Proposed Rules

Federal Register
Vol. 63, No. 235
Tuesday, December 8, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 98–62]

RIN 3069–AA77

Collateral Eligible to Secure Federal Home Loan Bank Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing eligible collateral for Federal Home Loan Bank (FHLBank) advances to clarify that certain assets, including the insured or guaranteed portions of federally-insured or guaranteed loans, securities representing an equity interest in eligible collateral, and mortgage assets or government securities held by members' wholly-owned investment subsidiaries, qualify as eligible collateral to secure FHLBank advances. The proposed rule would also amend the Finance Board's regulation on collateral verification to eliminate certain ambiguities therein.

DATES: Comments are due on or before February 8, 1999.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(a) of the Federal Home Loan Bank Act (Bank Act) enumerates four categories of collateral that are eligible to secure FHLBank advances: (1) Current whole first mortgage loans on improved residential property and securities representing a whole interest in such mortgages; (2) securities that are issued, guaranteed, or insured by the United States Government, or any agency thereof; (3) deposits of a FHLBank; and (4) other real-estate related collateral in a total amount not to exceed 30 percent of the borrowing member's capital. *See* 12 U.S.C. 1430(a).

The Finance Board promulgated part 935 of its regulations, 12 CFR part 935, governing FHLBank advances, in 1993. *See* 58 FR 29469 (May 20, 1993). Among other things, the Advances Regulation implements and clarifies the statutory requirements of 12 U.S.C. 1430 relating to the security interests that a FHLBank must obtain and maintain when making advances to member institutions. *See* 12 CFR 935.9–935.12. Among the issues that the Regulation addresses are: the types and amounts of collateral that a FHLBank may or must accept when making advances; the priority of FHLBank claims to such collateral in relation to other creditors; and requirements regarding the valuation and verification of the existence of pledged collateral.

In the five and one-half years since the promulgation of the Advances Regulation, the Finance Board has received numerous requests from both FHLBanks and their members to clarify or interpret these collateral provisions in the context of specific transactions, which the agency has done on a case-by-case basis. In other instances, FHLBanks have requested permission to enter into various collateral arrangements that, while permissible under the terms of the advances provisions of the Bank Act, are not clearly authorized under the Advances Regulation. The Finance Board is now proposing to amend certain of the collateral provisions of its Advances Regulation, and to add other provisions, in order to codify in the Regulation various collateral arrangements that have been the subject of regulatory interpretations and requests for such interpretations from the FHLBanks and their members.

The Finance Board requests comments on all aspects of the proposed rule.

II. Analysis of the Proposed Rule

A. Definitions

The proposed rule would amend § 935.1 of the Advances Regulation, 12 CFR 935.1, which sets forth definitions of terms used in part 935, by adding thereto a definition of the term ''qualifying investment subsidiary.'' This term is used in proposed § 935.9(b) to refer to certain member-owned subsidiaries. Because the definition of ''qualifying investment subsidiary'' is intended primarily to make clear the parameters of the authority granted to the FHLBanks under proposed § 935.9(b), the term is addressed in detail in the discussion of that section, set forth below.

The proposed rule also would make technical amendments to the definition of the term ''mortgage-backed security'' set forth in § 935.1, in order to eliminate redundant language contained in the existing definition and otherwise make it more readable.

B. Mortgage Collateral

Substantively, the proposed rule would make several revisions to § 935.9(a) of the Advances Regulation, which implements and clarifies the statutory requirements set forth in section 10(a) of the Bank Act, governing collateral eligible to secure FHLBank advances to members. *See* 12 U.S.C. 1430(a). Section 935.9(a)(1) of the existing Advances Regulation implements section 10(a)(1) of the Bank Act by authorizing the FHLBanks to accept as collateral for advances current whole first mortgage loans on improved residential property and high-quality privately-issued mortgage-backed securities (MBS). The proposed rule would add a new paragraph (iii) to permit the FHLBanks to accept any security the ownership of which would represent an undivided equity interest in such whole mortgage loans or MBS. Although such equity securities arguably also fall within the definition of MBS set forth in § 935.1, § 935.9(a)(1)(iii) has been included in the proposed rule to make clear that shares of mutual funds and similar investments that are not ordinarily considered to be MBS may constitute eligible collateral when the underlying assets consist only of current whole first mortgage loans on residential property or eligible privately-issued MBS.

C. Government Securities

Section 935.9(a)(2) of the Advances Regulation implements section 10(a)(2) of the Bank Act by authorizing the FHLBanks to accept as collateral for advances to members securities issued, insured, or guaranteed by the United States Government, or any agency thereof. Under the proposed rule, the text of existing § 935.9(a)(2) would be modified slightly to make clear that MBS that are issued or guaranteed by any agency of the United States Government—and not merely those issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae—may be accepted as collateral. This text also would be redesignated as the introductory paragraph and paragraph (A) of proposed § 935.9(a)(2)(i).

Paragraph (B) of proposed § 935.9(a)(2)(i) would contain a new provision clarifying that the FHLBanks may accept as collateral mortgages or other loans, regardless of the delinquency status of the mortgages or other loans, to the extent that repayment of the principal and/or interest on such mortgages or loans is backed by the full faith and credit of the United States. For example, under this provision, FHLBanks would be permitted to accept the insured portions of Federal Housing Administration (FHA) and Veteran's Administration (VA)-insured mortgage loans, or the guaranteed portions of small business loans guaranteed by the Small Business Administration (SBA).

While section 10(a)(2) of the Bank Act mentions MBS as an example of securities that FHLBanks are authorized to accept thereunder, the Act does not limit the FHLBanks to acceptance of any particular types of securities, aside from requiring that they be issued, guaranteed, or insured by the United States Government or any of its agencies. Section 10(a)(1) of the Bank Act (and § 935.9(a)(1) of the Advances Regulation), in authorizing FHLBanks to accept whole mortgage loans as collateral, requires that such mortgages be ''not more than 90 days delinquent.'' However, this requirement addresses a safety and soundness concern that is effectively mooted to the extent that the principal and/or interest payments on a particular loan are backed by the full faith and credit of the United States. As such, the Finance Board has determined that the authorization contained in proposed § 935.9(a)(2)(i)(B) is consistent with the requirements of section 10(a) of the Bank Act.

Paragraph (C) of proposed § 935.9(a)(2)(i) would provide that FHLBanks may also accept as collateral securities that are backed by, or represent equity interests in, pools of loans or mortgages that are insured or guaranteed by the United States Government or its agencies, even if the investment instrument itself is not so insured or guaranteed. In this case, the benefit of the government insurance or guarantee would pass through to the security holders and serve as the functional equivalent of a guaranty of, or insurance on, the security itself.

Proposed § 935.9(a)(2)(ii) parallels paragraph (iii) of proposed § 935.9(a)(1) in that it would permit FHLBanks to accept as collateral shares of mutual funds and other similar investments that represent an undivided equity interest in pools of government securities.

D. Eligible Collateral Held by a Qualifying Investment Subsidiary

The proposed rule would redesignate paragraphs (b) through (e) of existing § 935.9 as paragraphs (c) through (f) and would add a new paragraph (b) to § 935.9. Proposed § 935.9(b) would permit FHLBanks, under certain circumstances, to accept as collateral for advances assets that would otherwise constitute eligible collateral under § § 935.9(a)(1) or (2), but that are held by the member's qualifying investment subsidiary, as opposed to the member itself. The proposed rule would add a definition of the term ''qualifying investment subsidiary'' (QIS) to § 935.1 of the Advances Regulation.

A QIS would include any business entity: 100 percent of the voting stock of which is owned and controlled, directly or indirectly, by a FHLBank member; that is operated for the sole purpose of holding investment or real estate assets on behalf of that member; and that holds only cash equivalents and assets that are eligible to secure advances under §§ 935.9(a)(1) and (2) of the Advances Regulation (*i.e.*, whole residential mortgages, high-quality privately-issued MBS, and government securities). The term is intended to include any entity established by a member, to reduce its tax burden or for other financial management purposes, as a passive repository for assets that the member would otherwise hold on its own balance sheet. Examples of entities that might qualify as a QIS include a Real Estate Investment Trust (REIT) established by a member in conformity with the requirements of the Internal Revenue Code (IRC), *see* 26 U.S.C. 856–68, or a security corporation established under Massachusetts law, *see* Mass. Gen. Laws Ann. ch. 63 section 38B, or other state law.

Under the proposed definition, a QIS may include entities that are wholly-owned indirectly by a member. For example, an entity that is wholly-owned by a holding company that itself is wholly-owned by the member institution may qualify as a QIS. By requiring 100 percent of only the voting stock of a QIS to be controlled by a member, the proposed rule would permit entities having non-voting preferred shares that are owned by individuals or entities other than the member to qualify as a QIS. For example, to qualify as a REIT under the IRC, an entity must be beneficially owned by at least 100 stockholders. *See* 26 U.S.C. 856(a)(5). If this IRC requirement is implemented through distribution by the REIT of a limited number non-voting preferred shares to persons or entities other than the member, that distribution would not invalidate the entity's status as a QIS under the proposed rule, so long as the member owns and controls all of the voting stock of the entity.

While the Bank Act requires that a member assume a primary and unconditional obligation to repay all advances, *see* 12 U.S.C. 1430(d), and that advances be fully secured by eligible collateral, *see id.* 1430(a), the Act does not expressly require that such collateral be pledged by the member itself. Section 10(f) of the Bank Act, which addresses priorities of FHLBank security interests, specifically mentions, and presumes the possible existence of, security interests granted by an ''affiliate'' of a member. *See id.* 1430(f). A wholly-owned subsidiary that would qualify as a QIS under the proposed rule clearly would be an ''affiliate'' of its member/parent, even under the most conservative definition of that term.

Without passing upon the question of whether eligible collateral held by a third party may be used in all cases to secure a FHLBank advance to a member, the Finance Board has concluded that such collateral held by a QIS of a member may be used to secure an advance to that member where the FHLBank's legal rights and privileges with respect to such collateral are functionally equivalent in all material aspects to those that the FHLBank would possess if the member were to pledge the same collateral on its own behalf. This conclusion is reflected in § 935.9(b)(1) of the proposed rule, which would permit FHLBanks to accept pledges of collateral from a member's QIS to secure advances to that member if these criteria are met. The Finance Board anticipates that this will be a determination that will need to be made on a case-by-case basis after careful legal review and analysis by each FHLBank that decides to accept such collateral, taking into consideration the structure

of the transaction and the law of the state that governs the transaction.

In order to provide guidance as to the factors that a FHLBank must consider in determining whether this general requirement has been met, the Finance Board has set forth in proposed § 935.9(b)(2) four ''safe harbor'' requirements which, if each is met by the FHLBank, would ensure that the FHLBank is in compliance with proposed § 935.9(b)(1). A FHLBank would not need to meet these safe harbor requirements to be in compliance with proposed § 935.9(b) if it otherwise demonstrated that its legal rights and privileges with respect to the QIS-held collateral are functionally equivalent in all material aspects to those that the FHLBank would possess if the member were to pledge the same collateral on its own behalf.

To meet the proposed safe harbor requirements, the FHLBank first must obtain from the QIS and maintain, as collateral for repayment of the advance, a legally enforceable security interest in assets held by the QIS that are eligible collateral under §§ 935.9(a)(1) or (2). To determine whether such a pledge is legally enforceable, a FHLBank, among other things, will need to satisfy itself that the QIS has the legal authority to make the pledge and that sufficient consideration has passed between the parties to make the pledge enforceable as a matter of contract law.

Because the Bank Act requires that each advance be fully secured, *see id.* 1430(a), a guaranty by the QIS of the member's obligation, backed by the eligible assets held by the QIS, would not meet the requirements of the Bank Act or the proposed rule, as the collateral would then be securing the QIS's secondary obligation and not the advance itself. However, as provided by proposed § 935.9(b)(2)(i), where the QIS enters into a surety arrangement under which it assumes a primary joint and several co-obligation to repay the advance made to the member, and fully secures this primary surety obligation with eligible collateral, such collateral would be considered as securing the advance itself as required by the statute.

Second, the FHLBank must obtain from the QIS a legally enforceable waiver of defenses, that the QIS might have as a third party pledgor that would not apply to a party pledging collateral in support of its own obligation. For example, under section 3–605 of the Uniform Commercial Code, a surety may be discharged from its obligation in certain cases where the obligor and obligee have modified their agreement without the knowledge or consent of the surety. *See* U.C.C. 3–605 (1995). However, the surety may waive this right of discharge in advance ''by general language indicating that parties waive defenses based on suretyship.'' *See id.* 3–605(i).

The types of defenses that third parties may be permitted to raise would vary depending upon the structure of the transaction in question and the law of the state that governs the transaction. The possibility that the QIS may be able to raise such a defense, even if remote in a practical sense, would render its pledge of collateral materially inferior to a pledge made directly by the member. Again, FHLBank staff would need to review thoroughly each transaction, as well as the applicable provisions of state law, to determine the types of defenses that could be raised by the QIS and whether these defenses could be effectively waived. If such defenses could not be waived, the transaction would fail to meet the safe harbor requirements. However, the FHLBank still might be able to comply with the general requirements of § 935.9(b)(1) by structuring the transaction to ensure that a scenario that might give rise to any such defenses could not occur.

Third, the FHLBank would need to take such precautions as are necessary to ensure that the pledge of collateral by the QIS would be neither voidable under the fraudulent conveyance provisions of applicable state and federal bankruptcy laws, *see* 11 U.S.C. 548, nor subject to the claims of other creditors. The Finance Board anticipates that both components of this requirement can be effectively addressed through contractual provisions. For example, provisions prohibiting the QIS from pledging collateral to any other party, or from incurring any type of debt, might be sufficient to ensure that the collateral could not be subject to the claims of any other creditors. Likewise, provisions that (1) limit the amount of any pledge of collateral to a fixed percentage (less than 100 percent) of the fair market value of the collateral and require substitution of collateral should this fair market value drop below a certain threshold, or (2) permit the FHLBank to force the liquidation of the QIS when certain criteria are met, might be sufficient to ensure that the collateral transaction could not be voidable under any fraudulent conveyance provisions. Again, the FHLBank would need to ensure that sufficient consideration has passed between the parties to support the pledge of collateral by the QIS.

Fourth and last, in order to qualify under the safe harbor provisions of proposed § 935.9(b)(2), a FHLBank would need to obtain from its member and maintain a perfectible security interest in stock or other securities representing the member's controlling equity interest in its QIS. In cases where the QIS is itself owned by a holding company that is wholly-owned by the member, the voting stock of both the QIS and the holding company would need to be pledged in order to meet this safe harbor requirement.

Security interests obtained and maintained by a FHLBank pursuant to proposed § 935.9(b) would be entitled to the benefit of the priority lien granted to FHLBanks under section 10(f) of the Bank Act, which applies to ''any security interest granted to a [FHL]Bank by any member of a [FHL]Bank or any affiliate of any such member.'' *See* 12 U.S.C. 1430(f).

E. Collateral Verification

Finally, the proposed rule would amend § 935.11(b) of the Finance Board's Advances Regulation, which requires that each FHLBank regularly verify the existence of collateral securing its advances. Existing § 935.11(b) requires that each FHLBank establish written collateral verification procedures containing standards that are ''similar to those established by the Auditing Standards Board of the American Institute of Public Accountants'' (AICPA). The Finance Board has found that the ambiguity of this reference renders it effectively unenforceable. The proposed rule, therefore, eliminates the reference to AICPA standards and requires merely that the FHLBanks establish ''written procedures and standards'' for collateral verification. Under this provision, the Finance Board will be able to evaluate each FHLBank's procedures and standards taking into account only the relevant safety and soundness considerations that apply to that FHLBank without reference to the AICPA, or any other external, standards.

III. Regulatory Flexibility Act

The proposed rule applies only to the FHLBanks, which do not come within the meaning of ''small business,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board proposes to amend 12 CFR part 935 as follows:

PART 935—ADVANCES

1. The authority citation for part 935 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

Subpart A—Advances to Members

2. Amend § 935.1 by revising the definition of ''Mortgage-backed security'' and adding the definition of ''Qualifying investment subsidiary'' to read as follows:

§ 935.1 Definitions.

* * * * *

Mortgage-backed security means:

(1) An equity security representing an ownership interest in:

(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) An obligation, bond, or other debt security backed entirely by the assets described in paragraph (1) (i) or (ii) of this definition.

* * * * *

Qualifying Investment Subsidiary means a business entity, including, without limitation, a Real Estate Investment Trust (REIT) or a state security corporation:

(1) 100 percent of the voting stock of which is owned and controlled, directly or indirectly, by a member;

(2) That is operated for the sole purpose of holding investment or real estate assets on behalf of that member; and

(3) That holds only cash equivalents and assets that are eligible to secure advances to members under § 935.9(a)(1) or (a)(2) of this part.

* * * * *

3. Amend § 935.9 as follows:

a. Add to the headings of paragraphs (b), (c) and (e) the word ''advances'' preceding the word ''collateral'';

b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f); and

c. Revise paragraph (a) and add paragraph (b) as follows:

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent;

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities which represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities which represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities which represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine; or

(iii) Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify as eligible collateral under paragraphs (a)(1)(i) or (ii) of this section.

(2) *Agency securities.* (i) Securities issued, insured, or guaranteed by the United States Government, or any agency thereof, including without limitation:

(A) Mortgage-backed securities, as defined in § 935.1 of this part, issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, or any other agency of the United States Government; and

(B) Mortgages or other loans, regardless of delinquency status, to the extent that such mortgage or loan is insured or guaranteed by the United States or any agency thereof, or otherwise is backed by the full faith and credit of the United States; or

(C) Securities backed by, or representing an equity interest in, mortgages or other loans referred to in paragraph (a)(2)(i)(B) of this section; or

(ii) Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify as eligible collateral under paragraph (a)(2)(i) of this section.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(i)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Eligible advances collateral held by investment subsidiaries.* (1) *General rule.* Assets held by a member's Qualifying Investment Subsidiary that are eligible to secure advances under paragraphs (a)(1) or (a)(2) of this section may be used to secure advances to that member if the Bank obtains and maintains a security interest pursuant to which the Bank's legal rights and privileges with respect to such assets are functionally equivalent in all material aspects to those that the Bank would possess if the member were to pledge eligible collateral directly;

(2) *Safe harbor provision.* A Bank's legal rights and privileges with respect to eligible assets held by a Qualifying Investment Subsidiary will be deemed to be functionally equivalent in all material aspects to those that the Bank would possess if the member were to pledge eligible collateral directly if:

(i) The Bank obtains from the Qualifying Investment Subsidiary, and maintains, a perfectible and legally enforceable security interest in collateral eligible to secure advances under paragraphs (a)(1) or (a)(2) of this section either:

(A) To secure the member's obligation to repay advances; or

(B) To secure a surety agreement under which the Qualifying Investment Subsidiary has assumed, along with the member, a primary obligation to repay advances made to the member;

(ii) The Bank obtains from the Qualifying Investment Subsidiary a legally enforceable waiver of any defenses that the Subsidiary may have as a pledgor of collateral on behalf of a third party, or as a surety, as appropriate;

(iii) The Bank takes such precautions as are necessary to ensure that the pledge of collateral by the Qualifying Investment Subsidiary will be neither voidable under the fraudulent conveyance provisions of applicable federal and state bankruptcy laws, nor subject to the claims of other creditors; and

(iv) The Bank obtains from the member, and maintains, a perfectible security interest in securities representing the member's equity interest in its Qualifying Investment Subsidiary.

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4. Amend § 935.11 by revising paragraph (b) to read as follows:

§ 935.11 Pledged collateral; verification.

* * * * *

(b) *Collateral verification.* Each Bank shall establish written procedures and standards for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures and standards.

Dated: December 2, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–32527 Filed 12–7–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–76–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Jetstream Model 3101 airplanes that have a certain wheel assembly incorporated and all Jetstream Model 3201 airplanes that are equipped with Dunlop AH54450 brake units. The proposed AD would require inspecting the main landing gear brake units for correct setting of the wear indicator pins, and re-setting the pins if incorrect. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent failure of the main landing gear brakes because the wear indicator pins present a false indication of the remaining wear of the brake units, which could result in loss of control of the airplane during takeoff, landing, or taxi operations.

DATES: Comments must be received on or before January 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–76–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Jetstream Model 3101 airplanes that have Jetstream Kit JK12097 or Jetstream Service Bulletin 32–JK12097 incorporated and all Jetstream Model 3201 airplanes that are equipped with Dunlop AH54450 main landing gear brake units. Kit JK12097 and Service Bulletin 32–JK12097 include the procedures necessary to incorporate J3200 series wheels with 12-ply rated tires and brakes for Jetstream Model 3101 airplanes.

The CAA reports an incident of a totally worn brake unit heat pack found during a routine inspection on one of the affected airplanes. The wear indicator pins showed 0.1 inch of wear remaining. Further investigation revealed that these pins were incorrectly set.

This condition, if not corrected in a timely manner, could result in failure of the main landing gear brakes with possible loss of control of the airplane during takeoff, landing, or taxi operations.

Relevant Service Information

British Aerospace has issued Jetstream Alert Service Bulletin 32–A–JA980540, ORIGINAL ISSUE: July 6, 1998, which specifies procedures for inspecting the main landing gear brake units for correct setting of the wear indicator pins, and re-setting the pins if incorrect.

The CAA classified this service bulletin as mandatory and issued British AD 003–07–98, dated July 13, 1998, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness