecessor'' and ''successor'' raise the same issues and should be parallel. The FDIC is simultaneously issuing a final rule on one-time credits. An analysis of the ''successor'' issue is contained in that final rule. Notably, the definition of successor in the one-time credit final rule expressly includes a de facto rule, defined as any transaction in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution.

As proposed, the FDIC would advise each institution of its dividend amount as soon as practicable after the Board's declaration of a dividend on or before May 15th. That is the earliest practical time for the declaration of dividends given the data availability and the statutory analysis required. We agree, however, that earlier payment of dividends than in the proposed rule should be workable. To allow time for requests for review of dividend amounts, the FDIC had proposed that the individual dividend amounts be paid to institutions at the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend. In contrast, under the final rule, the individual dividend amounts generally will be paid to institutions no later than 45 days after the issuance of the special notice, which will allow the FDIC to freeze payment of an individual institution's dividend amount, if that amount is in dispute.

Depending on the timing of the Board's declaration, which could occur prior to May 15th, and the expiration of the 30-day period for requesting review, it is possible that dividends could be paid at the same time as the collection of the quarterly assessment and would offset those payments. Dividends will be paid through the Automated Clearing House (ACH). Although it is expected in most instances that dividends will be paid after the first quarter assessment payment, if they are paid at the time of assessment payments, offsets will be made. If the institution owes assessments in excess of the dividend amount, there will be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owes an additional dividend amount in excess of the assessment to the institution, there will be a net credit (resulting in payment from the FDIC). The FDIC will notify institutions whether dividends will offset the next assessment payments with the next invoice.

Under the final rule, the FDIC shall freeze the payment of the disputed portion of dividend amounts involved in requests for review. In the absence of such action, institutions will receive the amount indicated on the notice. Any adjustment to an individual institution's dividend amount resulting from its request for review will be handled through ACH in the same manner as existing procedures for underpayment or overpayment of assessments.

As set forth in the proposed rule, an institution may request review of its dividend amount by submitting documentation sufficient to support the change sought to the Division of Finance within 30 days from the date of the notice or invoice advising each institution of its dividend amount. Review may be requested if (1) an institution disagrees with the computation of the dividend as stated on the invoice, or (2) it believes that the notice or invoice does not fully or accurately reflect appropriate adjustments to the institution's 1996 assessment base ratio, such as for the acquisition of another institution through merger. If an institution does not submit a timely request for review, it will be barred from subsequently requesting review of that dividend amount.

At the time of the request for review, the requesting institution also must notify all other institutions of which it knew or had reason to believe would be directly and materially affected by granting the request for review and provide those institutions with copies of the request for review, supporting documentation, and the FDIC's procedures for these requests for review.

In addition, the FDIC will make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified. These institutions will then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request for review. If an institution was identified and notified through this process and does not submit a timely response, that institution will be foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process.

The FDIC may request additional information as part of its review, and the institution from which such information is requested will be required to supply that information within 21 days of the date of the FDIC's request.

The final rule requires a written response from the FDIC's Director of the Division of Finance (Director), or his or her designee, which notifies the requesting institution and any materially affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible: (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional institutions are notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or (3) if the FDIC has requested additional information, within 60 days of its receipt of the additional information, whichever is latest.

If a requesting institution disagrees with the determination of the Director, that institution may appeal its dividend determination to the FDIC's Assessments Appeals Committee (AAC). The final rule extends the time for filing an appeal; an appeal to the AAC must be filed within 30 calendar days of the date of the Director's written determination. Notice of the procedures applicable to appeals of the Director's determination to the AAC will be included with the written response. The AAC's determination is final and not subject to judicial review.

V. Regulatory Analysis and Procedure

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. The final rule implementing the dividend requirements of the Reform Act relies on information already collected and maintained by the FDIC in the regular course of business. The rule imposes no new reporting, recordkeeping, or other compliance requirements. For the two-year duration of this rule, it also appears unlikely that a dividend would be required. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable. No comments on the RFA were received.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the FDIC reviewed the final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. No commenters suggested that the proposed rule was unclear, and the final rule is substantively similar to the proposed rule.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family wellbeing 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).

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

12 CFR Chapter III

Authority and Issuance

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

PART 327—ASSESSMENTS

■ 1. Add subpart C, consisting of §§ 327.50 through 327.55, to read as follows:

Subpart C—Implementation of Dividend Requirements

Sec.

Authority: 12 U.S.C. 1817(e)(2), (4).

§ 327.50 Purpose and scope.

(a) *Scope.* This subpart C of part 327 implements the dividend provisions of section 7(e)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(2), and applies to insured depository institutions.

(b) *Purpose.* This subpart C of part 327 sets forth the rules for:

(1) The FDIC's annual determination of whether to declare a dividend and the aggregate amount of any dividend;

(2) The FDIC's determination of the amount of each insured depository institution's share of any declared dividend;

(3) The time and manner for the FDIC's payments of dividends; and

(4) An institution's appeal of the FDIC's determination of its dividend amount.

§ 327.51 Definitions.

For purposes of this subpart:

(a) *Board* has the same meaning as under subpart B of this part.

(b) *DIF* means the Deposit Insurance Fund.

(c) An *insured depository institution's 1996 assessment base ratio* means an institution's 1996 assessment base ratio as determined pursuant to § 327.33 of subpart B of this part, adjusted as necessary after the effective date of subpart B of this part to reflect subsequent transactions in which the institution succeeds to another institution's assessment base ratio, or a transfer of the assessment base ratio pursuant to § 327.34.

(d) *Predecessor,* when used in the context of insured depository institutions, refers to the institution merged with or into a resulting institution, consistent with the definition of "successor" in § 327.31.

§ 327.52 Annual dividend determination.

(a) On or before May 15th of each calendar year, beginning in 2007, the Board shall determine whether to declare a dividend based upon the reserve ratio of the DIF as of December 31st of the preceding year, and the amount of the dividend, if any.

(b) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and does not exceed 1.5 percent, the Board shall declare the amount that is equal to one-half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as the aggregate dividend to be paid to insured depository institutions.

(c) If the reserve ratio of the DIF exceeds 1.5 percent of estimated insured deposits, except as provided in paragraph (d) of this section, the Board shall declare the amount in excess of the amount required to maintain the reserve ratio at 1.5 percent as the aggregate dividend to be paid to insured depository institutions and shall declare a dividend under paragraph (b) of this section.

(d)(1) The Board may suspend or limit a dividend otherwise required to be paid if the Board determines that:

(i) A significant risk of losses to the DIF exists over the next one-year period; and

(ii) It is likely that such losses will be sufficiently high as to justify the Board concluding that the reserve ratio should be allowed:

(A) To grow temporarily without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent; or

(B) To exceed 1.5 percent.

(2) In making a determination under this paragraph, the Board shall consider:

(i) National and regional conditions and their impact on insured depository institutions;

(ii) Potential problems affecting insured depository institutions or a specific group or type of depository institution;

(iii) The degree to which the contingent liability of the FDIC for anticipated failures of insured institutions adequately addresses concerns over funding levels in the DIF; and

(iv) Any other factors that the Board may deem appropriate.

(3) Within 270 days of making a determination under this paragraph, the Board shall submit a report to the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs, providing a detailed explanation of its determination, including a discussion of the factors considered.

(e) The Board shall annually review any determination to suspend or limit dividend payments and must either:

(1) Make a new finding justifying the renewal of the suspension or limitation under paragraph (d) of this section, and submit a report as required under paragraph (d)(3) of this section; or

(2) Reinstate the payment of dividends as required by paragraph (b) or (c) of this section.

§ 327.53 Allocation and payment of dividends.

(a) For any dividend declared before January 1, 2009, allocation of such dividend among insured depository institutions shall be based solely on an insured depository institution's 1996 assessment base ratio, as determined pursuant to paragraph 327.51(c) of this subpart, as of December 31st of the year for which dividends are declared.

(b) The FDIC shall notify each insured depository institution of the amount of such institution's dividend payment based on its share as determined pursuant to paragraph (a) of this section. Notice shall be given as soon as practicable after the Board's declaration of a dividend through a special notice of dividend.

(c) The FDIC shall pay individual dividend amounts, which are not subject to request for review under section 327.54 of this subpart, to insured depository institutions no later than 45 days after the issuance of the special notices of dividend. The FDIC shall notify institutions whether dividends will offset the next collection of assessments at the time of the invoice. An institution's dividend amount may be remitted with that institution's assessment or paid separately. If remitted with the institution's assessment, any excess dividend amount will be a net credit to the institution and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A of this part. If remitted with the institution's assessment and the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited to the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution's dividend amount is subject to review under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC may credit the institution with the dividend amount provided on the invoice or freeze the amount in dispute. Adjustments to an individual institution's dividend amount based on the final determination of a request for review will be handled in the same manner as assessment underpayments and overpayments.

§ 327.54 Requests for review of dividend amount.

(a) An insured depository institution may submit a request for review of the FDIC's determination of the institution's dividend amount as shown on the special notice of dividend or assessment invoice, as appropriate. Such review may be requested if:

(1) The institution disagrees with the calculation of the dividend as stated on the special notice of dividend or invoice; or

(2) The institution believes that the 1996 assessment base ratio attributed to the institution has not been adjusted to include the 1996 assessment base ratio of an institution acquired by merger or transfer pursuant to §§ 327.33 and 327.34 of subpart B and the institution has not had an opportunity (whether or not that opportunity was utilized) to appeal that same determination under subpart B.

(b) Any such request for review must be submitted within 30 days of the date of the special notice of dividend or invoice for which a change is requested. The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. If an institution does not submit a timely request for review, that institution may not subsequently request review of its dividend amount, subject to paragraph (d) of this section. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. The FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(c) During the FDIC's consideration of the request for review, the amount of dividend in dispute may not be available for use by any institution.

(d) Within 30 days of receiving notice of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (b) of this section does not submit a response to the request for review, that institution may not subsequently:

(1) Dispute the information submitted by any other institution on the transaction(s) at issue in that review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(e) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(f) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance (''Director''), or his or her designee, notifying the affected institutions of the determination of the

Director as to whether the requested change is warranted, whenever feasible:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information, whichever is later. Notice of the procedures applicable to appeals under paragraph (g) of this section will be included with the Director's written determination.

(g) An insured depository institution may appeal the determination of the Director to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

§ 327.55 Sunset date.

Subpart C shall cease to be effective on December 31, 2008.

Dated at Washington, DC, this 10th day of October, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–17304 Filed 10–17–06; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–360–AD; Amendment 39–14789; AD 2006–21–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 777–200, and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400, 777–200, and 777–300 series airplanes. This AD requires, for certain airplanes, replacing the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequently deactivating the flight deck humidifier. For certain other airplanes, this AD requires an inspection of the flight deck humidifier to determine certain part numbers and replacing the cell stack if necessary. This AD also allows blanking plates to be replaced with cell stacks. The actions specified by this AD are intended to prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck. This action is intended to address the identified unsafe condition.

DATES: Effective November 22, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Palmer, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6481; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, 777–200, and 777–300 series airplanes was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 4, 2006 (71 FR 299). That action proposed to require, for certain airplanes, replacing the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequently deactivating the flight deck humidifier. For certain other airplanes, that action proposed to require an inspection of the flight deck humidifier to determine certain part numbers and replacing the cell stack if necessary. That action also proposed to allow blanking plates to be replaced with cell stacks. That action also proposed to add airplanes to the applicability.

Actions Since Second Supplemental NPRM (SNPRM) Was Issued

Since we issued the second SNPRM, Boeing has issued Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006; and Service Bulletin 777–21A0048, Revision 3, dated May 12, 2006. Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005; and Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005, were referenced as the appropriate sources of service information for doing certain actions proposed in the second SNPRM. Both service bulletins, Revision 3, contain essentially the same procedures as the corresponding service bulletins, Revision 2. We have revised this final rule to refer to Revision 3 of these service bulletins.

We have also added Boeing Alert Service Bulletin 747–21A2414, Revision 2, to paragraphs (b) and (g) of this final rule and added Boeing Alert Service Bulletin 777–21A0048, Revision 2, to paragraphs (e) and (h) of this final rule to allow credit for actions done in accordance with Revision 2 of the service bulletins.

Operators should note that Boeing Service Bulletin 747–21A2414, Revision 3, dated May 12, 2006, specifies Group 1 as ''all 747–400 airplanes with Hamilton Sundstrand flight deck humidifier 821486–01.'' However, the correct part number for the humidifier is 821486–1. We have added Note 1 to this final rule to indicate that Group 1 is identified as all 747–400 airplanes with Hamilton Sundstrand flight deck humidifier 821486–1.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Second SNPRM

Boeing, the manufacturer, concurs with the content of the second SNPRM.

Request To Remove Airplanes From the Second SNPRM

United Airlines (UAL) does not agree with the contents of the second SNPRM for the Model 747–400 series airplanes and feels that regulatory action is not necessary to ensure the intent of the second SNPRM for these airplanes. UAL states that it took immediate steps to comply with Boeing and Hamilton Sundstrand service bulletins specified in the second SNPRM. UAL notes that because the reliability of the humidifier was extremely poor at the time that the cell stack concern was identified, the humidifier cell stacks have been