

the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

An interim final rule concerning this action was published in the **Federal Register** on April 5, 2006 (71 FR 16982). Copies of the rule were mailed by the Board's staff to all Board members and tart cherry handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended June 5, 2006. Two comments were received. One comment was received from a tart cherry grower and the other comment was from the Executive Director of the Board.

The comment from the grower supported USDA's modification to the Board's recommendation concerning the authority of the Secretary to remove or select members of the Board. The Board had recommended that current Board members in a specific district determine who is removed from the Board when production levels decrease. USDA modified the recommendation so it stated that when a district falls below the threshold level, members from the district should make a recommendation to the Board. The Board would then submit its recommendation to the Secretary for approval. The commenter agreed with this modification.

The comment from the Executive Director of the Board concerned two issues contained in the interim final rule: (1) Grower mapping requirements; and (2) reallocating Board representation. With respect to the first issue, the commenter urges USDA to remove the requirement now included in § 930.158(b) that if a grower decides not to participate in the grower diversion program for a year, the grower must inform the Board of his/her non-participation. USDA agrees that this requirement is not necessary for the operation of the grower diversion program. As such, this requirement is being deleted from § 930.158(b).

The second issue the Executive Director addressed concerned the reallocation of Board membership. The commenter asserted that the recommendation of the Board, concerning reallocation, should be adopted without the USDA modification that the Secretary will make the final decision based on a Board recommendation. The Board's recommendation, however, did not take into account the Secretary's sole authority to remove and select persons to serve on the Board. As previously discussed, it would not be appropriate

to give direct responsibility to current Board members in a specific district to determine who is removed from the Board when production levels decrease. Therefore, the commenter's second suggestion is not adopted in this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, with a change, as published in the **Federal Register** (71 FR 16982, April 5, 2006) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

**PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ Accordingly, the interim final rule amending 7 CFR part 930 which was published at 71 FR 16982 on April 5, 2006, is adopted as a final rule with the following change.

**PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ 1. The authority citation for part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 930.158, the introductory text of paragraph (b) is revised to read as follows:

**§ 930.158 Grower diversion and grower diversion certificates.**

\* \* \* \* \*

(b) *Application and mapping for diversion.* Any grower desiring to divert cherries using methods other than in-orchard tank shall submit a map of the orchard or orchards to be diverted, along with a completed Grower Diversion Application, to the Board by April 15 of each crop year. The application includes a statement which

must be signed by the grower which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of orchard or orchards and other information which may be necessary to accomplish the desired diversion. On or before July 1, the grower should inform the Board of such grower's intention to divert in-orchard and what type of diversion will be used. The four types of diversion are random row diversion, whole block diversion, partial block diversion and in-orchard tank diversion. A grower who informs the Board about the type of diversion he or she wishes to use by July 1 can elect to use any diversion method or combination of diversion methods. Only random row or in-orchard tank diversion methods may be used if the Board is not so informed by July 1. Trees that are four years or younger do not qualify for diversion. Annual resubmissions of either the map or application will no longer be required. Growers will only submit a new application and map if they are participating in the grower diversion program for the first time. Growers will need only to submit a new orchard map if he/she adds a new block of trees to the orchard or changes the orchard layout differently from the map previously submitted to the Board.

\* \* \* \* \*  
Dated: November 7, 2006.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*  
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**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 328**  
**RIN 3064–AD05**

**Advertisement of Membership**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).  
**ACTION:** Final rule.

**SUMMARY:** The FDIC is promulgating a final rule revising its regulation governing official FDIC signs and advertising of FDIC membership. The final rule replaces the separate signs used by Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF) members with a new sign, or insurance logo, to be used by all insured

depository institutions. In addition, the final rule extends the advertising requirements to savings associations, consolidates the exceptions to those requirements, and restricts the use of the official advertising statement when advertising non-deposit products. The final rule also restructures the text in certain sections in order to make them easier to read. Lastly, the final rule places the current prohibition pertaining to receipt of deposits at the same teller station or window as noninsured institutions in its own section.

**DATES:** The final rule will become effective on November 13, 2007.

**FOR FURTHER INFORMATION CONTACT:** David P. Lafleur, Policy Analyst, (202) 898-6569, Division of Supervision and Consumer Protection (DSC); John M. Jackwood, Acting Chief, Compliance Section, (202) 898-3991, DSC; Kathleen G. Nagle, Supervisory Consumer Affairs Specialist, (202) 898-6541, DSC; or Richard B. Foley, Counsel, (202) 898-3784, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

A notice of proposed rulemaking (NPR) was published in the **Federal Register** at 71 FR 40440 (July 17, 2006). The public comment period ended on September 15, 2006. The FDIC received a total of twelve comments. Nine of the comments were from insured depository institutions and three were from trade associations.

**II. The Final Rule**

**A. Section 328.0—Scope**

(i) *Proposed rule.* Under the proposed rule, the scope provision would be revised by the proposed rule to reflect that there would now be one sign used by all insured depository institutions and the advertising requirements in § 328.3 would be extended to savings associations.

(ii) *Comments.* No comments were received on this aspect of the proposed rule.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

**B. Section 328.1—Official Sign**

(i) *Proposed rule.* Pursuant to section 18(a) of the Federal Deposit Insurance Act (FDI Act), as amended by section 2(c)(2) of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Public Law 109-173, 119 Stat. 3601-19 (FDIRCA Act), the proposed rule would revise § 328.1 to eliminate the separate official bank sign and

official savings association sign, and to display a black and white version of the new official sign that would be used by all insured depository institutions.

Under the proposed rule, the official sign would be 7" by 3" in size, with black lettering and gold background. The design is similar in color scheme and layout to the current bank sign but with the following differences: First, the language above "FDIC" states "Each depositor insured to at least \$100,000," instead of "Each depositor insured to \$100,000." The revised language more accurately reflects the new deposit insurance coverage limits in the FDIRCA Act and the Federal Deposit Insurance Reform Act of 2005, Public Law 109-171, title II, subtitle B, 120 Stat. 9-21. Second, the proposed sign includes the FDIC's internet Web site and leaves out the FDIC seal. Finally, the full faith and credit statement required by the FDIRCA Act is in italics on the left side of the proposed sign and is bordered by a semi-circle of stars, a design that partially reflects the current savings association sign.

Section 328.1 also describes the "symbol" of the Corporation that insured depository institutions could use at their option as the official advertising statement. Under the proposed rule, the symbol would be that portion of the proposed official sign consisting of "FDIC" and the two lines of smaller type above and below "FDIC."

(ii) *Comments.* Some commenters expressed support for having one official sign for all insured depository institutions, but one of those commenters objected to the language "Each depositor insured to at least \$100,000," arguing that the language may require changing the official sign every five years if the insurance limit changes.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule. The FDIC believes that the proposed language indicating the minimum dollar amount of insurance coverage provides customers with important information, despite the fact that a depositor may in some situations have greater insurance coverage and the minimum dollar amount of insurance coverage may increase in the future. By saying that each depositor is insured to "at least"—rather than "up to"—\$100,000, the new official sign will remain accurate even if there are future increases in insurance coverage.

**C. Section 328.2—Display and Procurement of Official Sign**

(i) *Proposed rule.* The proposed rule would make conforming changes to this

section so that it applies to all insured depository institutions, not just insured banks. The proposed rule also restructures this section to make it easier to read but without making any substantive changes.

Part 328 uses the term "automatic service facilities" in some places, and the term "remote service facilities" in other places, although the two terms have the same meaning within that part. The proposed rule uses the term "remote service facility" in each place and defines that term in § 328.2(a)(1)(ii) to include any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

The current §§ 328.2 and 328.4 are virtually identical, except that one applies to insured banks and the other applies to insured savings associations. The key difference between these provisions is that § 328.4 has a paragraph (e) prohibiting insured savings associations from using the official bank sign. As the new official sign would be applicable to all insured depository institutions, the proposed rule would combine current §§ 328.2 and 328.4 into a new § 328.2.

As in the current § 328.2, the proposed revision would allow an insured depository institution to vary the size, color, or material of the official sign at its expense, and to display such altered signs within the institution at locations other than where insured deposits are received. However, under the proposed rule, only the official sign adhering to the specifications of § 328.1 could have been displayed where insured deposits are received. The proposed rule refers to the FDIC's internet Web site, <http://www.fdic.gov>, for information on obtaining the official sign.

(ii) *Comments.* Some commenters opposed the requirement in the proposed rule that only the official sign—*i.e.*, the black and gold design specified in § 328.1—could be displayed at each station or window where insured deposits are received. Those commenters maintained that the FDIC currently allows institutions to display signs that vary in color or material at stations or windows where insured deposits are received.

Some commenters noted that section 18(a)(1)(A) of the FDI Act, 12 U.S.C. 1828(a)(1)(A), requires an insured depository institution to display a sign "at each place of business maintained by that institution," not at each station or window where insured deposits are received. Therefore, according to those commenters, the FDIC could simply

require that the official sign be displayed at each customer entrance to an institution's office.

Some commenters stated that they assumed the FDIC would provide insured depository institutions, without charge, as many official signs as they need to comply with the final rule. However, one of those commenters suggested that current signage could be "grandfathered," since providing the new signs would impose a cost on taxpayers for what could be considered a non-substantive change.

(iii) *Final rule.* The final rule retains the longstanding requirement that the official sign be displayed at each station or window where insured deposits are received. Requiring that signs be displayed at each station or window where insured deposits are received, rather than at each customer entrance to an institution's office, is consistent with section 18(a)(1)(A) of the FDI Act. Moreover, because depository institutions offer uninsured non-deposit products in other parts of their premises, the requirement better informs customers about where FDIC-insured deposits are received.<sup>1</sup>

The final rule permits an institution to display signs varying in size, color, or material from the specifications for the official sign in § 328.1 at stations or windows where insured deposits are received. However, in locations where display of the official sign is required under § 328.2(a), the final rule prohibits variations in size that are smaller than the official sign. In the required locations, signs must also use the same color for the text and symbols. These requirements are intended to ensure that customers are able to recognize the sign. A new sub-paragraph (2) of § 328.2(a) implements these changes, and § 328.2(a)(2) of the proposed rule has been redesignated as § 328.2(a)(3). Finally, § 328.2(a)(1)(i) of the proposed rule has been revised to provide that, in addition to those locations where the official sign must be displayed under § 328.2(a), an institution may display the official sign in other locations at the institution.

Like the proposed rule, the final rule will allow insured depository institutions to obtain from the FDIC, at no charge, the official signs they need to comply with part 328. The final rule

<sup>1</sup> Insured depository institutions are required to disclose that certain non-deposit products are not FDIC-insured, and such products generally must be sold at physical locations distinct from the area where retail deposits are taken. See 12 CFR part 343 (Consumer Protection in Sales of Insurance—rules applicable to FDIC-supervised institutions) and the *Interagency Policy Statement on Retail Sales of Nondeposit Investment Products*, issued on February 15, 1994 (NDIP Policy Statement).

does not adopt the suggestion by one commenter that current signage could be "grandfathered," since that would be inconsistent with section 18(a) of the FDI Act.

#### *D. Section 328.3—Official Advertising Statement Requirements*

##### (1) Proposal To Extend Official Advertising Statement Requirement to Savings Associations

(i) *Proposed rule.* Section 328.3 requires insured banks to include the official advertising statement in all their advertisements (with certain exceptions). The basic form of the statement is "Member of the Federal Deposit Insurance Corporation," which may be shortened to "Member FDIC." There is no equivalent requirement for insured savings associations. The proposed rule would revise § 328.3 to provide for consistent treatment of banks and savings associations by requiring all insured depository institutions to include the official advertising statement in their advertisements.

(ii) *Comments.* One commenter voiced support for this aspect of the proposed rule. No commenters objected to it.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

##### (2) Proposals To Consolidate Exceptions to the Required Use of the Official Advertising Statement

(i) *Proposed rule.* There are currently twenty exceptions to the required use of the official advertising statement. The proposed rule would have simplified the advertising requirements by reducing the number of exceptions to five. The proposed rule would have done this by limiting the applicability of § 328.3 to advertisements that specifically promote deposit products or generally promote banking services offered by an insured depository institution. The latter would have included advertisements that contain an institution's name and a statement about the availability of general banking services. The term "advertisement" would have been defined as a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business. By limiting the applicability of § 328.3 in this way, the NPR asserted that most of the current exceptions to the advertising requirements would become unnecessary. The exemptions eliminated from the proposed rule would have been for: Statements and reports of condition; bank supplies; listings in directories; and

advertisements relating to loan services, safekeeping box services, trust services, real estate services, armored car services, service or analysis charges, securities services, travel department business, and savings bank life insurance.

(ii) *Comments.* Some commenters found the phrase "generally promote banking services" ambiguous enough to be interpreted to include advertisements that fall within the current exceptions—e.g., the exceptions for bank supplies, listings in directories, and advertisements for loan and safekeeping box services. Those commenters maintained that the advertising requirements should only apply to advertisements promoting deposit products. One commenter suggested clarifying the final rule by explaining that promoting only non-deposit banking products is not "generally promoting banking services." Another commenter suggested substituting the phrase "promote non-specific banking services" for "generally promoting banking services." Some commenters advocated retaining the current list of exceptions to the advertising requirements. One commenter thought that the paragraph heading for 328.3(c)—"Use of official advertising statement in all advertisements"—should be revised by deleting the word "all," since there will no longer be a laundry list of exceptions.

(iii) *Final rule.* In order to avoid ambiguity as to the scope of the advertising requirements, the final rule substitutes the phrase, "promote non-specific banking products and services," for the phrase, "generally promote banking services." In addition, the final rule explains that an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution—e.g., "Anytown Bank, offering a full range of banking services." Lastly, the final rule explicitly references the exceptions listed at § 328.3(c)(1), (2), (4), (5) and (6) of the current rule. The word "all" has been deleted from the heading for § 328.3(c), as suggested by one commenter. Taken together, these revisions clarify when the advertising requirements apply and when they do not apply. The final rule is not intended to expand the applicability of the advertising requirements.

##### (3) Other Proposed Revisions

(i) *Proposed rule.* The proposed rule also would make certain clarifying, non-substantive, and conforming editorial

changes in § 328.3. In addition, three provisions in the current rule have not been included in the proposed rule because they address narrow situations that rarely occur. The first provision, § 328.3(a)(2), allows the Board to grant temporary exemptions from the advertising requirements for good cause. The second provision, § 328.3(a)(3), concerns advertising copy not including the official advertising statement that is on hand on the date the advertising requirements become operative. The third provision, § 328.3(d), addresses how to handle outstanding billboard advertisements that require use of the official advertising statement.

(ii) *Comments.* One commenter voiced no objection to this aspect of the proposed rule.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

#### *E. Section 328.3(e)—Restrictions on Using the Official Advertising Statement When Advertising Non-Deposit Products*

(i) *Proposed rule.* The NPR solicited comment on whether the final rule should include a provision that would: (1) Prohibit use of the official advertising statement in advertisements relating solely to non-deposit products (NDPs) or hybrid products containing NDP and deposit features (e.g., sweep accounts); and (2) require that the official advertising statement be clearly segregated from information about NDPs in advertisements containing information about both NDPs and insured deposit products.

(ii) *Comments.* Several commenters supported having a provision in the final rule setting forth the requirements for using, not using, and/or segregating the official advertising statement in advertisements for NDPs only, advertisements for hybrid products, and advertisements for both NDPs and insured deposit products. Some commenters advocated clarification of the advertising requirements in the final rule. One commenter recommended that the final rule clarify the advertising requirements by providing that the official advertising statement is not mandatory in advertisements for NDPs only or in advertisements for hybrid products. One commenter thought the proposal is consistent with the NDIP Policy Statement except with regard to hybrid products. That commenter opposed the prohibition against displaying the official advertising statement in advertisements for hybrid products only. Another commenter asserted that the proposed provision is unnecessary, but argued that if the FDIC acted in this area, it should do so through a separate rulemaking.

(iii) *Final rule.* The final rule includes a new provision, in § 328.3(e), restricting use of the official advertising statement when advertising NDPs, as described above and in the NPR. The final rule defines the term “non-deposit product” to include, without limitation, insurance products, annuities, mutual funds, and securities. The products specifically included in the definition of non-deposit product are products that, in the FDIC’s experience, have been mistakenly viewed by customers as being FDIC-insured. Credit products are excluded from this definition. The term “hybrid product” is defined as a product or service that has both deposit and non-deposit product features—e.g., a sweep account.

Under § 328.3(e), insured depository institutions will be prohibited from using the official advertising statement in advertisements containing information only about NDPs or hybrid products. In mixed advertisements, containing information about both NDPs or hybrid products and insured deposit products, the official advertising statement will have to be clearly segregated from information about the NDPs or hybrid products in order to make it clear that the statement refers only to the insured deposit products. Since the new provision is consistent with the proposal set forth in the NPR, the FDIC does not believe that a separate rulemaking is necessary for this provision. Section 328.3(e) of the proposed rule has been redesignated as § 328.3(f).

#### *F. Section 328.4—Prohibition Against Receiving Deposits at Same Teller Station or Window as Noninsured Institution*

(i) *Proposed rule.* Section 328.2 currently has a provision that prohibits banks from receiving deposits at the same teller station or window where a noninsured institution receives deposits, except for a remote service facility. Since this provision does not relate directly to the display and procurement of the official sign and is significant enough that it should be set apart in a separate section, the proposed rule would move the provision to § 328.4.

(ii) *Comments.* One commenter voiced no objection to this aspect of the proposed rule.

(iii) *Final rule.* No changes were made to this aspect of the proposed rule.

#### *G. Effective Date*

(i) *Proposed rule.* The NPR also solicited comment on whether the proposed effective date of six months after publication of the final rule in the

**Federal Register** would give insured depository institutions sufficient time to adjust to the new requirements in the proposed revision of part 328.

(ii) *Comments.* Several commenters advocated a one-year transition period. Some commenters believed that six months would not be enough time for institutions to use their existing inventory of promotional materials containing the current official signs and to change such materials to comply with the requirements for the new sign. One commenter maintained that six months might be enough time for display of the official sign at teller windows, but at least one year should be allowed with respect to paper supplies. One commenter thought January 17, 2007, would be appropriate for site specific advertising, such as signs on teller windows or bank doors, and for modifying an institution’s internet pages, but felt that for changing paper materials the effective date should be extended to January 1, 2008.

One commenter was concerned that the effective date provision in the preamble to the NPR would not allow institutions to implement measures to comply with requirements of the final rule until the very end of the transition period, because doing so earlier would violate the current requirements in Part 328. That commenter also believed that institutions should be allowed to use existing stocks of printed materials until they are exhausted.

(iii) *Final rule.* The final rule extends the effective date until one year after the date when it is published in **Federal Register**. Such a transition period should give institutions sufficient time to use existing printed materials before the new requirements become mandatory. During the transition period, between publication of the final rule in the **Federal Register** and the effective date, insured depository institutions will not be deemed in violation of the current requirements in Part 328 if they implement measures to comply with requirements of the final rule. Indeed, the very purpose of the transition period is to give institutions time to implement such measures.

### **III. Paperwork Reduction Act**

The final rule does not contain any “collections of information” within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502(3)).

### **IV. Regulatory Flexibility Act**

Display of the official sign is required by section 18(a) of FDI Act, as amended by section 2(c)(2) of the FDIRCA Act. There would not be any significant

compliance costs with displaying the official sign, because it would be provided by the FDIC free of charge. Insured banks have complied with similar advertising requirements for over seventy years without significant expense. Although savings associations have not been subject to such advertising requirements, many have used the official advertising statement voluntarily. Moreover, mandatory compliance with the advertising requirements by savings association would not entail significant expense. Accordingly, the Board hereby certifies that the final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601-612).

**V. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency

Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

**VI. Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget has determined that the final rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

**List of Subjects in 12 CFR Part 328**

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends title 12, chapter III of the Code of Federal Regulations by revising part 328 to read as follows:

**PART 328—ADVERTISEMENT OF MEMBERSHIP**

Sec.  
328.0 Scope.

- 328.1 Official sign.
- 328.2 Display and procurement of official sign.
- 328.3 Official advertising statement requirements.
- 328.4 Prohibition against receiving deposits at same teller station or window as noninsured institution.

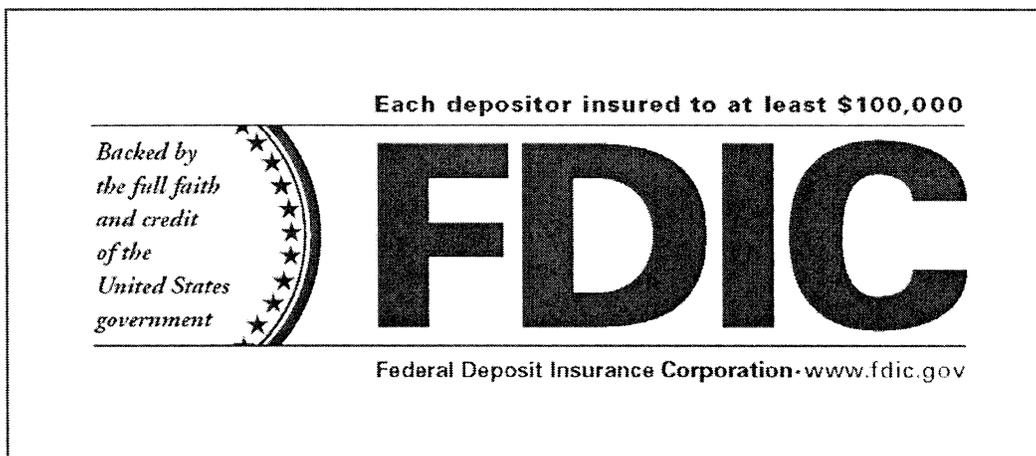
**Authority:** 12 U.S.C. 1818(a), 1819 (Tenth), 1828(a).

**§ 328.0 Scope.**

Part 328 describes the official sign of the FDIC and prescribes its use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of part 328, the term “insured depository institution” includes insured branches of a foreign depository institution. Part 328 does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

**§ 328.1 Official sign.**

(a) The official sign referred to in this part shall be 7” by 3” in size, with black lettering and gold background, and of the following design:



(b) The “symbol” of the Corporation, as used in this part, shall be that portion of the official sign consisting of “FDIC” and the two lines of smaller type above and below “FDIC.”

**§ 328.2 Display and procurement of official sign.**

(a) *Display of official sign.* Each insured depository institution shall continuously display the official sign at each station or window where insured deposits are usually and normally received in the depository institution’s principal place of business and in all its branches.

(1) *Other locations—*

(i) *Within the institution.* In addition to locations where display of the official sign is required under this § 328.2(a), an insured depository institution may display the official sign in other locations at the institution.

(ii) *Other facilities.* An insured depository institution may display the official sign on or at Remote Service Facilities. If an insured depository institution displays the official sign at a Remote Service Facility, and if there are any noninsured institutions that share in the Remote Service Facility, any

insured depository institution that displays the official sign must clearly show that the sign refers only to a designated insured depository institution(s). As used in this part, the term “Remote Service Facility” includes any automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received.

(2) *Varied signs.* Instead of displaying the official sign, an insured depository institution may display signs that vary from the official sign in size, color, or material at any location where display

of the official sign is required or permitted under this § 328.2(a). However, any such varied sign that is displayed in locations where display of the official sign is required under this § 328.2(a) must not be smaller in size than the official sign and must have the same color for the text and symbols.

(3) *Newly insured institutions.* A depository institution shall display the official sign no later than its twenty-first day of operation as an insured depository institution, unless the institution promptly requested the official sign from the Corporation, but did not receive it before that date.

(b) *Procuring official sign.* An insured depository institution may procure the official sign from the Corporation for official use at no charge. Information on obtaining the official sign is posted on the FDIC's internet Web site, <http://www.fdic.gov>. Alternatively, insured depository institutions may, at their expense, procure from commercial suppliers signs that vary from the official sign in size, color, or material. Any insured depository institution which has promptly submitted a written request for an official sign to the Corporation shall not be deemed to have violated this § 328.2 by failing to display the official sign, unless the insured depository institution fails to display the official sign after receipt thereof.

(c) *Required changes in sign.* The Corporation may require any insured depository institution, upon at least thirty (30) days' written notice, to change the wording of the official sign in a manner deemed necessary for the protection of depositors or others.

### § 328.3 Official advertising statement requirements.

(a) *Advertisement defined.* The term "advertisement," as used in this part, shall mean a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

(b) *Official advertising statement.* The official advertising statement shall be in substance as follows: "Member of the Federal Deposit Insurance Corporation."

(1) *Optional short title and symbol.* The short title "Member of FDIC" or "Member FDIC," or a reproduction of the symbol of the Corporation (as described in § 328.1(b)), may be used by insured depository institutions at their option as the official advertising statement.

(2) *Size and print.* The official advertising statement shall be of such size and print to be clearly legible. If the symbol of the Corporation is used as the official advertising statement, and the symbol must be reduced to such

proportions that the two lines of smaller type above and below "FDIC" are indistinct and illegible, those lines of smaller type may be blocked out or dropped.

(c) *Use of official advertising statement in advertisements—(1) General requirement.* Except as provided in § 328.3(d), each insured depository institution shall include the official advertising statement prescribed in § 328.3(b) in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the institution. For purposes of this § 328.3, an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution. An example of such an advertisement would be, "Anytown Bank, offering a full range of banking services."

(2) *Foreign depository institutions.* When a foreign depository institution has both insured and noninsured U.S. branches, the depository institution must also identify which branches are insured and which branches are not insured in all of its advertisements requiring use of the official advertising statement.

(3) *Newly insured institutions.* A depository institution shall include the official advertising statement in its advertisements no later than its twenty-first day of operation as an insured depository institution.

(d) *Types of advertisements which do not require the official advertising statement.* The following types of advertisements do not require use of the official advertising statement:

(1) Statements of condition and reports of condition of an insured depository institution which are required to be published by State or Federal law;

(2) Insured depository institution supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, etc.;

(3) Signs or plates in the insured depository institution offices or attached to the building or buildings in which such offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured depository institution;

(6) Entries in a depository institution directory, provided the name of the insured depository institution is listed on any page in the directory with a symbol or other descriptive matter

indicating it is a member of the Federal Deposit Insurance Corporation;

(7) Joint or group advertisements of depository institution services where the names of insured depository institutions and noninsured institutions are listed and form a part of such advertisements;

(8) Advertisements by radio or television, other than display advertisements, which do not exceed thirty (30) seconds in time;

(9) Advertisements which are of the type or character that make it impractical to include the official advertising statement, including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; and

(10) Advertisements which contain a statement to the effect that the depository institution is a member of the Federal Deposit Insurance Corporation, or that the depository institution is insured by the Federal Deposit Insurance Corporation, or that its deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least \$100,000 for each depositor.

(e) *Restrictions on using the official advertising statement when advertising non-deposit products—(1) Definitions—*

(i) *Non-deposit product.* As used in this part, the term "non-deposit product" shall include, but is not limited to, insurance products, annuities, mutual funds, and securities. For purposes of this definition, a credit product is not a non-deposit product.

(ii) *Hybrid product.* As used in this part, the term "hybrid product" shall mean a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

(2) *Non-deposit product advertisements.* Except as provided in § 328.3(e)(4), an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement relating solely to non-deposit products.

(3) *Hybrid product advertisements.* Except as provided in § 328.3(e)(4), an insured depository institution shall not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of federal deposit insurance, in any advertisement relating solely to hybrid products.

(4) *Mixed advertisements.* In advertisements containing information about both insured deposit products and non-deposit products or hybrid

products, an insured depository institution shall clearly segregate the official advertising statement or any similar statement from that portion of the advertisement that relates to the non-deposit products.

(f) *Official advertising statement in non-English language.* The non-English equivalent of the official advertising statement may be used in any advertisement, provided that the translation has had the prior written approval of the Corporation.

**§ 328.4 Prohibition against receiving deposits at same teller station or window as noninsured institution.**

(a) *Prohibition.* An insured depository institution may not receive deposits at any teller station or window where any noninsured institution receives deposits or similar liabilities.

(b) *Exception.* This § 328.4 does not apply to deposits received at a Remote Service Facility.

By order of the Board of Directors.

Dated at Washington, DC, this 2nd day of November, 2006.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E6-18802 Filed 11-9-06; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2006-25388; Directorate Identifier 2006-NM-086-AD; Amendment 39-14824; AD 2006-23-12]

RIN 2120-AA64

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

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes equipped with certain hydraulic accumulators. This AD requires inspecting the hydraulic accumulators to identify certain serial numbers, and replacing any affected accumulator with a new or serviceable accumulator. Operators may delay doing the replacement by doing repetitive inspections of the affected hydraulic accumulators for signs of failure

(leaking or cracking), and replacing any failed accumulator with a new or serviceable unit. This AD results from a report that one hydraulic accumulator failed in service, which caused the loss of the yellow hydraulic system when the airplane was configured for landing. We are issuing this AD to prevent damage to the pressure skin, failure of certain hydraulic systems, contamination of the cabin with hydraulic mist, increased workload for the flightcrew associated with the loss of one or more hydraulic circuits, and consequent reduced controllability of the airplane.

**DATES:** This AD becomes effective December 18, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 18, 2006.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

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

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Examining the Docket**

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the

**ADDRESSES** section.

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ airplanes equipped with certain hydraulic accumulators. That NPRM was published in the **Federal Register** on July 19, 2006 (71 FR 40940). That NPRM proposed to require inspecting the hydraulic accumulators to identify

certain serial numbers, and replacing any affected accumulator with a new or serviceable accumulator. Operators may delay doing the replacement by doing repetitive inspections of the affected hydraulic accumulators for signs of failure (leaking or cracking), and replacing any failed accumulator with a new or serviceable unit.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

**Request To Change Incorporation of Certain Information**

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that, if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA is concerned that the failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Document Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, "affected individuals" means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and