

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b and 714c.

Subpart A—General

2. Revise § 1421.13 to read as follows:

§ 1421.13 Special marketing assistance loans and loan deficiency payments.

(a) Commodities stored in an unapproved storage facility may be pledged as collateral for a marketing assistance loan if the producer:

(1) Makes request of the marketing assistance loan and obtains the commodity certificate to immediately exchange for the requested loan collateral at the same time at the county office that, under part 718 of this title, is responsible for administering the programs for the farm on which the commodity was produced.

(2) Submits the marketing assistance loan request and the commodity certificate exchange before or on the date of delivery to the unapproved facility.

(b) Eligible producers of hay and silage derived from an eligible loan commodity as provided in § 1421.5 are eligible to request hay and silage quantities for a loan deficiency payment in accordance with § 1421.200.

Subpart B—Marketing Assistance Loans

3. Revise § 1421.103(c) to read as follows:

§ 1421.103 Approved storage.

* * * * *

(c)(1) Approved warehouse storage consists of warehouses that are:

(i) If Federally-licensed, in compliance with 7 CFR part 735; or

(ii) If not Federally-licensed, in compliance with State laws and is a warehouse that issues a warehouse receipt that meets the criteria set forth in § 1421.107.

(2) CCC may, on a case-by-case basis, require a warehouse operator that is not Federally-or State-licensed to enter into an agreement with CCC that sets forth requirements to adequately protect CCC's security interest in commodities pledged as collateral for a loan in accordance with this part.

4. Remove §§ 1421.5551 through 1421.5559.

Signed in Washington, DC, on June 16, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–10368 Filed 6–30–06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 32

RIN 3150–AH48

National Source Tracking of Sealed Sources: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On June 13, 2006, the Nuclear Regulatory Commission (NRC) published for public comment a proposal to change the basis for the national source tracking rule from the NRC's authority to promote the common defense and security to protection of the public health and safety. The comment period for this proposed rule was to have expired on July 3, 2006. Senator Hillary Rodham Clinton and Representative Edward Markey requested an extension to the comment period. The NRC has decided to extend the comment period for an additional 25 days.

DATES: The comment period for the proposed rule published on June 13, 2006 (71 FR 34024), has been extended and now expires on July 28, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH48) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal Rulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, mlh1@nrc.gov.

Dated at Rockville, Maryland, this 28th day of June, 2006.

For the Nuclear Regulatory Commission.

Annette Vietti Cook,

Secretary of the Commission.

[FR Doc. E6–10422 Filed 6–30–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2006–24]

RIN 1550–AC06

Subordinated Debt Securities and Mandatorily Redeemable Preferred Stock

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: A savings association must obtain OTS approval (or non-objection) before it may include subordinated debt securities or mandatorily redeemable preferred stock in supplementary (tier 2) capital. OTS rules at 12 CFR 563.81 set forth application and notice procedures, requirements that securities must meet in order to be included in supplementary capital, and conditions for OTS approval (or non-objection), and also address other matters.

OTS is proposing to update this rule. The proposed rule would delete several unnecessary or outdated requirements and would conform certain provisions, such as maturity period requirements and purchaser restrictions, to the rules issued by the other federal banking agencies. In addition, the proposed rule would reconcile conflicting rules, add appropriate statutory cross-references, and rewrite the rule in plain language.

DATES: Comments must be received on or before September 1, 2006.

ADDRESSES: You may submit comments, identified by No. 2006–24, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail address: regs.comments@ots.treas.gov. Please include No. 2006–24 in the subject line of the message and include your name and telephone number in the message.

- Fax: (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–24.

- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–24.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to the OTS Internet Site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a

facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

David W. Riley, Senior Analyst, (202) 906–6669; Capital Policy, Karen Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, or Gary Jeffers, Senior Attorney, (202) 906–6457, Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Discussion

A savings association must obtain OTS approval (or non-objection) before it may include subordinated debt securities or mandatorily redeemable preferred stock in supplementary (tier 2) capital. OTS rules at 12 CFR 563.81 set forth application and notice procedures, requirements that securities must meet in order to be included in supplementary capital, and conditions for OTS approval (or non-objection), and also address other matters.

OTS is proposing to update this rule. The proposed rule would delete several unnecessary or outdated requirements and would conform certain provisions, such as maturity period requirements and purchaser restrictions, to the rules issued by the other federal banking agencies. In addition, the proposed rule would reconcile conflicting OTS rules, add appropriate statutory cross-references, and rewrite the rule in plain language. A section-by-section description of the proposed rule follows.

Scope—Proposed § 563.81(a)

Paragraph (a) sets out the scope of the proposed rule. This new paragraph states that a savings association must comply with § 563.81 if it wishes to include covered securities in supplementary capital under 12 CFR 567.5(b). Paragraph (a) also states that § 563.81 does not apply if a savings association does not intend to include covered securities in supplementary capital. OTS notes that a savings association that issues subordinated debt securities must comply with the general borrowing limitations at 12 CFR 563.80, whether or not the savings association intends to include the securities in supplementary capital.

Application and Notice Procedures—Proposed § 563.81(b)

OTS has substantially amended its application processing rules in the past years. As a result, 12 CFR part 516 contains various procedures that overlap and duplicate the application processing requirements set out in existing § 563.81. Proposed paragraph (b) would streamline the rule by cross-referencing the application and notice filing procedures at part 516, subpart A. The proposed rule would also clarify that a savings association may file its application or notice before or after it issues covered securities, but may not include the covered securities in supplementary capital until OTS approves the application or does not object to the notice.

The proposed rule includes a new provision at paragraph (b)(2). This provision reminds savings associations that they must comply with OTS securities offering rules at 12 CFR part 563g by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

Securities Requirements—Proposed § 563.81(c)

Proposed paragraph (c) addresses the form of securities, maturity requirements, mandatory prepayment restrictions, and indenture agreements.

Form. The existing rule contains various requirements regarding the form of covered securities.¹ Paragraph (c)(1) of the proposed rule would restate these requirements with certain modifications. Under the proposed rule, each certificate evidencing a covered security must:

- Bear a legend indicating that the security is *not* a savings account or deposit, and is *not* insured by the United States or any agency or fund of the United States.

- State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority.

- State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association.

- State that the security is not eligible collateral for a loan by the savings association.

- Restate certain statutory prohibitions. The existing rule requires covered securities to restate the prohibition on the payment of

¹ 12 CFR 563.81(d)(1).

dividends or interest at 12 U.S.C. 1828(b) (prohibiting payments while an insured depository institution is in default on payment of its Federal Deposit Insurance Corporation (FDIC) assessment). The proposed rule adds that subordinated debt securities must restate the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h) (prohibiting payments by a critically undercapitalized insured depository institution).²

- For subordinated debt securities, state (or refer to a document stating) the terms under which the savings association may prepay the obligation.

- State (or refer to a document stating) that the savings association must obtain OTS approval before the voluntarily prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntarily redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the savings association fails to meet certain capital tests before or after the repayment. The current rule refers to regulatory capital standards at 12 CFR part 567. The proposed rule adds that OTS approval is required if the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized under prompt corrective action standards (PCA standards) at 12 CFR part 565.

The proposed rule would delete three provisions that are codified as form requirements in the existing rule. First, the proposed rule would delete various purchaser prohibitions. Under the existing rule, each certificate evidencing covered securities must state that the issuer is prohibited from selling the covered securities to another savings association or to a corporate affiliate of a savings association, without the prior written approval of OTS. The existing rule, however, permits an issuer to sell covered securities to its corporate affiliates, or to a diversified savings and loan holding company and its non-savings association affiliates.³

The Federal Home Loan Bank Board (FHLBB), as the operating head of the Federal Savings and Loan Insurance Corporation (FSLIC), originally promulgated this provision. The purchaser restriction was primarily intended to protect FSLIC and was based on the view that no risk is

transferred outside the group of institutions with FSLIC-insured accounts when the purchaser is another insured savings association or its affiliate.⁴ OTS questions whether it is appropriate to continue to impose this requirement on covered securities. Neither FDIC, which is charged with the primary responsibility of protecting the Deposit Insurance Fund, nor the other federal banking agencies impose this requirement on other insured depository institutions that issue similar securities. Moreover, other existing OTS rules provide some protection. For example, OTS capital rules protect the Deposit Insurance Fund by requiring savings associations to deduct reciprocal holdings of depository institution capital instruments from total capital.⁵ Accordingly, OTS proposes to delete the purchaser restriction.⁶

OTS also proposes to delete the existing requirement that all certificates evidencing subordinated debt must state that the savings association retains the right to prepay the subordinated debt, without premium or other penalty, during the 15 months immediately prior to the maturity date.⁷ This requirement ensures that a savings association has the ability to repay early where, for example, the savings association is able to refinance the debt on more favorable terms. The requirement, however, also prevents a savings association from bargaining away its right to prepay in return for a lower interest rate or other favorable terms. In recent years, savings associations have frequently requested, and OTS has granted, waivers of this 15-month prepayment provision. As a result, OTS proposes to eliminate this provision as a requirement for subordinated debt issuances.

Finally, the existing rule requires certificates evidencing subordinated debt to include certain provisions using language prescribed in the regulation.⁸ Two of these provisions address various issues related to FDIC's obligations as receiver for the issuer. A third provision addresses the purchaser restrictions, which are discussed above. The proposed rule does not include

prescribed language. Instead, OTS will prescribe language for certificates and related documents in its Application Processing Handbook. This will permit OTS to amend the required text promptly to reflect revised laws and regulations and other changed circumstances. OTS specifically requests comments on whether it should revise the current language when it is incorporated in the Application Processing Handbook.

Maturity requirements. The proposed rule at § 563.81(c)(2) addresses maturity requirements. Under the existing OTS rule, a covered security must have an original period to maturity (or to required redemption) of at least seven years. In addition, OTS's rule prescribes a formula that limits the amount of required sinking fund payments, required prepayments, required purchase-fund payments, required reserve allocations, and required redemptions that may occur during the first six years that a covered security is outstanding.⁹ By contrast, the other banking agencies' rules require that subordinated debt securities and mandatorily redeemable preferred stock must have a five-year original weighted average maturity to be included in Tier 2 capital.¹⁰

Depending upon the payment schedule applicable to a particular covered security and other factors, OTS's rules could require an original weighted average maturity that is shorter—or longer—than five years. Ultimately, however, OTS believes that the five-year original weighted average maturity requirement may be more flexible than its current rule because the five-year requirement does not impose a specific formula limiting the amount of permissible repayments, payments, and reserve allocations that may be made during the first six years that the covered security is outstanding. Accordingly, OTS proposes to change its rule to state that covered securities must have an original weighted average maturity (or period to required redemption) of at least five years. OTS

⁹ 12 CFR 563.81(d)(2). During the first six years that a covered security is outstanding, these items may not exceed the original principal amount or original redemption price of the covered securities multiplied by a specified fraction. The numerator of the fraction is the number of years elapsed since the issuance of the covered security. The denominator of the fraction is the number of years in the original period to maturity or required redemption.

¹⁰ OCC and FRB rules use the phrase "original weighted average maturity," while FDIC rules use the phrase "original average maturity." See 12 CFR 3.100(f)(1) (OCC); 12 CFR part 208, Appendix A, § I.A.2.d.(ii) and part 225, Appendix A, § I.A.2.d.(i) (FRB); and 12 CFR part 325, Appendix A, § I.A.2.(d) (FDIC).

⁴ 50 FR 20550 (May 17, 1985).

⁵ 12 CFR 567.5(c)(2)(i). The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and FDIC have similar capital rules. See 12 CFR part 3, Appendix A, § 2(c)(6)(ii) (OCC); 12 CFR part 208, Appendix A, § I.B.(iii) and part 225, Appendix A, § I.B.(iii) (FRB); and 12 CFR part 325, Appendix A, § I.B.(4) (FDIC).

⁶ For similar reasons, OTS proposes to delete existing 12 CFR 563.81(d)(3)(i), which prohibits the sale of subordinated debt securities to a Federal Home Loan Bank or to FDIC.

⁷ 12 CFR 563.81(d)(1)(iii).

⁸ 12 CFR 563.81(d)(1)(vi).

² OTS notes that certain prepayments may be capital distributions that are subject to 12 CFR part 563, subpart E.

³ 12 CFR 563.81(d)(1)(i)(B). This restriction is restated in various forms in several other places in the existing rule. See 12 CFR 563.81(d)(1)(vi)(C), (d)(3)(ii), and (k)(3)(ii).

notes that this change would conform this aspect of its capital rules to the capital rules of the other banking agencies and is consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803). Section 303 directs the agencies to work to make uniform regulations and guidelines implementing common statutory or supervisory policies, consistent with the principles of safety and soundness, statutory law and policy, and the public interest.

Mandatory prepayment of principal. The proposed rule at § 563.81(c)(3) would restate the current rules regarding mandatory prepayment of subordinated debt.¹¹ Specifically, the proposed rule states that subordinated debt securities may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

- Arise from the savings association's failure to make timely payment of interest or principal.
- Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities,
- Relate to bankruptcy, insolvency, receivership, or similar events.

As noted above, the proposed rule would continue to state that any acceleration of payment of principal on a subordinated debt security by a savings association that fails to meet certain capital requirements would be subject to OTS prior approval.

All of the banking agencies allow for the mandatory prepayment or acceleration of principal upon events of default related to bankruptcy, insolvency, receivership, and similar events.¹² However, there is no uniform approach with respect to prepayment or acceleration upon other events of default.¹³ OTS seeks public comment whether it should revise this provision. Commenters should address whether the rules issued by any other Federal banking agency more appropriately address events of default that may

trigger mandatory prepayment or acceleration of principal.

Indenture requirements. The current rule requires savings associations to use an indenture for subordinated debt securities.¹⁴ OTS proposes to update the monetary thresholds in these indenture requirements to reflect statutory changes in the Trust Indenture Act of 1939 (TIA). 15 U.S.C. 77aaa *et seq.*

In addition to these updates, OTS is seeking public comment on additional possible revisions to the indenture requirements. For example, the current rule requires a savings association to use an indenture for all subordinated debt security issuances. The TIA generally requires indentures for debt instruments, but does not require an indenture where the underlying securities are exempt from registration under the Securities Act of 1933 (Securities Act).¹⁵ One such exemption is available for offerings made solely to accredited investors.¹⁶ The Securities Act and the TIA exempt such offerings because accredited investors are considered to have sufficient financial and professional resources and sophistication to analyze the offering, make informed decisions, and defend and exercise their rights.¹⁷ In recent years, OTS has waived the indenture requirement where subordinated debt securities are issued to accredited investors that are top-tier parent holding companies of the issuer (or subsidiaries of these holding companies), provided a paying agent agreement is in place. These waivers are conditioned upon the savings association's representation that it will provide OTS with a draft indenture before the debt holder sells or assigns any of the debt securities to an unaffiliated third party. In addition, the savings association must agree that the indenture will apply to all unaffiliated third party debt holders. OTS is considering exempting such issuances from the indenture requirements in the final rule and seeks comment on this possible change. Commenters are invited to address whether OTS should exempt offerings to accredited investors that are holding companies of the issuer (or their subsidiaries) from the

indenture requirement, and whether it should also exempt offerings to unaffiliated accredited investors.

OTS Review—Proposed § 563.81(d)

Proposed paragraph (d)(1) states that OTS will review notices and applications under the application processing procedures at 12 CFR part 516, subpart E. In addition, proposed paragraph (d)(2) sets out the factors that OTS will consider in its review of a notice or application. These criteria are based on the existing rule with minor changes.¹⁸ In reviewing notices and applications under this section, OTS will consider whether:

- The issuance of the covered securities is authorized under applicable laws and regulations, and is consistent with the savings association's charter and bylaws.
- The savings association is at least adequately capitalized under the PCA standards and meets the regulatory capital requirements. The current rule refers only to the regulatory capital requirements at 12 CFR part 567. The proposed rule would add the reference to the PCA standards at 12 CFR part 565.
- The savings association is or will be able to service the covered securities.
- The covered securities are consistent with the requirements regarding the form of securities, limitations on terms, prepayment restrictions, use of an indenture, and other requirements imposed under the rule.
- The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.
- OTS has no objection to the issuance based on the savings association's overall policies, condition, and operations.¹⁹

The existing rule states that issuances of covered securities are subject to seven standard conditions. OTS has decided to delete most of these conditions. OTS has determined that many of the standard conditions are unnecessary because they are stated elsewhere as proposed regulatory requirements. For example, reporting is addressed in proposed paragraph (g),²⁰ and amendments to covered securities following OTS review are addressed at

¹⁴ 12 CFR 563.81(d)(4).

¹⁵ 15 U.S.C. 77ddd.

¹⁶ 15 U.S.C. 77d(6).

¹⁷ For example, "accredited investors" include such entities as: brokers or dealers registered under the Securities Exchange Act of 1934; insurance companies as defined in the Securities Act; investment companies registered under the Investment Company Act of 1940; certain employee benefit plans; directors, executive officers or general partners of the issuer; natural persons with income or net worth in excess of specified limits; and certain trusts with assets in excess of specified limits. 17 CFR 230.501(a). See 15 U.S.C. 77(a)(15).

¹⁸ 12 CFR 563.81(b).

¹⁹ The existing rule states that OTS shall establish non-exclusive guidelines identifying supervisory bases that may be used to object to the inclusion of covered securities in regulatory capital. 12 CFR 563.81(b)(2)(i). While OTS may establish such guidance in the future, the proposed rule does not require OTS to take this step.

²⁰ 12 CFR 563.81(k)(2) and (3).

¹¹ 12 CFR 563.81(b)(3).

¹² 12 CFR 250.166(b)(2) (FRB); and 12 CFR part 325, Appendix A, § I.A.2.(c)(2) and (d) (FDIC). See Comptroller's Licensing Manual, Subordinated Debt (November 2003), pp 15–16.

¹³ 12 CFR 250.166 (FRB); 12 CFR part 325, Appendix A, § I.A.2.(d) (FDIC); and 12 CFR part 3, Appendix A, § 2(b)(4) and Comptroller's Licensing Manual, Subordinated Debt (November 2003) (OCC).

new paragraph (e).²¹ Other standard conditions would be deleted because they are contrary to current securities law or refer to obsolete OTS regulations.²²

With these deletions, proposed 563.81(d)(3) would provide that OTS approval or nonobjection is conditioned upon no material changes to the information disclosed in the application or notice submitted to OTS.²³ The proposed rule would also expressly state that OTS may impose such additional requirements or conditions as may be necessary to protect purchasers, the savings association, OTS, or the Deposit Insurance Fund.

Amendments—Proposed § 563.81(e)

The proposed rule would resolve an inconsistency in the current rules regarding amendments to covered securities or related documents following OTS review. One provision appears to require a savings association to seek OTS approval or nonobjection only where an amendment would not conform to OTS regulations governing the form or content of the covered securities and related documents, or where the amended securities would not sufficiently transfer risk from the Deposit Insurance Fund.²⁴ The other provision requires a savings association to seek OTS approval or nonobjection for *all* amendments that occur after the conclusion of the OTS review.²⁵ OTS believes that it should have the opportunity to review all amendments to covered securities and related documents. Accordingly, the proposed rule requires OTS approval or nonobjection for all amendments after OTS review.

Sale of Covered Securities—Proposed § 563.81(f)

The existing rule provides that a savings association must complete the sale of securities within one year of OTS approval or nonobjection and that OTS may extend this period upon a timely request.²⁶ Proposed paragraph (f) restates this provision in plain language without substantive change.

Reports—Proposed § 563.81(g)

The existing rule requires savings associations to submit various reports in connection with the sale of covered

securities.²⁷ The proposed rule would restate and consolidate all reporting requirements in one provision. The proposed rule does not modify the substance of the reporting requirement.

Obsolete Provisions

In addition to the revisions discussed above, OTS proposes to delete certain obsolete provisions of the existing rules. These existing provisions include:

- 12 CFR 563.81(b)(2)(i)(B), which refers to non-existent OTS regulations at 12 CFR 563.160 and 563.172.
- 12 CFR 563.81(d) (introductory paragraph), which states that OTS may waive certain requirements. This provision duplicates (and conflicts with) OTS general waiver authority at 12 CFR 500.30(a).
- 12 CFR 563.81(k)(7). This section conflicts with 12 CFR 563.76, which prohibits the sale of debt securities on the premises of a savings association.

II. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires Federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this proposed rule easier to understand. For example:

- (1) Have we organized the material to suit your needs? If not, how could the material be better organized?
- (2) Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?
- (3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?
- (4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

III. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a “significant regulatory action” for purposes of Executive Order 12866.

IV. Unfunded Mandates Reform Act of 1995

Today’s proposed rule merely revises an existing rule to delete unnecessary, outdated, and conflicting requirements, to add appropriate statutory cross-references, and to rewrite the rule in plain language. Accordingly, OTS has

determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more and that a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601), the Director certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Today’s proposed rule merely revises an existing rule to delete unnecessary, outdated, and conflicting requirements, to add appropriate statutory cross-references, and to rewrite the rule in plain language.

VII. Paperwork Reduction Act of 1995

The information collection requirements in the existing OTS rules at 12 CFR 563.81 were previously approved under OMB control number 1550–00xx. The proposed rule would continue to incorporate these requirements and does not make any substantive changes that affect the overall burden of compliance.

List of Subjects in 12 CFR Part 563

Accounting, Administrative practice and procedure, Advertising, Conflict of interest, Crime, Currency, Holding companies, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bond.

Accordingly, the Office of Thrift Supervision proposes to amend 12 CFR part 563 as set forth below:

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

2. Revise § 563.81 to read as follows:

§ 563.81 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.

(a) *Scope.* A savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (“covered securities”) in supplementary capital under 12 CFR 567.5(b). If a savings association does not include covered securities in supplementary capital, it is not required to comply with this section.

²¹ 12 CFR 563.81(k)(5) and (6).

²² 12 CFR 563.81(k)(1) and (7).

²³ 12 CFR 563.81(k)(4).

²⁴ 12 CFR 563.81(k)(5).

²⁵ 12 CFR 563.81(a).

²⁶ 12 CFR 563.81(g).

²⁷ These reporting requirements are contained in 12 CFR 563.81(h) and in the standard conditions at 12 CFR 563.81(k)(2) and (3).

(b) Application and notice

procedures. (1) A savings association must file an application or notice under 12 CFR part 516, subpart A seeking OTS approval of, or nonobjection to, the inclusion of covered securities in supplementary capital. The savings association may file its application or notice before or after it issues covered securities, but may not include covered securities in supplementary capital until OTS approves the application or does not object to the notice.

(2) A savings association must also comply with the securities offering rules at 12 CFR part 563g by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(c) Securities requirements. To be included in supplementary capital, covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: "This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;"

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association, as defined in 12 CFR 583.2;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h);

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) State or refer to a document stating that the savings association must obtain OTS approval before the voluntarily prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntarily redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized as described

in § 565.4(b) of this chapter, fails to meet the regulatory capital requirements at 12 CFR part 567, or would fail to meet any of these standards following the payment.

(ii) A savings association must include such additional statements as OTS may prescribe for certificates, purchase agreements, indentures, and other related documents. OTS will prescribe the text of these additional statements in its Application Processing Handbook.

(2) *Maturity requirements.* Covered securities must have an original weighted average maturity or original weighted average period to required redemption of at least five years.

(3) *Mandatory prepayment.* Subordinated debt securities and related documents may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

(i) Arise from the savings association's failure to make timely payment of interest or principal;

(ii) Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities; or

(iii) Relate to bankruptcy, insolvency, receivership, or similar events.

(4) *Indenture.* A savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities that are publicly offered (excluding sales in a non-public offering as defined in 12 CFR 563g.4) and sold in any consecutive 12-month or 36-month period exceeds \$5,000,000 or \$10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for:

(i) The appointment of a trustee other than the savings association or an affiliate of the savings association (as defined at 12 CFR 583.2); and

(ii) Collective enforcement of the security holders' rights and remedies.

(d) *OTS review.* (1) OTS will review notices and applications under 12 CFR part 516, subpart E.

(2) In reviewing notices and applications under this section, OTS will consider whether:

(i) The issuance of the covered securities is authorized under applicable laws and regulations and is consistent with the savings association's charter and bylaws.

(ii) The savings association is at least adequately capitalized under § 565.4(b)

of this chapter and meets the regulatory capital requirements at § 567.2 of this chapter.

(iii) The savings association is or will be able to service the covered securities.

(iv) The covered securities are consistent with the requirements of this section.

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.

(vi) OTS has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(3) OTS approval or nonobjection is conditioned upon no material changes to the information disclosed in the application or notice submitted to OTS. OTS may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, OTS, or the Deposit Insurance Fund.

(e) *Amendments.* If a savings association amends the covered securities or related documents following the completion of OTS review, it must obtain OTS approval or nonobjection under this section before it may include the amended securities in supplementary capital.

(f) *Sale of covered securities.* The savings association must complete the sale of covered securities within one year after OTS approval or nonobjection under this section. A savings association may request an extension of the offering period by filing a written request with OTS. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(g) *Reports.* A savings association must file the following information with OTS within 30 days after the savings association completes the sale of covered securities includable as supplementary capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

Dated: June 26, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E6-10341 Filed 6-30-06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25232; Directorate Identifier 2006-NM-106-AD]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes. This proposed AD would require repetitive inspections of the wing top skin under the rib 0 joint strap, and related investigative and corrective actions if necessary. This proposed AD results from a report of a significant crack in the wing top skin under the rib 0 joint strap. We are proposing this AD to detect and correct corrosion and cracking in that area, which could result in reduced structural integrity of the wing.

DATES: We must receive comments on this proposed AD by August 2, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2006-25232; Directorate Identifier 2006-NM-106-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes. The EASA advises that a significant crack in the wing top skin under the rib 0 joint strap was found during a scheduled inspection of adjacent structure. This cracking may also occur on other airplanes having top wing skins made from the same aluminum alloy as the top wing skin on the subject airplane. Cracking in this area, if not corrected, could result in reduced structural integrity of the wing.

Relevant Service Information

The manufacturer has issued BAE Systems (Operations) Limited Alert Inspection Service Bulletin (ISB) ISB.57-a071, dated April 12, 2006. The ISB describes procedures for repetitive ultrasonic inspections for defects (including corrosion and cracking) of the wing top skin under the rib 0 joint strap, at the outer row of fasteners. The initial compliance time ranges from the earlier of 500 flights or 3 months (for airplanes with existing repairs and no previous inspection of the subject area) to the earlier of 4,000 flight cycles or 24 months (for airplanes previously inspected). For any defect found, the ISB specifies the related investigative actions of a radiographic inspection of the top wing skin to detect corrosion and cracking, and a high frequency eddy current inspection around the nuts of the stringer flanges to detect cracking and corrosion. The ISB describes the corrective actions of repairing the cracks or corrosion; alternatively, the ISB specifies operators may obtain an approved BAE Systems repair scheme.

Accomplishing the actions specified in the ISB is intended to adequately address the unsafe condition. The EASA mandated the ISB and issued emergency airworthiness directive 2006-0091-E, dated April 20, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

The ISB refers to BAe 146 Series/AVRO-RJ Series Nondestructive Testing Manual 57-10-12, Revision 23, dated November 15, 2003, as an additional source of service information for the radiographic and high frequency eddy current inspections. The ISB refers to BAe Structural Repair Manual 57-10-15-001 as an additional source of service information for the repair.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom