

Insurance Act (Act), 12 U.S.C. 1831g, which prohibits any insured depository institution from entering into a written or oral contract with any person to provide goods, products or services to or for the benefit of the institution if the performance of such contract would adversely affect its safety or soundness. Section 30(b) authorizes the FDIC to prescribe such regulations as may be necessary to carry out the purposes of section 30. In accordance with this authority, the FDIC Board of Directors issued for public comment a proposal to add new Part 334 to the FDIC's rules and regulations (which was published in the **Federal Register** on April 1, 1991 (56 FR 13291)) to address adverse contracts.

The proposed rule would have implemented section 30 of the Act by prohibiting any insured depository institution from entering into any contract determined to be adverse and would have treated all adverse contracts uniformly without distinguishing between contracts with affiliates and those with non-affiliates. The proposed rule would not have defined with specificity the types of contracts that would be considered adverse. Instead, the proposal provided examples of terms that could indicate an adverse arrangement and identified prohibited actions by a discussion of previously encountered abuses.

Under the proposed rule, each contract would have been evaluated separately on the basis of its own terms and by comparison with the terms of similar contracts entered into by the institution and other institutions. The burden of establishing the propriety of a contract with respect to which the appropriate Federal banking agency has made an initial determination of adverse effect on the institution's safety or soundness would have been on the institution and its contractor. As discussed in the preamble, the "preponderance of evidence" standard normally would have applied, but where there was evidence of bad faith, intentional wrong-doing or fraud, the propriety and legality of the contract would have been determined by clear and convincing evidence. The proposed rule also would have made clear that enforcement actions may be taken directly against any contractor, as an "institution-affiliated party".

The proposed rule also requested specific comment on how to prevent abuses involving contracts with holding companies and other affiliates. Although an approach for dealing with affiliate contracts was discussed in the preamble, no rule was proposed. It was suggested that the FDIC might establish

a rebuttable regulatory presumption that certain types of contracts between an insured institution and its affiliates are adverse. However, it was specifically noted that such a rebuttable presumption would not prohibit all affiliate contracts. Instead, only certain specified types of contracts would be covered and contracts with other insured institutions or with subsidiaries of insured institutions would be excluded from being presumed adverse.

Discussion

Summary of Comments Received

The FDIC received 206 comments on the proposed rule. Almost all of the comments received opposed the proposed rule or suggested major changes, while many commenters requested that the FDIC withdraw the proposed rule. Many commenters expressed the view that a regulation dealing with adverse contracts would create an unnecessary regulatory burden and that the Federal banking agencies already possess the necessary supervisory authority to deal with such contracts. Many of the objections to the proposal focused on the possibility of treating contracts with affiliates differently from those with non-affiliates and were virtually unanimous in their opposition to developing an additional rule dealing with affiliate contracts. Other objections to the proposed rule focused on: (1) Inadequacies in the definition of "contract"; (2) the requirement that an insured institution must rebut a prima facie case that a particular contract is adverse with clear and convincing evidence; and (3) including independent contractors as "institution-affiliated parties" who could be joined to FDIC cease-and-desist actions against insured institutions and/or named as respondents in civil money penalty and prohibition actions.

Policy Statement

The FDIC's policy statement on Development and Review of FDIC Rules and Regulations (44 FR 31007, May 30, 1979) calls for withdrawal of any proposed regulation with respect to which final action by the FDIC Board of Directors has not been taken within nine months from the date of proposal. The FDIC believes that withdrawal of the proposed rule is appropriate because no action has been taken with respect to the proposal for over nine months.

Effect of Withdrawal of Proposed Rule

Section 30 of the Act authorizes (but does not require) the FDIC to promulgate such regulations as may be

necessary to administer and carry out the purposes of, and prevent evasions of, the statutory prohibition. The statute is enforceable by its own terms by the FDIC and the other Federal banking agencies in the absence of an implementing regulation. The FDIC has decided to withdraw the proposed rule because of the significant decrease in the type of activity that the proposed rule was intended to eliminate (i.e., abuses involving contracts made by or on behalf of an insured institution that seriously jeopardize or misrepresent its safety and soundness), the overwhelmingly negative comments received on the proposed rule, and an FDIC policy statement that recommends the withdrawal of proposed rules that have not been acted upon by the FDIC Board of Directors within nine months of the date of proposal. Moreover, the FDIC believes that the statute can be administered without regulation. The FDIC may decide, however, at a later date to publish a new proposal if it determines that the existence of adverse contracts has increased or that such action is otherwise necessary or appropriate. If the FDIC wishes at a later date to promulgate a regulation that deals with or addresses adverse contracts, it will begin the rulemaking process anew.

In consideration of the foregoing, the FDIC hereby withdraws proposed new Part 334 of Title 12 of the Code of Federal Regulations.

By Order of the Board of Directors.

Dated at Washington, DC, this 21st day of March 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Fiscal Year 1998 Rotorcraft Research and Development Initiative, Program Identification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Call for part 27 and 29 research and development program proposals.

SUMMARY: This notice announces a call for proposals that will define the Federal Aviation Administration (FAA), Aircraft Certification Service, Rotorcraft Directorate Research and Development

(RE&D) initiative for Fiscal Year (FY) 1998 by defining and documenting specific, potential RE&D program proposals. The call for proposals will focus on Aircraft Certification RE&D programs that support activity related to FAR Parts 27, 29, and associated operations Parts. Other FAA requirements such as flight standards, air traffic, or airway facilities will not be addressed. The FAA is soliciting the public sector to ensure that proposed Rotorcraft RE&D requirements will have relevant, practical applications and will be cost effective.

DATES: The call for proposals will be open until close of business May 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Mike Mathias, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193-0111; telephone (817) 222-5123.

SUPPLEMENTARY INFORMATION: Each FY the FAA prepares an RE&D program plan that includes new (and amended) RE&D proposals. The Aircraft Certification Service's Rotorcraft Directorate is responsible for preparing its part of the overall FAA submittal.

The philosophy of the RE&D process is to create an atmosphere that will promote the identification of requirements by any person or organization in the government or private sector. This makes the RE&D process more responsive to public sector needs. Within the Aircraft Certification Service, the RE&D process places increased emphasis on FAA Aircraft Certification Directorate and Division level participation in identifying new requirements and in sponsoring and monitoring the resulting RE&D projects.

Therefore, as part of the overall FAA and Aircraft Certification initiative, the FAA's Rotorcraft Directorate is undertaking a directly-related initiative specifically for the rotorcraft community. It has the same basic mission, goals, and procedures as the agency-wide initiative.

The Rotorcraft Directorate will implement its segment of the FY-98 submittal by identifying, describing, evaluating, and cataloging potential RE&D requirements (i.e., proposals) for potential sponsorship and incorporation into the overall FAA FY-98 RE&D submittal. This will result in a coordinated FY-98 rotorcraft requirements package that will be

assigned to the appropriate FAA RE&D provider organizations when approved and when funds are allocated by the budget process.

It should be stressed that the proposals that are evaluated as a result of this notice, if accepted, will not be funded until the overall FAA FY 98 RE&D submittal is funded, (i.e., at least two (2) years after their original submittal on 10/15/95) and that reprogramming of limited RE&D resources before then is highly unlikely. Also, the accepted proposals will have to compete for resources with other requirements identified for RE&D by other FAA activities. Nonetheless, the need clearly exists to identify Rotorcraft Certification RE&D needs to compete for the agency's RE&D resources.

As a matter of information, there are four primary FAA RE&D supplier organizations: (1) The Technical Center (ACD) in Atlantic City, New Jersey; (2) the Research and Development Service (ARD) in Washington, D.C.; (3) the Office of Environment and Energy (AEE) in Washington, D.C.; and (4) the Office of Aviation Medicine's Civil Aeromedical Institute (AAM/CAMI) in Oklahoma City, Oklahoma. These organizations perform the RE&D on programs that are approved and funded through the process.

Although not mandatory, the format of Figure 1 for RE&D proposals is preferred:

Figure 1—FY-98 Rotorcraft Directorate RE&D Program Description Form

Originator

(Insert Name, Address, Phone Number, and Fax Number)

Proposed RE&D Program Descriptions & Objectives

(Insert Brief Description of the proposal program and its major goals and objectives)

Note: A more detailed description may be attached in addition to this summary but is not mandatory at this time.

How Would You Accomplish this Program?

(Insert Brief Description of your recommended method of accomplishing the proposed RE&D program)

Justification/History

(If appropriate, furnish data such as a concise accident/incident history and any other relevant statistics or information that would show that the proposed research is needed, cost-effective, and applicable to developing a solution to the proposed RE&D project. This history/justification input data will

be used to aid in assessing the relative value of the proposed RD&D project.)

Anticipated Benefits/Products and Beneficiaries

(Insert Brief Description of anticipated benefits/products, who would benefit, and how)

If an RE&D proposal has been submitted previously, then (unless a major change or update has been made) it is on file and need not be resubmitted.

Copies of this notice are being mailed to all known interested parties. Any interested party who desires but has not received a copy of this notice by May 8, 1995, should request a copy from Mary June Bruner, FAA Rotorcraft Standards Staff, Fort Worth, TX 76137-0111, telephone (817) 222-5110.

Issued in Fort Worth, Texas, on March 16, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

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14 CFR Part 71

[Airspace Docket No. 95-ASO-7]

Proposed Establishment of Class D Airspace; Jackson, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Jackson, TN. A non-federal control tower is being commissioned at the Jackson/McKellar-Sipes Regional Airport. Class D airspace is required when the control tower is in operation to accommodate current Standard Instrument Approach Procedures (SIAPs) and for instrument flight rules (IFR) operations at the airport. This action would also modify the Class E airspace to classify the airspace as part-time when the tower is closed.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95-ASO-7, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.