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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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AB65

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation on assessments in three ways. First, the FDIC proposes to delay the collection date for the first quarterly assessment payment that insured institutions must make for the first semiannual period of each year (first payment). Under the existing regulation, the collection date for this payment is December 30 of the prior year. The FDIC proposes to change the collection date to the first business day following January 1. Second, the FDIC proposes to give insured institutions the option of prepaying the first quarterly payment during the prior December. Institutions could prepay the amount of the first payment or twice that amount (an approximation of the entire amount due for the upcoming semiannual period). The FDIC's purpose in making these first two changes is to relieve certain institutions of the regulatory burden of having to make an extra assessment payment in 1995, while at the same time affording flexibility to other institutions to make such a payment if they should so desire. Third, the FDIC proposes to replace the interest rate to be applied to underpayments and overpayments of assessments with a new, more sensitive rate derived from the 3-month Treasury bill discount rate. The current standard rapidly becomes obsolete in volatile interest-rate markets; the proposed standard would be more sensitive to current market conditions.

DATES: Written comments must be received by the FDIC on or before September 11, 1995.

ADDRESSES: Written comments shall be addressed to Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. Comments may be hand delivered to Room F-402, 1776 F Street NW., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [Fax number: (202)898-3838; Internet address: comments@fdic.gov] Comments will be available for inspection at the FDIC's Reading Room, Room 7118, 550 17th Street NW., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan Long, Assistant Director, Treasury Branch, Division of Finance (703) 516-5546; Claude A. Rollin, Senior Counsel, Legal Division (202) 898-3985; or Jules Bernard, Counsel, Legal Division, (202) 898-3731; Federal Deposit Insurance Corporation, Washington, D. C. 20429.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Payment Schedule

On December 20, 1994, the FDIC adopted a new procedure for the collection of deposit insurance assessments. See 59 FR 67153 (December 29, 1994). The new procedure became effective April 1, 1995. It applies to the second semiannual assessment period of 1995 (beginning July 1, 1995) and thereafter.

The FDIC collects assessment payments on a quarterly basis, by means of FDIC-originated direct debits through the Automated Clearing House network. The collection dates for the first semiannual period (January through June) of any given year are December 30 of the prior year and March 30 of the current year. The collection dates for the second semiannual period (July through December) are June 30 and September 30.

Thirty days prior to each collection date, the FDIC provides to each institution an invoice showing the amount that the institution must pay. The FDIC prepares the invoice from data that the institution has reported in its report of condition for the previous quarter.

Under this schedule, the first quarterly payment for the first semiannual period of a given year is collected during the prior year. The

procedure is as follows: The institution determines its deposits on September 30 of the prior year, uses the information to prepare its report of condition, and files the report of condition by October 30. The FDIC uses the report of condition to prepare an invoice for the institution, and provides the invoice to the institution by November 30. The FDIC collects the payment by a direct debit on December 30. If December 30 falls on a weekend or holiday, the FDIC collects the payment on the previous business day.

Before adopting the new quarterly-collection procedure, the FDIC issued it as a proposed rule, and asked for public comment. 59 FR 29965 (June 10, 1994). The FDIC received 51 comment letters.

Two respondents pointed out that the FDIC's payment schedule would result in an anomaly in 1995. Institutions would pay their full semiannual assessment for the first semiannual period in 1995 in January, in accordance with the assessment regulations then in effect. Institutions would also pay both quarterly payments for the second semiannual period in 1995 (one at the end of June; the other at the end of September). Then they would make one further payment in 1995: the first payment for 1996. In effect, they would pay assessments for 5 quarters in 1995.

These commenters asked the FDIC to move the collection date for the first payment for 1996 from December 30, 1995, to January, 1996. In response, the FDIC looked into the issue further.

As a result of its inquiry, the FDIC determined that relatively few institutions would be adversely affected, and decided to retain the December collection date. The FDIC recognized that a December 1995 collection date could present a one-time problem for some institutions. But the FDIC concluded that this situation was a by-product of the shift from a semiannual to a quarterly collection procedure, and would not involve an "extra" assessment payment. 59 FR 67157. The FDIC further observed that this timing issue would adversely affect only institutions that use cash-basis accounting. Finally, the FDIC pointed out that the commenters' recommended solution—moving the December collection date to January—would not cure the problem if adopted only for a single year: the problem would recur in

1996. A permanent change in the collection date would be required. *Id.*

Shortly after the new system was adopted, however, the FDIC began to receive information suggesting that more institutions would be adversely affected by the December collection date than was initially thought. Moreover, the Independent Bankers Association of America (IBAA) issued a letter to the FDIC requesting the FDIC to reconsider the issue in light of the December collection date's effect on cash-basis institutions. The FDIC's Board of Directors considers that it is appropriate to regard the IBAA's request as a "petition for the amendment of a regulation" within the meaning of the FDIC's policy statement "Development and Review of FDIC Rules and Regulations," 2 FED. DEPOSIT INS. CORP. LAWS, REGULATIONS, RELATED ACTS 5057 (1984).

Accordingly, FDIC has decided to propose, for public comment, certain changes in the quarterly collection schedule. The proposed changes would take effect upon publication in the **Federal Register**.

2. Interest on Underpaid and Overpaid Assessments

The FDIC pays interest on amounts that insured institutions overpay on their assessments, and charges interest on amounts by which insured institutions underpay their assessments. The interest rate is the same in either case: namely, the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the **Federal Register**. See 12 CFR 327.7(b).

The TFRM rate is based on aged data, and quickly becomes obsolete in volatile interest-rate markets. For example, the rate set for January through June, 1995, was based on the average rate data from October, 1993, through September, 1994. The practical consequence was that the TFRM rate for the January-to-June period in 1995 was 3% per annum, when the actual market rate at that time was over 5% per annum.

The FDIC is proposing to replace the TFRM rate with a rate keyed to the 3-month Treasury bill discount rate. The new rate would take effect on January 1, 1996.

B. The Proposed Amendment

1. The Payment Schedule

a. Delaying the Collection Date for First Payments

The proposed rule would change the collection date for the first quarterly payment for the first semiannual period

of each year (first payment). Under the present regulation, the collection date is December 30 of the prior year. The proposed rule would delay the collection date to the first business day following January 1. Accordingly, every institution would ordinarily make its first payment on that date.

No other aspect of the collection procedure would be altered: there would be no change in the amount of the assessment due, and there would be no change in the other collection dates.

The proposal is designed to protect cash-basis institutions against the adverse consequences of having to make an extra assessment payment during 1995. The remedy is necessarily a continuing one. Accordingly, the FDIC considers that it is appropriate to make the change in the collection date permanent.

The FDIC believes that the delay in the collection date confers a financial benefit to institutions, because they may earn additional interest on the funds they retain for the additional time. The FDIC does not consider that it is appropriate to give a benefit of this kind to some institutions but not others, however. Accordingly, the FDIC proposes to delay the collection date for all institutions, not just for cash-basis institutions.

The FDIC further believes that most institutions have already prepared to comply with the direct-debit procedures, and would suffer no procedural disadvantage from the proposed delay in the collection date. The FDIC would collect the January 1 payment in the same manner as under the existing regulation.

b. Prepaying First Payments

The FDIC recognizes, however, that some institutions may prefer the existing payment schedule, notwithstanding the fact that they would be making five payments during 1995. The proposed rule accommodates these institutions. Under the proposed rule, an institution would be able to elect to prepay its first payment for any year.

The FDIC would collect prepayments by electronically debiting prepaying institutions' accounts, just as the FDIC collects other quarterly assessment payments. The collection date for the prepayments would be December 30 of the prior year (or, if December 30 is not a business day, the preceding business day).

An institution could prepay either the amount of the first payment or twice that amount. The doubled amount represents an approximation of the entire amount due for the first

semiannual period. The approximation is not intended to be exact. Growing institutions would ordinarily owe an additional amount on the next quarterly collection date; shrinking institutions would ordinarily receive a credit for the overpayment.

In order to elect to prepay the first payment for a given year, an institution would have to file a certification to that effect by the preceding November 1. The prepayment election would be effective with respect to the first payment for the upcoming year and for all years thereafter.

The institution would have to complete a pre-printed form supplied by the FDIC to make the certification. The FDIC's Division of Finance would make pre-printed forms available for this purpose. The institution's chief financial officer, or an officer designated by the institution's board of directors, would have to sign the form.

An institution would certify that it would pay its first assessment in accordance with the prepayment procedure. The institution would also specify whether it would prepay the invoiced amount or double that amount.

An institution could terminate its election of the prepayment option in the same way as it made the election: by certifying that it was terminating the election for an upcoming year. As in the case of the original election, the institution would have to use a pre-printed form supplied by the FDIC to make the certification, and would have to file the form by November 1 of the prior year. The institution would then revert to the regular payment schedule for the upcoming year and for all future years.

An institution that terminated an election could make a new election. An institution could even terminate one election and make a new election for the same semiannual period—*e.g.*, for the purpose of changing the amount of a prepayment—if the institution filed both certifications by the November 1 deadline.

The proposed rule does not contemplate that the FDIC would pay interest on prepaid assessments.

The FDIC believes that it is appropriate to allow the prepayment option for two reasons. The FDIC recognizes that institutions that keep their books on an accrual basis are not materially harmed by having to pay five quarters' worth of assessments in 1995. (By the same token, these institutions are not materially harmed by delaying the collection date from December to January.)

Some of these institutions may prefer to prepay some or all of their first

semiannual assessments for their own business reasons. The FDIC further recognizes that institutions may have arranged their affairs in the expectation that the first payment for 1996 will be due in 1995. The FDIC is providing the prepayment option in order to enable these institutions to avoid unnecessary disruption and financial disadvantage.

2. Interest on Underpaid and Overpaid Assessments

The FDIC is proposing to replace the interest rate that is applied to underpaid assessments and overpaid assessments. The current rate is the TFRM rate (which is now 5.00% per annum), which is compounded annually. The FDIC would replace this rate with a more market-sensitive rate: the coupon equivalent rate set on the 3-month Treasury bill at the last auction held by the U.S. Treasury Department before the start of the quarter. Interest would be compounded as of the first day of each subsequent quarter. Currently, this rate is 5.51% per annum (see below).

Under the current regulation, interest begins to run on the day after collection date and continues to run through the day on which the debt is paid. If the new collection schedule were adopted, the collection date for the first quarterly payment for 1996 would be January 2. Interest on any overpayments or underpayments due on that date would begin to run on January 3.¹

The next collection date is March 29 (March 30 being a Saturday). The FDIC would ordinarily collect or repay the full amount of the overpayment or underpayment (plus interest) on that date by adjusting the payment then due. Accordingly, interest on the overpayment or underpayment would run through March 29.

The initial interest rate would be the rate for the quarter for which (but not generally in which) the payment would be made. The collection date for the first quarter would be January 2, which falls within that quarter. But the collection dates for the second, third, and fourth calendar quarters are March 30, June 30, and September 30, respectively; if the regularly scheduled collection date falls on a weekend or holiday, the collection

date is the preceding business day. Each of these collection dates falls in the quarter preceding the quarter for which the payment is due. Nevertheless, the initial interest rates on any underpayments or overpayments of payments due on these dates would be the rates for the second, third, and fourth quarters, respectively.

This initial interest rate on an overpayment or underpayment would apply to the amount in question for the entire interval running from the day after the collection date through the end of the quarter, or until the overpayment or underpayment were discharged, whichever came first. The FDIC would redetermine the rate at the beginning of each quarter. If any portion of the overpayment or underpayment (including interest) remained outstanding at that time, the FDIC would apply the new quarter's rate to the outstanding amount, beginning on the first day of the new quarter.

If the proposed rate had been in effect for the third quarter in 1995, the FDIC would have computed interest on an overpayment or underpayment of an amount due for that quarter as follows:

The FDIC would have based the rate on the average rate for the 3-month Treasury bill set at the June 26, 1995, auction (settling on June 29, 1995). On a bank discount rate basis (360-day year with no compounding), the auction resulted in a 5.35% average rate. This converts to a coupon equivalent rate of 5.51% according to the United States Treasury Department.

June 30 is the collection date. On the following day (July 1) the FDIC would have begun to apply the 5.51% rate to overpayments or underpayments collected on June 30. The outstanding amount would ordinarily be repaid on the next collection day, which falls on September 29 (September 30 being a Saturday).

A \$1 million overpayment collected on June 30 and refunded on September 29 would have generated 91 days of interest: $(91/366) \times .0551 \times \$1,000,000 = \$13,699.73$.²

The FDIC is proposing to adopt the new rate because the new rate more closely approximates the opportunity cost of money both for the institution and for the FDIC. If an institution were to overpay its assessment, the FDIC would return to the institution the benefit that the institution would have been able to obtain by investing the excess amount. Conversely, if an institution were to underpay its assessment, the institution would have to restore to its fund—the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)—the

economic value of the interest that the fund would otherwise have earned.

The FDIC would apply the new rate (and the quarterly compounding) prospectively, not retroactively. The FDIC would apply the new rate to payments due for the first quarter of 1996 and thereafter, and to any outstanding amounts owed to or by the FDIC on and after January 1, 1996. For amounts owed to or by the FDIC during intervals prior to January 1, 1996, the FDIC would continue to apply the then-current TFRM rate (and the annual compounding) for those intervals.

C. Effect on the Insurance Funds

1. The Payment Schedule

The proposed shift in the collection date is not expected to have any substantial adverse impact on the insurance funds.

In the case of the BIF, the maximum amount of the interest foregone as a result of delaying the collection is not expected to exceed \$600,000. The actual amount of the foregone interest is likely to be considerably less, as many BIF members can be expected to take advantage of the prepayment election. Accordingly, the FDIC considers that the BIF would not suffer any material harm by the loss of this revenue.

In the case of the SAIF, the foregone interest is not expected to exceed \$108,000. Here again, the actual amount is likely to be considerably less. While this sum is not insubstantial, the FDIC believes that its loss would not materially harm the SAIF under current conditions, and would not impede the SAIF's progress toward recapitalization.

2. Interest on Underpaid and Overpaid Assessments

The change from the TFRM rate to the new rate is not expected to have any material impact on either the BIF or the SAIF. The net yearly amount routinely subject to the interest rate—that is, the net of the amounts that institutions routinely overpay, minus the amounts they routinely underpay—is approximately \$2,000,000 per year in the aggregate for both funds. This amount represents a net overpayment. It is outstanding for 60 days on average; accordingly, at the current TFRM rate, the FDIC ordinarily pays out a net annual amount of approximately \$16,000 in interest. Under the proposed new rate, the FDIC would pay out approximately \$18,000 yearly—for a net change to the funds of just \$2,000.

¹ Even in the case of prepaying institutions, the amounts to be collected from the institutions would not be due until the regular collection date. Accordingly, interest on overpayments and underpayments would begin to run from the regular collection date, not the prepayment date.

Furthermore, as noted above, the proposed rule does not contemplate that the FDIC would pay interest on prepaid assessments. In particular, if an institution elected to prepay double the amount of a first payment, the doubled amount would not be regarded as an "overpayment," and the FDIC would not pay interest on the extra amount so paid.

² The third calendar quarter in 1995 falls within the leapyear cycle that begins on March 1, 1995, and ends on February 29, 1996.

D. Assessment of the Reporting or Recordkeeping Requirements

1. The Payment Schedule

The FDIC considers that the proposed rule's reporting or recordkeeping requirements would be minimal. The proposed rule does not compel any institution to create or maintain new records. It merely delays the collection date for the first payment of each year, without changing the procedures that institutions must follow in order to make that payment.

Some institutions may take a different view, however. They may consider that they have already taken all the steps necessary to make a December payment, and yet must now do something more—namely, file the certification—in order to make that payment.

The FDIC believes, however, that the burden of the one-time filing would be so small as to be immaterial. The proposed rule would not require the institution to retain the form, or to file a new certification each year, or to keep any other new records.

2. Interest on Underpaid and Overpaid Assessments

The changes in the interest rate would have no effect on the reporting or recordkeeping requirements of insured institutions.

E. Effect on Competition

The proposed regulation is not expected to have any effect on competition among insured depository institutions.

F. Relationship of the Proposed Regulation to Other Government Regulations

The proposed regulation is not expected to have any impact on other government regulations.

G. Cost-Benefit Analysis

1. The Payment Schedule

The FDIC believes that the proposed regulation would not impose any new costs on non-electing institutions. On the contrary, it would benefit them by allowing them to retain the use of their funds for an extra interval. The proposal would provide a special benefit to cash-basis institutions by eliminating an expense they would otherwise have sustained in 1995.

In the case of electing institutions, the proposed regulation would also provide significant benefits. The FDIC believes that institutions will elect to prepay their first payments only if doing so is advantageous to them. The proposed rule would allow all institutions to earn extra interest: Accordingly, at a

minimum, an institution would have to expect to derive an even greater benefit from electing the prepayment option. On the other hand, the only costs incurred by electing institutions are the costs of signing and submitting the certification. The FDIC considers that those costs are not likely to be significant.

2. Interest on Underpaid and Overpaid Assessments

The change from the TFRM rate to the proposed new rate would likewise impose minimal costs on institutions. The net amount at issue would not be material in the aggregate. For any particular institution, the net effect of the change would be impossible to predict, because the relationship between the TFRM rate and the proposed rate varies from one interval to another.

Accordingly, the FDIC believes that the benefits of the proposed rule would likely outweigh any costs it might impose.

H. Other Approaches Considered

1. Retaining the Status Quo

a. The Payment Schedule

In developing the proposal, the FDIC has considered whether it would be advisable to retain the current schedule without change.

As noted above, however, the FDIC recognizes that it is responsible for establishing the December 1995 collection date. The FDIC further recognizes that requiring institutions to make a payment on that date could adversely affect institutions that keep their financial records and make their financial reports on a cash basis. The FDIC believes that, if it can mitigate harm of this kind by modifying its regulations, it should make every effort to do so.

b. Interest on Underpaid and Overpaid Assessments

The FDIC also considered whether it would be desirable to retain the TFRM rate without change. The FDIC believed, however, that the rigidities and delays inherent in the TFRM rate militated against retaining this interest-rate standard.

2. Alternative Proposal

a. The Payment Schedule

The FDIC has also considered an alternative proposal: retaining the current payment schedule, while giving cash-basis institutions the option of electing to defer their first payment until January.

The alternative proposal would have focused narrowly on the one-time disadvantage that cash-basis institutions would suffer in 1995, and would have aimed at protecting those institutions against that disadvantage. Accordingly, the FDIC would not have offered the deferred-payment option to non-cash-basis institutions, and would not have offered the option to cash-basis institutions after 1995.

Institutions that exercised the option by November 1, 1995, would have made their first payment for 1996 on the first business day following January 1, 1996, and would have continued thereafter to make the first payment on the first business day of the year. Institutions that failed to exercise the option by November 1, 1995, would have had to make all their payments according to the regular payment schedule.

After an institution had made the election, the institution could have terminated the election—thereby reverting to the regular payment schedule—by so certifying to the FDIC in writing. For the termination to be effective for a given year, the institution would have had to provide the certification to that effect to the FDIC no later than November 1 of the prior year. The termination would have been permanent. The FDIC would not have charged interest on the delayed payments.

The FDIC has chosen to issue the proposed rule, rather than the alternative proposal, for two reasons. First, the FDIC expects that the approach set forth in the proposed rule would be more evenhanded: all institutions would have the benefit of the later collection date, and all would have an equal opportunity to earn additional interest on their funds. Second, the proposed rule would provide greater flexibility to all institutions to plan the timing of their expenses.

b. Interest on Underpaid and Overpaid Assessments

The FDIC also considered proposing to replace the single TFRM rate with a pair of rates: namely, the composite yield at market of the BIF and SAIF portfolios, respectively. These rates would have been determined retrospectively, because they are generated by looking at the interest that the portfolios actually earned. For the second quarter of 1995, the rates would have been 5.70% for the BIF and 5.61% for the SAIF.

The FDIC would have proposed the "composite yield at market" rate on the theory that such a rate would represent the FDIC's actual benefits (or costs) from

the overcollection (or undercollection) of assessments. If an institution were to overpay its assessment, the FDIC would return to the institution every bit of the benefit that the FDIC had received from the overpayment. Conversely, if an institution were to underpay its assessment, it would be obliged to restore to its fund the economic value of the interest the fund would otherwise have earned, and the fund would be made whole.

The FDIC has chosen to propose the new rate, rather than the "composite yield at market" rate, for two reasons. First, the new rate is based on a published rate, not on proprietary information, and accordingly is easier for people in the private sector to determine. Second, the new rate is intended to approximate the market value of the funds—that is, the interest that an institution earned or could have earned by investing the funds—rather than the vagaries of the investment portfolios of the BIF and the SAIF.

I. Effective Date

1. The Payment Schedule

The FDIC proposes to make the revisions to the payment schedule effective upon adoption by the Board of Directors. The FDIC considers that the new payment schedule would "relieve a restriction" within the meaning of 5 U.S.C. 553(d)(1), because it would delay the date on which the FDIC would regularly collect the first payments, and would thereby allow institutions to retain their funds for an extra interval. More to the point, the FDIC believes that there would be "good cause" to make this aspect of the final rule effective upon adoption because institutions should have as much time as possible to adjust to the new collection schedule and to decide whether to take advantage of the election option provided by the rule. Accordingly, the FDIC proposes to make the revisions to the payment schedule effective at once, rather than delay the effective date for 30 days, see 5 U.S.C. 553(d), or wait until the first day of the following calendar quarter, see 12 U.S.C. 4802(b).

2. Interest on Underpaid and Overpaid Assessments

The FDIC proposes to make the revision of the interest rate effective 30 days after publication of the final rule in the **Federal Register**. Ordinarily, the proposed effective date of the final rule would be October 1, 1995, the first day of the calendar quarter that begins on or after the expected date of publication of the final rule. *Id.* But the Administrative Procedure Act requires a 30-day waiting

period between the publication of a final rule and its effective date. 5 U.S.C. 553(d). Accordingly, the proposed effective date of the final rule must be deferred to the end of the waiting period. See 12 U.S.C. 4802(b)(1)(C).

J. Paperwork Reduction Act

The proposed rule provides that, if institutions wish to elect the option of prepaying their first payments, they must file a written certification to that effect with the FDIC in advance, and do so on a form provided by the FDIC. Institutions would certify that they intended to take advantage of the prepayment procedure, and also report whether they wished to prepay the amount due for the first payment or double that amount.

By requiring institutions to provide information regarding the amount to be prepaid, the FDIC is engaging in a new "collection of information." The collection has been submitted to the Office of Management and Budget for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064-0057), Washington, D.C. 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Room F-400, 550 17th St., N.W., Washington, D.C. 20429.

Institutions that wish to terminate the election must so certify to the FDIC in writing in advance, using a form provided by the FDIC. Certifications of this kind do not constitute "information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), however, as they merely identify the institutions.

The FDIC estimates that approximately 500 institutions are likely to elect the prepayment option in 1995, the initial year that it is offered. Thereafter, the same number of institutions are likely to elect the prepayment option and/or terminate the election.

The estimated annual reporting burden for the collection of information requirement in this proposed rule is summarized as follows:

Approximate Number of Respondents: 500.
Number of Responses per Respondent: 1.
Total Approximate Annual Responses: 500.
Average Time per Response: 15 minutes.
Total Average Annual Burden Hours: 125.

K. Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The proposal would mitigate a cost incurred by certain smaller entities—namely, cash-basis depository institutions—that arises from the one-time shift from the semiannual assessment process to the new quarterly assessment schedule. The proposal further confers a benefit on all institutions (including smaller institutions) by allowing them to earn interest on their funds for an additional interval.

To the extent that an institution might incur a cost in connection with preparing and submitting the paperwork necessary to make the election, the FDIC believes that the cost would be minimal, and would be far outweighed by the resulting benefit. In any case, each institution's decision to make the election would be purely voluntary: the proposed rule would not compel an institution to accept any cost of this kind.

L. Request for Comment

The FDIC requests comments on all aspects of the proposal. In particular, the FDIC asks for comment on the following matters: the extent to which institutions expect to avail themselves of the prepayment option; the amounts they regularly expect to prepay; the magnitude of the burden that would be imposed by the FDIC's proposed procedures for electing the prepayment option; whether it would be more appropriate to require institutions to re-elect the pre-payment option each year; the likelihood that prepaying institutions will seek to revert to the regular collection schedule; the advisability of replacing the TFRM rate with the new rate, and the appropriateness of the new rate; and the relative desirability of the status quo and of the alternative proposal.

The FDIC's Board of Directors has determined that it is appropriate to receive comments for a period of 30 days rather than 60 days. The Board considers that the shorter comment period is necessary in order to implement the proposal within the available time-frame.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Board of Directors of the

FDIC proposes to amend 12 CFR Part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.3 is amended by revising paragraphs (c)(2), (e), and (f) and by adding paragraph (c)(3) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) * * *

(1) * * *

(2) *Payment date and manner.* The Corporation will cause the amount stated in the applicable invoice to be directly debited on the following dates from the deposit account designated by the insured depository institution for that purpose:

(i) In the case of the first quarterly assessment payment for a semiannual period that begins on January 1, on the first business day of the semiannual period, except as provided in paragraph (c)(3) of this section; and

(ii) In the case of the first quarterly assessment payment for a semiannual period that begins on July 1, on the preceding June 30.

(3) *Prepayments.* (i) An insured depository institution may elect to prepay the first quarterly payment for a semiannual period that begins on January 1. An institution may elect to prepay either the amount of the first quarterly payment due for a semiannual period that begins on January 1, or twice that amount.

(ii) In order to elect the prepayment option with respect to a current semiannual period, an institution must so certify in writing to the Corporation no later than November 1 of the prior year. The prepayment certification shall be made on a pre-printed form provided by the Corporation. The form shall be signed by the institution's chief financial officer or such other officer as the institution's board of directors may designate for that purpose. The form shall be sent to the attention of the Chief of the Assessment Operations Section of the Corporation's Division of Finance. An institution may obtain the form from the Corporation's Division of Finance. The prepayment certification shall indicate whether the institution will prepay the first quarterly payment for the current semiannual period or twice that amount. The election shall be effective with respect to the current

semiannual period and thereafter, until terminated.

(iii) An insured depository institution may terminate its election of the prepayment option, and revert to the regular payment schedule. In order to terminate the election with respect to a current semiannual period, an institution must so certify in writing to the Corporation no later than November 1 of the prior year. The termination certification shall be made on a pre-printed form provided by the Corporation. The form shall be signed by the institution's chief financial officer or such other officer as the institution's board of directors may designate for that purpose. The form shall be sent to the attention of the Chief of the Assessment Operations Section of the Corporation's Division of Finance. An institution may obtain the form from the Corporation's Division of Finance. The termination shall be permanent, except that an institution that has terminated an election may make a new election.

(iv) If an insured depository institution elects the prepayment option, the Corporation will cause the amount indicated in the prepayment certification to be directly debited on December 30 of the year prior to the current semiannual period from the deposit account designated by the insured depository institution for that purpose.

* * * * *

(e) *Necessary action, sufficient funding by institution.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the insured depository institution's designated deposit account and, prior to each payment date indicated in paragraphs (c)(2), (c)(3)(iv), and (d)(2) of this section, shall ensure that funds in an amount at least equal to the invoiced amount or, in the case of a prepayment pursuant to paragraph (c)(3)(iv) of this section, the amount indicated in the prepayment certification are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment.

(f) *Business days.* If a payment date specified in paragraph (c)(2)(ii), (c)(3)(iv), or (d)(2) of this section falls on a date that is not a business day, the applicable date shall be the previous business day.

* * * * *

3. Section 327.7 is amended by revising paragraphs (a)(2), (a)(3), and (b)

and adding paragraph (c) to read as follows:

§ 327.7 Payment of interest on assessment underpayments and overpayments.

(a) * * *

(2) *Payment by Corporation.* (i) The Corporation will pay interest on any overpayment by the institution of its assessment.

(ii) An amount that an institution prepays on its assessment, whether in accordance with § 327.3(c) or otherwise, shall not be regarded as an overpayment of an assessment.

(3) *Accrual of interest.* Interest shall accrue under this section from the day following the regular collection date, as provided for in § 327.3 (c)(2) and (d)(2), of the quarterly assessment amount that was overpaid or underpaid, through the payment date applicable to the quarterly assessment invoice on which adjustment is made by the Corporation for the underpayment or overpayment, provided, however, that interest shall not begin to accrue on any overpayment until the day following the date such overpayment was received by the Corporation.

(b) *Rates after December 31, 1995.* On and after January 1, 1996—

(1) The interest rate for any calendar quarter will be the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill at the last auction held by the United States Treasury Department prior to the commencement of the calendar quarter;

(2) The initial interest rate to be applied to an overpayment or underpayment of an amount due on a regularly scheduled collection date (whether or not prepaid) will be the interest rate for the calendar quarter following the last auction held by the United States Treasury Department immediately prior to that collection date; and

(3) The interest rate to be applied during any subsequent calendar quarter to the outstanding balance (including interest thereon) owed to or by the insured depository institution for assessments will be the interest rate for such calendar quarter and will begin on the first day of such calendar quarter.

(c) *Rates prior to January 1, 1996.* Through December 31, 1995—

(1) The interest rate will be the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the **Federal Register**;

(2) The interest will be calculated based on the rate issued under the TFRM for each applicable period and compounded annually;

(3) For the initial year, the rate will be applied to the gross amount of the underpayment or overpayment; and

(4) For each additional year or portion thereof, the rate will be applied to the net amount of the underpayment or overpayment after that amount has been reduced by the assessment credit, if any, for the year.

By order of the Board of Directors.

Dated at Washington, D.C. this 3d day of August, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95-19696 Filed 8-9-95; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-75-AD]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes. This proposal would require an inspection to verify if the securing rivet is installed on the rod end of the control push rods of the spoiler flight control system, an inspection to verify if the jam nut is secure on the opposite end of the rod end, and repair of any discrepancy. This proposal is prompted by a report of loss of roll control on the co-pilot's control wheel shortly after takeoff due to a rivet missing from the control push rod. The actions specified by the proposed AD are intended to ensure that the push rod rivets are installed. Missing control push rod rivets could result in the disengagement of the push rod end from the push rod tube; this could lead to loss of roll control and subsequent reduced controllability of the airplane after takeoff.

DATES: Comments must be received by September 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-75-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location

between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4122; fax (316) 946-4407.

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 shall 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 notice 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-75-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, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No.

95-NM-75-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report of loss of roll control on the co-pilot's control wheel on a Beech Model 400A airplane shortly after takeoff. Investigation revealed that the rod end of the control push rod of the co-pilot's spoiler flight control system had disengaged from the threaded end of the push rod tube at the center bellcrank. Further investigation revealed that a rivet was missing from both the pilot's and co-pilot's control push rod; this rivet secures the rod end that is threaded onto the control push rod. Additionally, the rod end on the opposite end of the control push rod was loose. These conditions, if not corrected, could result in disengagement of the push rod end from the push rod tube. This could lead to reduced controllability of the airplane after takeoff.

The FAA has reviewed and approved Beechcraft Safety Communique 400A-113, dated March 1995, which describes procedures for a one-time detailed visual inspection to verify if the securing rivet is installed on the control push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite control rod end.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time detailed visual inspection to verify if the securing rivet is installed on the push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite rod end. The actions would be required to be accomplished in accordance with the safety communique described previously. If any discrepancy is found, the repair would be required to be accomplished in accordance with a method approved by the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of