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FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1064]

Membership of State Banking Institutions in the Federal Reserve System: Financial Subsidiaries

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a final rule implementing the financial subsidiary provisions of the Gramm-Leach-Bliley Act for state member banks. The Gramm-Leach-Bliley Act authorizes state member banks that comply with the requirements of the rule to control, or hold an interest in, a financial subsidiary which may conduct certain financial activities that are not permissible for the parent bank to conduct directly. The final rule is substantially similar to the interim rule that the Board adopted in March 2000.

DATES: The final rule is effective on September 17, 2001.

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SUPPLEMENTARY INFORMATION:

Background

Section 121 of the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. 106–102; 113 Stat. 1373–82) authorizes qualifying state member banks to own or control a new type of subsidiary—referred to as a financial subsidiary. A financial subsidiary may engage in activities that have been determined to be financial in nature or incidental to financial activities under the GLB Act, including general insurance agency activities in any location and travel agency activities. In addition, a financial subsidiary may engage in underwriting, dealing in and making a market in all types of securities—activities previously prohibited for subsidiaries of state member banks by the Glass-Steagall Act. A financial subsidiary of a state member bank also may conduct any activity that the bank is permitted to conduct directly.

The GLB Act prohibits financial subsidiaries from engaging in certain types of activities. As a general matter, a financial subsidiary may not engage as principal in underwriting insurance, providing or issuing annuities, real estate development or real estate investment, and merchant banking and insurance company investment activities.

In March 2000, the Board adopted and requested comment on an interim rule that implemented the financial subsidiary provisions of the GLB Act for state member banks (65 FR 14810). The interim rule set forth the criteria that a state member bank and its depository institution affiliates must meet for the bank to own or control a financial subsidiary; the activities that a financial subsidiary may and may not conduct; the procedures that a state member bank must follow to establish a financial subsidiary; and the procedures and restrictions that would apply if a state member bank or any of its depository institution affiliates ceased to continue to meet the requirements of the rule. The interim rule paralleled the rule adopted by the Office of the Comptroller of the Currency (OCC) governing financial subsidiaries of national banks. (*See* 65 FR 12905.)

The Board received three comments from the public on the interim rule, each of which was submitted by a trade association for the banking industry. All commenters supported the interim rule and one commenter noted that the interim rule was conveniently formatted and easy to understand. Commenters also asked that the Board modify the rule in minor respects or address issues suggested by the commenter. For example, one commenter suggested that the Board make available a list of the newly authorized financial activities that may be conducted by a financial subsidiary. Another commenter requested that the Board further streamline the 15-day prior notice process established by the interim rule for obtaining the Federal Reserve System's approval to establish a financial subsidiary or commence a new financial activity through an existing financial subsidiary.

In addition, one commenter urged the Board and the other Federal banking agencies to closely monitor financial subsidiaries of banks to ensure that these newly authorized entities do not threaten the safety and soundness of affiliated depository institutions. Another commenter asserted that the Board should allow a state member bank that has received a less-than-satisfactory management rating or rating under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA) to request that a follow-up examination occur expeditiously and, thereby, permit the bank the opportunity to quickly restore its compliance with the rule's criteria.

The Board has carefully reviewed the comments received on the interim rule. As described further below, the Board has modified certain provisions of the interim rule in light of these comments and the Federal Reserve System's experience in administering the interim rule since March 2000. The final rule remains substantially similar to the Board's interim rule and the financial subsidiary rule adopted by the OCC.

Description of Final Rule

The final rule, like the interim rule, permits qualifying state member banks to control, or hold an interest in, a new type of subsidiary, referred to as a ''financial subsidiary.'' A financial subsidiary is defined as any company that is controlled by one or more insured depository institutions, but does not include (1) a subsidiary that the state member bank is specifically authorized to hold by the express terms of a Federal statute (other than section 9 of the Federal Reserve Act), such as an Edge Act subsidiary held under section 25 of the Federal Reserve Act, or (2) a subsidiary that engages only in activities that the parent bank may conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank. As discussed further below, a financial subsidiary of a bank may only engage in activities

permissible for the parent bank and certain other financial activities. The final rule clarifies that a financial subsidiary includes any of its direct or indirect subsidiaries.

The authority for a state member bank to own or control a financial subsidiary is in addition to the existing authority of state member banks to establish operations subsidiaries, which are subsidiaries that engage only in activities that the parent bank may conduct directly and that are conducted on the same terms and conditions that govern the conduct of these activities by the bank. *See* 12 CFR 250.141. State member banks may continue to retain and establish new operations subsidiaries permitted under state law and the Board's interpretations without complying with the requirements of this rule.[1]

Section 208.71—What Are the Requirements To Invest in or Control a Financial Subsidiary?

Under the GLB Act, a state member bank may control, or hold an interest in, a financial subsidiary only if certain criteria are met. Section 208.71 of the rule sets forth these criteria.

Capital and Management Requirements

First, the state member bank and each of its depository institution affiliates must be well capitalized and well managed. An insured depository institution is well capitalized if it meets or exceeds the capital levels designated as ''well capitalized'' by the institution's appropriate Federal banking agency under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) (FDI Act). The final rule provides that an *uninsured* depository institution will be considered ''well capitalized'' if it has and maintains at least the capital levels its appropriate Federal banking agency has established under section 38 of the FDI Act for an insured depository institution to be well capitalized.[2]

Well managed is defined by reference to the achievement of specific examination ratings.[3] The FDI Act allows the appropriate Federal banking agency for a depository institution to use an examination conducted by a state banking agency in lieu of a Federal examination if the state examination meets the criteria set forth in section 10(d) of the FDI Act (12 U.S.C. 1820(d)). Accordingly, the final rule allows a depository institution to be deemed ''well managed'' on the basis of a qualifying state examination.[4] The final rule continues to provide that a depository institution that has not been examined will be considered well managed if its appropriate Federal banking agency determines that the institution's managerial resources are satisfactory.

In the course of administering the interim rule, questions have arisen concerning whether a well managed depository institution would retain its well managed status if it merged with another depository institution. The final rule clarifies that a depository institution that results from the merger of two or more well managed depository institutions will be considered well managed unless the appropriate Federal banking agency for the resulting institution determines otherwise. However, where a merger involves an institution that is not well managed, the managerial status of the combined organization likely will depend on the facts and circumstances of the particular case. Accordingly, the final rule provides that a depository institution resulting from the merger of a well managed institution with an institution that is not well managed or that has not been examined will be considered well managed if the appropriate Federal banking agency determines that the resulting institution is well managed.

Asset Limitation

Under the GLB Act and the rule, the aggregate consolidated total assets of the bank's financial subsidiaries may not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion. The GLB Act requires the Board and the Secretary of the Treasury to establish a mechanism for indexing the $50 billion limit.[5]

Debt Rating or Alternative Requirement for Large Banks

If the state member bank is one of the largest 100 insured banks, the bank must have at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization. Eligible debt refers to unsecured debt that has an initial maturity of more than 360 days. The debt must be issued and outstanding, may not be supported by any form of credit enhancement, and may not be held in whole or in any significant part by affiliates or insiders of the bank or by any other person acting on behalf of or with funds from the bank or an affiliate.

If the state member bank is one of the second 50 largest insured banks, the GLB Act allows the bank to meet this debt rating requirement or an alternative criteria established jointly by the Board and the Secretary of the Treasury by regulation. The final rule includes the alternative criteria established by the Board and the Secretary of the Treasury (*see* 66 FR 8748). A bank meets this alternative criteria if the bank has a current long-term issuer credit rating (as defined in § 208.77(f) of the rule) from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.[6] The debt rating and alternative criteria do not apply to a large bank if its financial subsidiaries do not engage in any newly authorized financial activity as principal.

Notice to Federal Reserve

Finally, the state member bank must obtain the Federal Reserve's approval to acquire control of, or an interest in, the financial subsidiary using the streamlined notice procedures set forth in § 208.76 of the rule. The state member bank also must obtain any necessary approvals from its state supervisory authority.

Section 208.72—What Activities May a Financial Subsidiary Conduct?

A financial subsidiary of a state member bank may conduct only three types of activities.

First, a financial subsidiary may engage in activities that section 4(k)(4) of the Bank Holding Company Act of 1956 (BHC Act) defines by statute to be financial in nature or incidental to a financial activity and permissible for a financial holding company. These activities are listed in § 225.86(a), (b) and (c) of the Board's Regulation Y (12 CFR 225.86(a), (b) and (c)) and include securities underwriting and dealing, selling insurance as agent, and operating a travel agency in connection with the offering of other financial services.

Second, a financial subsidiary may engage in activities that the Secretary of the Treasury, in consultation with the Board, determines to be financial in nature or incidental to financial activities and permissible for financial

[1] The Board recently determined that a state member bank may, consistent with Federal law and 12 CFR 250.141, acquire less than 100 percent of the shares of an operations subsidiary so long as the bank controls the subsidiary within the meaning of the Bank Holding Company Act. *See* Letter from Jennifer J. Johnson, Secretary of the Board, to Ronald C. Mayer, The Chase Manhattan Bank, dated August 16, 2000.

[2] *See* 12 CFR 208.77(g)(2).

[3] *See* 12 CFR 208.77(h).

[4] *See* 12 CFR 208.77(h)(1).

[5] *See* 12 U.S.C. 24a(a)(6).

[6] *See* 66 FR 8748 for a discussion of the types of ratings that qualify as a long-term issuer credit rating.

subsidiaries of national banks pursuant to section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)). These activities currently are listed in 12 CFR 1501.2 of the Treasury Department's rules.[7]

Third, a financial subsidiary of a state member bank may engage in activities that the bank is permitted to engage in directly, subject to the same terms and conditions that govern the conduct of the activity by the state member bank.

As required by the GLB Act, the rule prohibits a financial subsidiary of a state member bank from engaging as principal in insurance underwriting (except to the extent permitted under state law and the GLB Act), providing or issuing annuities, real estate investment or development (except to the extent expressly authorized by applicable state and Federal law), and merchant banking and insurance company investment activities permitted for financial holding companies under sections 4(k)(4)(H) or (I) of the BHC Act.

As noted above, one commenter requested that the Board make available a list of the financial activities that a financial subsidiary may conduct. The Board expects to issue shortly a list of the newly authorized financial activities permissible for a financial subsidiary. This list, which may be obtained from the Reserve Banks, will not identify activities that a state member bank may be permitted to engage in directly and that would, therefore, also be permissible for a financial subsidiary of the bank.

Section 208.73—What Additional Restrictions Are Applicable to State Member Banks With Financial Subsidiaries?

The GLB Act requires that a state member bank that owns or controls a financial subsidiary comply with a number of prudential safeguards. Section 208.73 of the rule implements these requirements.

For purposes of determining its compliance with all applicable regulatory capital standards, the state member bank must ''de-consolidate'' the assets and liabilities of its financial subsidiaries from those of the bank and then deduct the aggregate amount of its equity investment (including retained earnings) in all financial subsidiaries from the bank's capital and assets. The final rule clarifies how to make the capital adjustments required by the GLB Act. Specifically, the bank must deduct (i) 50 percent of the aggregate amount of its equity investment (including retained earnings) in all financial subsidiaries from both the bank's Tier 1 capital and Tier 2 capital for purposes of determining its risk-based capital ratios, (ii) 50 percent of the aggregate amount of its equity investment (including retained earnings) in all financial subsidiaries from the bank's Tier 1 capital for purposes of determining its leverage ratio, and (iii) 100 percent of the aggregate amount of its equity investment (including retained earnings) in all financial subsidiaries from its tangible equity for purposes of determining its tangible equity capital ratio.[8] In addition, the bank must deduct the entire amount of its equity investment (including retained earnings) in all financial subsidiaries from the bank's risk-weighted assets, average total assets and total assets for purposes of determining its risk-based, leverage and tangible capital ratios, respectively.

The bank must meet all applicable capital requirements—including the well capitalized requirement of § 208.71 and the capital levels established by the Board under section 38 of the FDI Act—after these adjustments. In addition, although the GLB Act requires a bank to ''de-consolidate'' the assets and liabilities of any financial subsidiary for regulatory capital purposes, a financial subsidiary remains a subsidiary of a state member bank and the Board will continue to review the operations and financial and managerial resources of the bank on a consolidated basis as part of the supervisory process. The Board may take appropriate supervisory action if the Board believes that the bank, either on a fully consolidated basis or on a basis that de-consolidates the bank's financial subsidiaries, does not have the appropriate financial and managerial resources (including capital resources and risk management controls) to conduct its direct or indirect activities in a safe and sound manner.

The rule also requires that the state member bank establish and maintain policies and procedures to manage the financial and operational risks arising from its ownership of a financial subsidiary and preserve the bank's separate corporate identity. A financial subsidiary also is considered a subsidiary of a bank holding company (and not a subsidiary of a bank) for purposes of the anti-tying prohibitions of the Bank Holding Company Act Amendments of 1970.

In addition, the rule specifies that a financial subsidiary of a state member bank is considered an affiliate (and not a subsidiary) of the bank for purposes of sections 23A and 23B of the Federal Reserve Act, and includes the GLB Act's special provisions governing the application of section 23A to investments in, and extensions of credit to, a financial subsidiary. The Board recently requested comment on a new rule (Regulation W) that would implement all aspects of sections 23A and 23B of the Federal Reserve Act, including the provisions of sections 23A and 23B that relate to financial subsidiaries of banks.[9] Proposed Regulation W addresses, among other things, the definition of a ''financial subsidiary'' for purposes of sections 23A and 23B, how to value a bank's investment in a financial subsidiary for purposes of section 23A, and when extensions of credit by an affiliate of a state member bank to a financial subsidiary of the bank will be considered an extension of credit by the bank itself under the GLB Act's special anti-evasion rules applicable to financial subsidiaries.[10] The Board may make modifications to this rule as appropriate in connection with the adoption of a final Regulation W.

Section 208.74—What Happens If the State Member Bank or a Depository Institution Affiliate Fails To Continue To Meet Certain Requirements?

The Board will give notice to a state member bank that owns or controls a financial subsidiary if the Board finds that the state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed, that the assets of the bank's financial subsidiaries exceed the asset limitation imposed on financial subsidiaries, or that the state member bank has failed to comply with the operational safeguards required by the rule.

To assist the Board in enforcing the requirements of the GLB Act, the final rule continues to require that a state member bank notify the appropriate

[7] *See* 66 FR 257. A financial subsidiary may not engage in activities that the Board determines are complementary to a financial activity and permissible for financial holding companies under section 4(k)(1) of the BHC Act (12 U.S.C. 1843(k)(1)). Similarly, a financial subsidiary may not engage in activities that the *Board* determines are financial in nature or incidental to financial activities under section 4(k) of the BHC Act unless the Secretary of the Treasury also finds that such activities are financial in nature or incidental to financial activities and permissible for financial subsidiaries under 12 U.S.C. 24a(b).

[8] *See* 12 CFR part 208 Appendix A (risk-based ratios) and Appendix B (leverage ratio); 12 CFR 208.43(b)(5) (tangible equity ratio). The rule provides that, if the deduction from Tier 2 capital exceeds the bank's Tier 2 capital, any excess must be deducted from the bank's Tier 1 capital for purposes of determining its risk-based capital ratios.

[9] *See* 66 FR 24186.

[10] *See id.* at 24194 and 24204.

Reserve Bank if the bank becomes aware that any of its depository institution affiliates has ceased to be well capitalized and well managed. The final rule provides that the bank must submit this notice within 15 calendar days of becoming aware of the change in the affiliate's capital or managerial status, and that the notice must identify the relevant depository institution affiliate and the area(s) of noncompliance.

If a state member bank receives a notice from the Board that it is not in compliance with the rule's requirements, the bank must execute an agreement with the Board to bring itself back into compliance with the requirements of the rule. The agreement must explain the actions the bank will take to correct the areas of noncompliance and when such actions will be taken and provide any other information the Board may require. If the notice relates to a depository institution affiliate, the affiliate must execute an agreement with its appropriate Federal banking agency to restore itself to well capitalized and well managed status. The Board and the appropriate Federal banking agency may impose conditions on the direct or indirect activities of the state member bank or depository institution affiliate, respectively, until the institution restores its compliance with the rule's requirements. If the deficiencies are not corrected within 180 days (or such longer period as the Board may permit), the Board may require the state member bank to divest its financial subsidiaries.

If a state member bank that is one of the largest 100 insured banks fails to continue to meet the debt rating requirement or alternative criteria of § 208.71(b), if applicable, the state member bank may not acquire any additional equity capital (including debt qualifying as capital) of the financial subsidiary until the bank once again meets these requirements.

Section 208.75—What Happens if the State Member Bank or Any of Its Insured Depository Institution Affiliates Receives Less Than a ''Satisfactory'' CRA Rating?

The GLB Act requires the Board to prohibit a state member bank from acquiring control of a financial subsidiary, or commencing any additional activity or acquiring control of any company through an existing financial subsidiary, if the bank or any insured depository institution affiliate has received less than a ''satisfactory'' rating from its appropriate Federal banking agency at its most recent examination under the CRA.[11] Section 208.75 includes these prohibitions. The rule clarifies that, if this prohibition is in effect, the financial subsidiary may not acquire control of another company by acquiring substantially all of the assets of the company. The rule also provides that any prohibition under § 208.75 does not affect the ability of a financial subsidiary to commence any additional activity, or acquire control of a company engaged only in activities, that the state member bank is permitted to engage in directly. The terms of the GLB Act require the Board to apply the prohibitions in § 208.75 if the state member bank ''or any of its insured depository institution affiliates has received in its most recent examination under the [CRA] a rating of less than 'satisfactory record of meeting community credit needs'.''[12] The Board recently considered how a parallel provision in the GLB Act should apply to a financial holding company that acquires an insured depository institution with a less-than-satisfactory CRA rating. The Board concluded, based on the Act's language and purposes, that the activity prohibitions would apply to a financial holding company only when an insured depository institution receives a less-than-satisfactory CRA rating while it is a subsidiary of the financial holding company.[13] For the same reasons discussed in that rulemaking, the Board believes that the parallel restrictions in the GLB Act and § 208.75 concerning financial subsidiaries apply only if the state member bank has a less-than-satisfactory CRA rating or an insured depository affiliate of the bank receives a less-than-satisfactory CRA rating while it is an affiliate of the state member bank. If a state member bank becomes affiliated with an insured depository institution that, at the time of the affiliation, has a less-than-satisfactory CRA rating, the institution must achieve at least a ''satisfactory'' CRA rating in its first CRA examination after becoming affiliated with the state member bank or the prohibitions in § 208.75 would apply to the state member bank and its financial subsidiaries.

The GLB Act's CRA prohibitions apply only if the state member bank or any of its insured depository institution affiliates has received less than a ''satisfactory'' CRA rating at its most recent examination under the CRA. Accordingly, the CRA rating requirement does not apply to special purpose banks that are not subject to CRA examination under the Federal banking agencies' CRA regulations,[14] or to *de novo* insured depository institutions that have not yet received (and are not the successor of an institution that has received) a CRA rating.

One commenter recommended that the Board allow a state member bank that has received a less-than-satisfactory management or CRA rating to request that a follow-up examination occur on an expedited basis. For many banks, the Board's rules and procedures already provide for a shorter safety and soundness and CRA examination cycle if the bank has received a less-than-satisfactory rating.[15] In addition, a Reserve Bank may, on request, move forward the scheduled date of a bank's next examination where such action is appropriate and consistent with available resources.

Section 208.76—What Federal Reserve Approvals Are Necessary for Financial Subsidiaries?

The final rule retains the streamlined notice procedures included in the interim rule for state member banks to engage in newly authorized financial activities through a financial subsidiary. A state member bank must file a notice with the appropriate Reserve Bank prior to acquiring control of, or an interest in, a financial subsidiary, or engaging in an additional financial activity through an existing financial subsidiary. A notice is not required for a financial subsidiary to engage in an additional activity that the parent state member bank is permitted to conduct directly. The notice must provide basic information on the financial subsidiary and its existing and proposed activities and include a certification that the state member bank and its depository institution affiliates meet the requirements of the GLB Act and the rule. The final rule also provides that a notice must provide the capital ratios for the bank and its depository institution affiliates. The Board has found that the capital data available to a banking organization at times differs from the data available to the Board, and that requiring the filing organization to include this data in a notice assists in ensuring that the organization meets the relevant capital levels required by statute.

If the notice relates to the initial affiliation of the state member bank with a company engaged in insurance activities, the notice also must describe the company's insurance activities and identify the states where the company

[11] *See* 12 U.S.C. 1843 (*l*)(2); 12 U.S.C. 24a(a)(7).

[12] *See* 12 U.S.C. 1843(*l*)(2).

[13] *See* 66 FR 400, 404 (Jan. 3, 2001).

[14] *See* 12 CFR 228.11(c)(3).

[15] *See, e.g.* 12 CFR 208.64.

holds an insurance license. The Board will use this information in fulfilling its obligations to consult with the relevant state insurance authorities under section 307(c) of the GLB Act (15 U.S.C. 6716(c)).

The rule provides that a notice will be deemed approved on the fifteenth day after receipt by the appropriate Reserve Bank of an informationally complete submission unless, prior to that time, the notice is disapproved or the bank is notified that additional time to review the notice is needed. In addition, the appropriate Reserve Bank may approve the notice prior to the expiration of the 15-day period by informing the bank in writing of such action. For purposes of calculating the 15-day review period, the day on which an informationally complete notice is received is considered day zero.

The Board believes that this streamlined 15-day notice procedure provides state member banks with the ability to respond quickly to market conditions while, at the same time, providing the Board adequate time to verify that the bank meets applicable statutory criteria. Accordingly, the Board has not adopted a procedure that would allow a state member bank to acquire a financial subsidiary (or commence a new financial activity through an existing financial subsidiary) immediately upon the filing of a notice with the Federal Reserve.

The GLB Act permits a state member bank to acquire an interest in or control a financial subsidiary if it meets the criteria and requirements set forth in the rule. The Board, however, retains its general supervisory authority for state member banks and may restrict or limit the activities of, or the acquisition or ownership of a subsidiary by, a state member bank if the Board finds the bank does not have the appropriate financial and managerial resources to conduct the activities or acquire or retain ownership of the company.

II. Regulatory Flexibility Analysis

In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule implements the new authority granted by the GLB Act to state member banks to acquire financial subsidiaries. Because the rule authorizes state member banks to acquire this new type of subsidiary, and thereby engage in new activities, the rule does not place any additional burden on state member banks and should, in fact, enhance the overall efficiency and flexibility of state member banks. The GLB Act makes this new authority available to all state member banks, provided the bank meets the qualifying criteria established by the Act. Accordingly, the rule applies to all state member banks, regardless of size. As of December 31, 2000, there were 991 state member banks, of which 593 had total assets of less than $150 million. The rule permits a state member bank to take advantage of this new authority by following a streamlined notice procedure, which should impose minimal burdens on small banking organizations.

III. Paperwork Reduction Act

The Board previously has reviewed, under the authority delegated to the Board by the Office of Management and Budget (OMB), the collection of information requirements of the final rule in accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1). *See* 66 FR 29325. The OMB control number for this rule is 7100–0292. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, any information collection unless the Board has displayed a currently valid OMB control number.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0292), Washington, DC 20503.

IV. Administrative Procedure Act

The provisions of the rule are effective on September 17, 2001, on a final basis. The interim rule became effective, on an interim basis, on March 11, 2000, in order to allow state member banks to immediately take advantage of the new authority granted by the GLB Act to own or control financial subsidiaries. This new statutory authority became effective on March 11, 2000. Pursuant to the Administrative Procedure Act (5 U.S.C. 553), the Board requested comments on all aspects of the interim rule and has amended the rule as appropriate after reviewing the comments received.

V. Use of ''Plain Language''

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invited comment on whether the interim rule was written in ''plain language'' and how to make the interim rule easier to understand. Commenters stated that the interim rule was effectively organized and easy to understand. The final rule is substantially similar to the interim rule and the Board believes the final rule is written plainly and clearly.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, Title 12, Chapter II, Part 208 of the Code of Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1843(l)(2), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. Subpart G is revised to read as follows:

Subpart G—Financial Subsidiaries of State Member Banks

208.71 What are the requirements to invest in or control a financial subsidiary?
208.72 What activities may a financial subsidiary conduct?
207.73 What additional provisions are applicable to state member banks with financial subsidiaries?
208.74 What happens if the state member bank or a depository institution affiliate fails to continue to meet certain requirements?
208.75 What happens if the state member bank or any of its insured depository institution affiliates receives less than a ''satisfactory'' CRA rating?
208.76 What Federal Reserve approvals are necessary for financial subsidiaries?
208.77 Definitions.

Subpart G—Financial Subsidiaries of State Member Banks

§ 208.71 What are the requirements to invest in or control a financial subsidiary?

(a) *In general.* A state member bank may control, or hold an interest in, a financial subsidiary only if:

(1) The state member bank and each depository institution affiliate of the state member bank are well capitalized and well managed;

(2) The aggregate consolidated total assets of all financial subsidiaries of the state member bank do not exceed the lesser of:

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) $50 billion, which dollar amount shall be adjusted according to an indexing mechanism jointly established by the Board and the Secretary of the Treasury;

(3) The state member bank, if it is one of the largest 100 insured banks (based on consolidated total assets as of the end of the previous calendar year), meets the debt rating or alternative requirement of paragraph (b) of this section, if applicable; and

(4) The Board or the appropriate Reserve Bank has approved the bank to acquire the interest in or control the financial subsidiary under § 208.76.

(b) *Debt rating or alternative requirement for 100 largest insured banks.*—(1) *General.* A state member bank meets the debt rating or alternative requirement of this paragraph (b) if:

(i) The bank has at least one issue of eligible debt outstanding that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization; or

(ii) If the bank is one of the second 50 largest insured banks (based on consolidated total assets as of the end of the previous calendar year), the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

(2) *Financial subsidiaries engaged in financial activities only as agent.* This paragraph (b) does not apply to a state member bank if the financial subsidiaries of the bank engage in financial activities described in § 208.72(a)(1) and (2) only in an agency capacity and not directly or indirectly as principal.

§ 208.72 What activities may a financial subsidiary conduct?

(a) *Authorized activities.* A financial subsidiary of a state member bank may engage in only the following activities:

(1) Any financial activity listed in § 225.86(a), (b), or (c) of the Board's Regulation Y (12 CFR 225.86(a), (b), or (c));

(2) Any activity that the Secretary of the Treasury, in consultation with the Board, has determined to be financial in nature or incidental to a financial activity and permissible for financial subsidiaries pursuant to Section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and

(3) Any activity that the state member bank is permitted to engage in directly (subject to the same terms and conditions that govern the conduct of the activity by the state member bank).

(b) *Impermissible activities.* Notwithstanding paragraph (a) of this section, a financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death (except to the extent permitted under applicable state law and section 302 or 303(c) of the Gramm-Leach-Bliley Act (15 U.S.C. 6712 or 6713(c));

(2) Providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72);

(3) Real estate development or real estate investment, unless otherwise expressly authorized by applicable state and Federal law; and

(4) Any merchant banking or insurance company investment activity permitted for financial holding companies by section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction required.* A state member bank that controls or holds an interest in a financial subsidiary must comply with the following rules in determining its compliance with applicable regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)):

(1) The bank must not consolidate the assets and liabilities of any financial subsidiary with those of the bank.

(2) For purposes of determining the bank's risk-based capital ratios under Appendix A of this part, the bank must—

(i) Deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from both the bank's Tier 1 capital and Tier 2 capital; and

(ii) Deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's risk-weighted assets.

(3) For purposes of determining the bank's leverage capital ratio under Appendix B of this part, the bank must—

(i) Deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's Tier 1 capital; and

(ii) Deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's average total assets.

(4) For purposes of determining the bank's ratio of tangible equity to total assets under § 208.43(b)(5), the bank must deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's tangible equity and total assets.

(5) If the deduction from Tier 2 capital required by paragraph (a)(2)(i) of this section exceeds the bank's Tier 2 capital, any excess must be deducted from the bank's Tier 1 capital.

(b) *Financial statement disclosure of capital deduction.* Any published financial statement of a state member bank that controls or holds an interest in a financial subsidiary must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank reflecting the capital deduction and adjustments required by paragraph (a) of this section.

(c) *Safeguards for the bank.* A state member bank that establishes, controls or holds an interest in a financial subsidiary must:

(1) Establish and maintain procedures for identifying and managing financial and operational risks within the state member bank and the financial subsidiary that adequately protect the state member bank from such risks; and

(2) Establish and maintain reasonable policies and procedures to preserve the separate corporate identity and limited liability of the state member bank and the financial subsidiary.

(d) *Application of Sections 23A and 23B of the Federal Reserve Act.* For purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1):

(1) A financial subsidiary of a state member bank shall be deemed an affiliate, and not a subsidiary, of the bank;

(2) The restrictions contained in section 23A(a)(1)(A) of the Federal Reserve Act (12 U.S.C. 371c(a)(1)(A)) shall not apply with respect to covered transactions between the bank and any individual financial subsidiary of the bank;

(3) The bank's investment in a financial subsidiary shall not include retained earnings of the financial subsidiary;

(4) Any purchase of, or investment in, the securities of a financial subsidiary by an affiliate of the bank will be considered to be a purchase of, or investment in, such securities by the bank; and

(5) Any extension of credit by an affiliate of the bank to a financial subsidiary of the bank will be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act and the Gramm-Leach-Bliley Act.

(e) *Application of anti-tying prohibitions.* A financial subsidiary of a state member bank shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*).

§ 208.74 What happens if the state member bank or a depository institution affiliate fails to continue to meet certain requirements?

(a) *Qualifications and safeguards.* The following procedures apply to a state member bank that controls or holds an interest in a financial subsidiary.

(1) *Notice by Board.* If the Board finds that a state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed, or the state member bank is not in compliance with the asset limitation set forth in § 208.71(a)(2) or the safeguards set forth in § 208.73(c), the Board will notify the state member bank in writing and identify the areas of noncompliance. The Board may provide this notice at any time before or after receiving notice from the state member bank under paragraph (a)(2) of this section.

(2) *Notification by state member bank.* A state member bank must notify the appropriate Reserve Bank in writing within 15 calendar days of becoming aware that any depository institution affiliate of the bank has ceased to be well capitalized or well managed. The notification must identify the depository institution affiliate and the area(s) of noncompliance.

(3) *Execution of agreement.* Within 45 days after receiving a notice from the Board under paragraph (a)(1) of this section, or such additional period of time as the Board may permit, the:

(i) State member bank must execute an agreement acceptable to the Board to comply with all applicable capital, management, asset and safeguard requirements; and

(ii) Any relevant depository institution affiliate of the state member bank must execute an agreement acceptable to its appropriate Federal banking agency to comply with all applicable capital and management requirements.

(4) *Agreement requirements.* Any agreement required by paragraph (a)(3)(i) of this section must:

(i) Explain the specific actions that the state member bank will take to correct all areas of noncompliance;

(ii) Provide a schedule within which each action will be taken; and

(iii) Provide any other information the Board may require.

(5) *Imposition of limits.* Until the Board determines that the conditions described in the notice under paragraph (a)(1) of this section are corrected:

(i) The Board may impose any limitations on the conduct or activities of the state member bank or any subsidiary of the bank as the Board determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act, including requiring the Board's prior approval for any financial subsidiary of the bank to acquire any company or engage in any additional activity; and

(ii) The appropriate Federal banking agency for any relevant depository institution affiliate may impose any limitations on the conduct or activities of the depository institution or any subsidiary of that institution as the agency determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act.

(6) *Divestiture.* The Board may require a state member bank to divest control of any financial subsidiary if the conditions described in a notice under paragraph (a)(1) of this section are not corrected within 180 days of receipt of the notice or such additional period of time as the Board may permit. Any divestiture must be completed in accordance with any terms and conditions established by the Board.

(7) *Consultation.* The Board will consult with all relevant Federal and state regulatory authorities in taking any action under this paragraph (a).

(b) *Debt rating or alternative requirement.* If a state member bank does not continue to meet any applicable debt rating or alternative requirement of § 208.71(b), the bank may not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank restores its compliance with the requirements of that section. For purposes of this paragraph (b), the term ''equity capital'' includes, in addition to any equity instrument, any debt instrument issued by the financial subsidiary if the debt instrument qualifies as capital of the subsidiary under any Federal or state law, regulation or interpretation applicable to the subsidiary.

§ 208.75 What happens if the state member bank or any of its insured depository institution affiliates receives less than a ''satisfactory'' CRA rating?

(a) *Limits on establishment of financial subsidiaries and expansion of existing financial subsidiaries.* If a state member bank, or any insured depository institution affiliate of the bank, has received less than a ''satisfactory'' rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*):

(1) The state member bank may not, directly or indirectly, acquire control of any financial subsidiary; and

(2) Any financial subsidiary controlled by the state member bank may not commence any additional activity or acquire control, including all or substantially all of the assets, of any company.

(b) *Exception for certain activities.* The prohibition in paragraph (a)(2) of this section does not apply to any activity, or to the acquisition of control of any company that is engaged only in activities, that the state member bank is permitted to conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as the state member bank and each insured depository institution affiliate of the state member bank has achieved at least a ''satisfactory'' rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act.

§ 208.76 What Federal Reserve approvals are necessary for financial subsidiaries?

(a) *Notice requirements.* (1) A state member bank may not acquire control

of, or an interest in, a financial subsidiary unless it files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(2) A state member bank may not engage in any additional activity pursuant to § 208.72(a)(1) or (2) through an existing financial subsidiary unless the state member bank files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(b) *Contents of Notice.* Any notice required by paragraph (a) of this section must:

(1) In the case of a notice filed under paragraph (a)(1) of this section, describe the transaction(s) through which the bank proposes to acquire control of, or an interest in, the financial subsidiary;

(2) Provide the name and head office address of the financial subsidiary;

(3) Provide a description of the current and proposed activities of the financial subsidiary and the specific authority permitting each activity;

(4) Provide the capital ratios as of the close of the previous calendar quarter for all relevant capital measures, as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), for the bank and each of its depository institution affiliates;

(5) Certify that the bank and each of its depository institution affiliates was well capitalized at the close of the previous calendar quarter and is well capitalized as of the date the bank files its notice;

(6) Certify that the bank and each of its depository institution affiliates is well managed as of the date the bank files its notice;

(7) Certify that the bank meets the debt rating or alternative requirement of § 208.71(b), if applicable; and

(8) Certify that the bank and its financial subsidiaries are in compliance with the asset limit set forth in § 208.71(a)(2) both before the proposal and on a pro forma basis.

(c) *Insurance activities.* (1) If a notice filed under paragraph (a) of this section relates to the initial affiliation of the bank with a company engaged in insurance activities, the notice must describe the type of insurance activity that the company is engaged in or plans to conduct and identify each state where the company holds an insurance license and the state insurance regulatory authority that issued the license.

(2) The appropriate Reserve Bank will send a copy of any notice described in paragraph (c)(1) of this section to the appropriate state insurance regulatory authorities and provide such authorities with an opportunity to comment on the proposal.

(d) *Approval procedures.* A notice filed with the appropriate Reserve Bank under paragraph (a) of this section will be deemed approved on the fifteenth day after receipt of a complete notice by the appropriate Reserve Bank, unless prior to that date the Board or the appropriate Reserve Bank notifies the bank that the notice is approved, that the notice will require additional review, or that the bank does not meet the requirements of this subpart. Any notification of early approval of a notice must be in writing.

§ 208.77 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) *Affiliate, Company, Control, and Subsidiary.* The terms ''affiliate'', ''company'', ''control'', and ''subsidiary'' have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(b) *Appropriate Federal Banking Agency, Depository Institution, Insured Bank and Insured Depository Institution.* The terms ''appropriate Federal banking agency'', ''depository institution'', ''insured bank'' and ''insured depository institution'' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Capital-related definitions.*

(1) The terms ''Tier 1 capital'', ''tangible equity'', ''risk-weighted assets'' and ''total assets'' have the meanings given those terms in § 208.41 of this part.

(2) The terms ''Tier 2 capital'' and ''average total assets'' have the meanings given those terms in Appendix A and Appendix B of this part, respectively.

(d) *Eligible Debt.* The term ''eligible debt'' means unsecured debt with an initial maturity of more than 360 days that:

(1) Is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(2) Is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(e) *Financial Subsidiary*—(1) *In general.* The term ''financial subsidiary'' means any company that is controlled by one or more insured depository institutions *other than:*

(i) A subsidiary that engages only in activities that the state member bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state member bank; or

(ii) A subsidiary that the state member bank is specifically authorized by the express terms of a Federal statute (other than section 9 of the Federal Reserve Act (12 U.S.C. 335)), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a, 611–631) or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(2) *Subsidiaries of financial subsidiaries.* A financial subsidiary includes any company that is directly or indirectly controlled by the financial subsidiary.

(f) *Long-term Issuer Credit Rating.* The term ''long-term issuer credit rating'' means a written opinion issued by a nationally recognized statistical rating organization of the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

(g) *Well Capitalized*—(1) *Insured depository institutions.* An insured depository institution is ''well capitalized'' if it has and maintains at least the capital levels required to be well capitalized under the capital adequacy regulations or guidelines adopted by the institution's appropriate Federal banking agency under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(2) *Uninsured depository institutions.* A depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation is ''well capitalized'' if the institution has and maintains at least the capital levels required for an insured depository institution to be well capitalized.

(h) *Well Managed*—(1) *In general.* The term ''well managed'' means:

(i) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) and at least a rating of 2 for management (if such rating is given) in connection with its most recent examination or subsequent review by the institution's appropriate Federal banking agency (or the appropriate state banking agency in an examination described in section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)); or

(ii) In the case of any depository institution that has not been examined by its appropriate Federal banking agency or been subject to an examination by its appropriate state

banking agency that meets the requirements of section 10(d) of the Federal Deposit Insurance Act (18 U.S.C. 1820(d)), the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

(2) *Merged depository institutions*—(i) *Merger involving well managed institutions.* A depository institution that results from the merger of two or more depository institutions that are well managed will be considered to be well managed unless the appropriate Federal banking agency for the resulting depository institution determines otherwise.

(ii) *Merger involving a poorly rated institution.* A depository institution that results from the merger of a well managed depository institution with one or more depository institutions that are not well managed or that have not been examined shall be considered to be well managed if the appropriate Federal banking agency for the resulting depository institution determines that the institution is well managed.

By order of the Board of Governors of the Federal Reserve System, August 13, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–20656 Filed 8–15–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–232–AD; Amendment 39–12386; AD 2001–16–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate SA5765NM or SA5978NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–300 series airplanes modified by supplemental type certificate (STC) SA5765NM or SA5978NM, that requires removal or modification of the in-flight entertainment (IFE) system installed by those STCs. This action is necessary to prevent the inability of the flight crew to remove power from the IFE system when necessary. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective September 20, 2001.

ADDRESSES: Information related to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing 767–300 series airplanes modified by supplemental type certificate (STC) SA5765NM or SA5978NM was published in the **Federal Register** on March 2, 2001 (66 FR 13192). That action proposed to require removal of the in-flight entertainment (IFE) system installed by those STCs.

Comments

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

Allow Modification of Installed IFE Systems

The commenter questions why the FAA is proposing to require removal of IFE systems installed per STC SA5765NM or SA5978NM rather than modification of the installed systems. The commenter states that a modification that transfers power from the main to the utility power bus, or that installs a master power switch for the IFE system on the video control center, along with appropriate changes to flight crew and cabin crew procedures, would adequately address the identified unsafe condition. The commenter also notes that it operates two Boeing Model 767–300 series airplanes affected by the proposed AD and is contracting with the STC holder for modification of the installed IFE system on these airplanes.

We concur with the commenter's request to allow modification of the subject IFE systems in lieu of removal of these systems. We stated in the proposed rule that the STC holder informed us that IFE systems installed by STC SA5765NM or SA5978NM had been removed from all affected airplanes. Based on the commenter's statements, however, we now know that there are at least two Model 767–300 series airplanes in the worldwide fleet with the subject IFE systems still installed.

The FAA concurs with the commenter that it may be possible to modify the subject IFE systems to adequately address the unsafe condition. Therefore, we have revised paragraph (a) of this AD to provide two options for compliance:

1. Removal of the subject IFE system per a method approved by the FAA (as proposed). Or,

2. Modification of the subject IFE system to provide the flight crew or cabin crew with a means of removing electrical power from the IFE system equipment and wiring during a non-normal or emergency situation involving smoke or fire on the flight deck or in the passenger cabin. Depending on the method of modification, it may also be necessary to revise the Airplane Flight Manual and cabin crew procedures manual to provide the airplane crew with information regarding the use of the power switches or controls installed during the modification. If this compliance option is chosen, the modification and any necessary manual revisions must be done per a method approved by the FAA.

Additionally, we have revised the Cost Impact section of this AD based on the information provided by the commenter, and paragraph (b) of this AD to state that installation of an IFE system per STC SA5765NM or SA5978NM after the effective date of this AD is prohibited unless the modification of the IFE system is done per this AD. Lastly, a new Note 2 has been added (and a subsequent note renumbered) to explain that, as part of the modification, it may be necessary to revise crew procedures.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The holder of the STCs previously informed the FAA that the subject IFE systems have been removed from all affected Boeing Model 767–300 series airplanes modified by STC SA5765NM or SA5978NM. However, based on