Proposed Rules

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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 DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AC80

Definition of ''Deposit''; Stored Value Cards

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is publishing for notice and comment a proposed rule that would clarify the meaning of ''deposit'' as that term relates to funds at insured depository institutions underlying stored value cards. This proposed rule would add a new section to part 303 of title 12 of the Code of Federal Regulations and would replace General Counsel's Opinion No. 8, published by the FDIC in 1996. Since the publication of General Counsel's Opinion No. 8, the banking industry has developed new types of stored value card systems. As a result, this new section is necessary to provide guidance to the industry and the public as to when funds underlying stored value cards will satisfy the definition of ''deposit'' at section 3(l) of the Federal Deposit Insurance Act. This new section would promote accuracy and consistency by insured depository institutions in reporting ''deposits.''

DATES: Written comments must be received by the FDIC no later than July 15, 2004.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Executive Secretary (Attention: Comments/Legal ESS), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station located at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Also, comments may be sent by e-mail to *comments@fdic.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, on business days between 9 a.m. and 4:30 p.m. The FDIC may post comments at its Internet site at the following address: *http://www.fdic.gov/regulations/laws/federal/propose.html.*

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

For purposes of the Federal Deposit Insurance Act (''FDI Act''), the term ''deposit'' is defined at section 3(l) (12 U.S.C. 1813(l)). In 1996, the FDIC interpreted this term as it relates to funds at insured depository institutions underlying ''stored value cards.'' The FDIC's interpretation is set forth in General Counsel's Opinion No. 8 (''GC8'') (discussed below in Section III). *See* 61 FR 40490 (August 2, 1996).

GC8 did not address all types of stored value card systems involving insured depository institutions. These systems were new in 1996 and many of the systems currently offered by insured depository institutions were developed after the issuance of the FDIC's opinion. The development of new systems has created a need for additional guidance as to whether the underlying funds qualify as ''deposits.'' Although the proposed rule would provide such additional guidance, it would retain the basic principles set forth in GC8 and extend these principles to new types of stored value card systems.

An example of a system not addressed in GC8 is where a company maintains an account at an insured depository institution for the purpose of making payments on stored value cards issued by that company (and not issued by the insured depository institution). For reasons explained below, the FDIC believes that the funds in such accounts are ''deposits.''

Another system not addressed in GC8 is one in which an insured depository institution—in connection with stored value cards issued by the insured depository institution (and not issued by another company)—maintains a pooled self-described ''reserve account'' (representing the institution's liabilities to multiple cardholders) but also maintains individual subaccounts (with each subaccount representing the institution's liability to a particular cardholder). For reasons discussed below, the FDIC proposes to add a new section to part 303 of title 12 of the Code of Federal Regulations that would classify the funds in such systems as ''deposits.'' The FDIC seeks comments on the proposed rule.

GC8 also did not address the insurability of the funds underlying ''payroll cards.'' As discussed below, the FDIC does not propose to adopt any rule dealing specifically with ''payroll cards.'' Rather, the FDIC proposes to apply the same rules governing the insurability of the funds underlying other types of stored value cards.

As a preliminary matter, the meaning of certain terms must be clarified. In this notice of proposed rulemaking, companies that issue stored value cards—other than insured depository institutions—are referred to as ''sponsoring companies.'' This term is used in the proposed rule. In referring to the ''issuance'' of stored value cards by insured depository institutions or sponsoring companies, the FDIC means the distribution of cards to cardholders (directly or through an agent) and the making of a promise to the cardholder that the card may be used to transfer the underlying funds (*i.e.*, the funds received by the issuer in exchange for the card's issuance) to one or more merchants at the merchants' point of sale terminals. Also, in using the term ''stored value card,'' the FDIC means a device that enables the user to effect such transfers of funds at merchants' point of sale terminals. The definition of ''stored value card'' is discussed in detail in Section VI.[1]

[1] This proposed rulemaking does not apply to ''gift cards'' offered by retailers in ''closed systems.'' Although such cards may be referred to as ''stored value cards,'' a ''gift card'' offered by a retailer (in a ''closed system'') is different than a ''stored value card'' offered by a bank (in an ''open system'') because the former card—unlike the latter card—does not move through a ''clearing'' process. In other words, the ''value'' on the card does not depend on whether a bank holds sufficient funds to back-up the card. Indeed, the retailer who accepts the card does not expect to receive payment through a bank. On the contrary, the retailer has been prepaid through the retailer's sale of the card. Through such sale, the ownership of the cardholder's funds passes from the cardholder to the retailer. Of course, the retailer might then place the collected funds into a deposit account at an FDIC-insured depository institution but any such placement of funds would have no effect on the ''value'' of the card or the cardholder's ability to use the card to collect the promised goods or services

This proposed rulemaking may not resolve all questions concerning the definition of "deposit'' as that term relates to funds underlying stored value cards and other stored value products. Developments in the banking industry may lead to new questions. The process of defining "deposit''—in response to such developments—may be evolutionary. In any event, this rulemaking will resolve certain specific questions that have arisen since the publication of GC8. In the event that questions arise that are not resolved by this rulemaking, the FDIC may need to resolve such questions on a case-by-case basis.

Also, this rulemaking is not intended to address any issue except the meaning of "deposit'' under the FDI Act but the FDIC welcomes comments on any issues that may be related to the meaning of "deposit'' in the context of stored value cards.[2]

The determination of whether certain funds are "deposits'' requires an analysis of the statutory definition of "deposit'' at section 3(l) of the FDI Act. The relevant portions of the statutory definition are quoted below. The recitation below of the relevant statutory language is followed by a detailed summary of the FDIC's interpretation of this language in GC8. This summary is followed by an analysis of the new types of stored value card systems.

II. The Statutory Definition

The definition of "deposit'' at section 3(l) of the FDI Act is a broad one. At paragraph 3(l)(1), the term "deposit'' is defined in part as "the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name. * * *'' 12 U.S.C. 1813(l)(1).

At paragraph 3(l)(3), the term "deposit'' is defined in part as "money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes. * * *'' 12 U.S.C. 1813(l)(3).

In addition, paragraph 3(l)(5) provides that the FDIC may in consultation with other financial regulatory agencies define "deposit'' through regulation. Specifically, paragraph 3(l)(5) provides that the term "deposit'' includes "such other obligations of a bank or savings association as the Board of Directors [of the FDIC], after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage. * * *'' 12 U.S.C. 1813(l)(5). In accordance with paragraph 3(l)(5), the FDIC has invited comments from the other federal banking agencies in connection with this proposed rulemaking.

In GC8, the FDIC relied in large part upon paragraphs 3(l)(1) and 3(l)(3) (quoted above) in determining whether the funds underlying certain types of stored value cards qualified as "deposits.'' A summary of GC8 is set forth below.

III. General Counsel's Opinion No. 8

GC8 is an interpretation of the term "deposit'' as that term relates to funds underlying stored value cards. In GC8, the FDIC identified several types of stored value card systems involving insured depository institutions. The FDIC made no attempt, however, to identify all types of systems. Moreover, the FDIC made no attempt to analyze systems offered by particular insured depository institutions. Rather, the FDIC described a mechanism or framework for determining when the funds underlying stored value cards may or may not qualify as "deposits.'' *See* 61 FR 40490. This framework was based upon information available to the FDIC in 1996. Since that time, the banking industry has developed new types of stored value cards.

In GC8, the FDIC identified four types of stored value card systems: (1) A "Bank Primary-Reserve System''; (2) a "Bank Primary-Customer Account System''; (3) a "Bank Secondary-Advance System''; and (4) a "Bank Secondary-Pre-Acquisition System.'' Each of these systems is summarized below.

In a "Bank Primary-Reserve System,'' the insured depository institution issues stored value cards in exchange for cash from the cardholders. The depository institution does not maintain an individual account for each cardholder; rather, the institution maintains a pooled "reserve account'' for all cardholders. In making payments to merchants or other payees (as the cardholders use their cards to purchase goods or services), the depository institution disburses funds from this "reserve account.'' In GC8, the FDIC determined that such funds held by the insured depository institution do not satisfy the statutory definition of "deposit'' at section 3(l) of the FDI Act. In making this determination, the FDIC specifically addressed the applicability of paragraphs 3(l)(1) and 3(l)(3) (quoted above). First, in finding that the funds do not satisfy paragraph 3(l)(1), the FDIC found that the stored value cards are not structured so that the institution credits a conventional commercial, checking, savings, time or thrift account. Rather, the institution credits the pooled "reserve account.'' *See* 61 FR 40490. The FDIC noted that "the sample agreements which the FDIC staff has reviewed clearly indicate that the parties to a stored value card agreement * * * do not intend that the funds be credited to one of the five enumerated accounts.'' Id. Second, in finding that the funds do not satisfy paragraph 3(l)(3), the FDIC determined that the purpose of the funds is not sufficiently "special or specific'' because the funds might be disbursed to any number of merchants as the cardholders use their cards to engage in miscellaneous and unrelated transactions. *See* 61 FR 40490. The FDIC noted that the holding of funds by a depository institution to meet obligations to numerous transferees does not appear to be as specific a purpose as the examples in the statute and case law. *See* id. The FDIC concluded that the funds in this type of system are not "deposits.'' *See* 61 FR 40490.

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from the retailer. To the extent that the retailer places funds into an account at an FDIC-insured depository institution, the funds would be insurable to the retailer (not the cardholder) in accordance with the ordinary deposit insurance rules at 12 CFR part 330. *See* 12 CFR 330.11(a) (providing that the deposit accounts of a corporation are added together and insured up to $100,000).

[2] The meaning of "deposit'' is relevant under the FDI Act for assessment and insurance purposes. There are a number of other issues, not addressed in this proposed rulemaking, which are of great importance to the FDIC and which the FDIC will continue to monitor as appropriate. Such issues include, but are not limited to, systemic risk, security, electronic fund transfer matters, reserve requirements, counterfeiting, monetary policy and money laundering.

A ''Bank Primary-Customer Account System'' is similar to a ''Bank Primary-Reserve System'' in that the insured depository institution issues stored value cards in exchange for cash from the cardholders. The accounting techniques in the two systems, however, are different. In a ''Bank Primary-Customer Account System,'' the depository institution does not maintain a pooled ''reserve account'' for all cardholders. Rather, the institution maintains an individual account for each cardholder. Citing paragraph 3(l)(1) of the statutory definition (quoted above), the FDIC in GC8 determined that the funds in these individual accounts are ''deposits.'' *See* 61 FR 40490.

In a ''Bank Secondary-Advance System,'' the insured depository institution acts as an intermediary in collecting funds from cardholders in exchange for stored value cards issued by a third party or sponsoring company. The funds are held by the depository institution for a short period of time, then forwarded to the third party. *See* 61 FR 40490. Later, when the cardholder uses the stored value card to make a purchase from a merchant, the third party (and not the depository institution) sends the appropriate amount of money to the merchant. In GC8, the FDIC determined that the funds collected by the depository institution are ''deposits'' belonging to the third party for the brief period before the funds are forwarded to the third party. The funds are not ''deposits'' belonging to the cardholders because the institution's liability for these funds is owed to the third party for whom the institution is temporarily holding the funds. *See* 61 FR 40490.

Similarly, in a ''Bank Secondary-Pre-Acquisition System,'' the insured depository institution provides cardholders with cards issued by a third party or sponsoring company. Prior to selling the cards to the cardholders, however, the depository institution purchases the cards from the third party. *See* 61 FR 40490. In this respect, the system is different than a ''Bank Secondary-Advance System.'' When the depository institution resells the cards to the cardholders, no money is owed to the third party. For this reason, the depository institution is free to retain the funds collected from the cardholders. Later, when a cardholder uses his/her stored value card to make a purchase from a merchant, the third party and not the depository institution sends the appropriate amount of funds to the merchant.

In GC8, the FDIC determined that the funds collected by the depository institution in a ''Bank Secondary-Pre-Acquisition System'' are not ''deposits.'' *See* 61 FR 40490. This conclusion was based upon the fact that the depository institution, in collecting funds from cardholders, does not assume a responsibility to return or disburse the funds to the cardholders or the third party or any other party. Rather, the depository institution merely sells the right to collect funds from the third party (*i.e.*, the issuer of the cards). Thus, the funds underlying the stored value cards are held by the third party, not the depository institution. Under these circumstances, no ''deposits'' exist at the depository institution. *See* 12 U.S.C. 1813(l)(1) (defining ''deposit'' as an ''unpaid balance of money or its equivalent''); 12 U.S.C. 1813(l)(3) (providing that the term ''deposit'' does not include ''funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness'').

IV. New Types of Stored Value Cards

As a result of developments in the banking industry, the classification scheme described in the previous section is at a minimum incomplete, and may be obsolete. That is, this classification scheme does not include all types of stored value card systems involving insured depository institutions. Examples of new types of systems are described below:

Example A: A sponsoring company issues cards to cardholders in exchange for cash. The company then places the cash into an account at an insured depository institution. Through an agreement between the company and the depository institution, the account is designated as a ''reserve account.'' The company uses the funds in the self-described ''reserve account'' to make payments to merchants as the cardholders use their cards. In this manner, the company satisfies its obligations as the issuer of the cards.

Example B: Through kiosks at retail stores, an insured depository institution issues cards to cardholders in exchange for cash. In connection with the issuance of these cards, the depository institution maintains a self-described ''reserve account.'' At the same time, the institution maintains an individual account or subaccount for each cardholder. When a cardholder uses his/her card to purchase goods or services from a merchant, the ''reserve account'' is debited and the individual account or subaccount also is debited. Account statements are made available to the cardholders so that they may check their balances.

Example C: In paying wages to its employees, a company distributes ''payroll cards'' in lieu of checks. Prior to the distribution of the cards, the company places funds at an insured depository institution. Briefly, the funds are held in a self-described ''funding account.'' After the distribution of the cards (on payday), however, the funds are transferred to individual accounts for the various employees. When an employee uses his/her card to purchase goods or services, funds are disbursed from the employee's individual account to the merchant.

None of the cards or systems described above was addressed in GC8. In Example A, the system is similar to a ''Bank Primary-Reserve System'' in that the insured depository institution maintains a ''reserve account.'' The system is different, however, in that the issuer of the cards is a sponsoring company and not the insured depository institution.

In Example B, the system is similar to a ''Bank Primary-Reserve System'' in that the insured depository institution maintains a ''reserve account.'' The system is different, however, in that the depository institution also maintains an account or subaccount for each cardholder. In this respect, the system is similar to a ''Bank Primary-Customer Account System.''

Finally, in Example C, the system is different than the systems described in GC8 because none of the systems in GC8 involved the payment of wages by an employer. The involvement of the employer raises questions as to (1) whether the issuer of the cards is the employer as opposed to the depository institution; and (2) whether the owner of the funds placed at the depository institution is the employer as opposed to the employees.

The examples above may or may not be typical. Possibly, the stored value card systems offered by some banks differ from the systems above in a variety of ways. For instance, a ''payroll card'' system might exist in which the funds are not transferred to individual accounts. Rather, the system might be designed so that the funds are held in a pooled ''reserve account.'' This pooled account might or might not include individual subaccounts. The cardholders might or might not receive periodic statements. The cardholders might or might not possess the ability to reload their cards. The possibilities are numerous.

In any event, GC8 did not address all types of stored value card systems involving insured depository

institutions. Additional guidance is needed as to whether the underlying funds held by depository institutions qualify as "deposits.'' Below, this issue is discussed in connection with the three types of systems described in the examples above.

A. Accounts Funded by Sponsoring Companies

A type of system not addressed in GC8 is a system in which (1) Consumers place funds with a sponsoring company in exchange for stored value cards; and (2) in order to make payments on the stored value cards, the sponsoring company maintains an account at an insured depository institution. In this system, the issuer of the cards is the sponsoring company (as in the "Bank Secondary-Advance System'' and the "Bank Secondary-Pre-Acquisition System'') and not the depository institution.

The question is whether the funds placed at the insured depository institution, in this type of system, are "deposits'' as defined at section 3(1) of the FDI Act. For the reasons explained below, the FDIC believes that the funds are "deposits'' under paragraph 3(1)(1) and paragraph 3(1)(3).

Paragraph 3(1)(1). As previously quoted, paragraph 3(1)(1) defines "deposit'' as "[t]he unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account. * * *'' 12 U.S.C. 1813(1)(1). In the case of an account funded by a sponsoring company for the purpose of making payments on stored value cards, the account is a "commercial account'' under this paragraph because the account is owned for a commercial purpose by a commercial enterprise (*i.e.*, the sponsoring company). The account is not a non-deposit "general liability account'' maintained by the depository institution. *See* 61 FR 40490 (recognizing a distinction between a "commercial, checking, savings, time, or thrift account'' under paragraph 3(1)(1) and a "general liability account'').

Paragraph 3(1)(3). As previously quoted, paragraph 3(1)(3) provides that the term "deposit'' includes "money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to * * * funds deposited by a debtor to meet maturing obligations. * * * '' 12 U.S.C. 1813(1)(3). In GC8, the FDIC found that this paragraph is not satisfied by a pooled "reserve account'' funded by multiple cardholders for the purpose of engaging in miscellaneous unrelated transactions. *See* 61 FR 40490. In the case of an account funded by a sponsoring company, however, paragraph 3(1)(3) is satisfied because the single intended purpose is to hold the funds for the sponsoring company. Under paragraph 3(1)(3), this "special or specific purpose'' means that the liabilities represented by the account at the insured depository institution (whether or not the account is described as a "reserve account'') are "deposits.''

The conclusion above is supported by the case law. The purpose of funding stored value cards is no less "special or specific'' than the purposes recognized by the courts as "special or specific.'' *See* Seattle-First National Bank v. FDIC, 619 F. Supp. 1351 (W.D. Okla. 1985) (funding a participated loan is a "special or specific purpose''); *FDIC* v. *European American Bank & Trust Co.,* 576 F. Supp. 950 (S.D.N.Y. 1983) (funding an interbank clearinghouse payment is a "special or specific purpose''). The conclusion above is supported by GC8 as well. *See* 61 FR 40490 (even in the case of a "reserve account'' funded by cardholders, the funds are "deposits'' if each cardholder's "ultimate payee can only be one predetermined party''). Finally, the conclusion above is supported by one of the examples of a "deposit'' specifically mentioned in paragraph 3(l)(3): "funds deposited by a debtor to meet maturing obligations.'' In the case of an account funded by a sponsoring company, the funds are equivalent to "funds deposited by a debtor to meet maturing obligations'' because the funds are deposited by the sponsoring company to meet that company's obligations to the cardholders as the cardholders use their cards.

In conclusion, the FDIC believes that funds placed at an insured depository institution by a sponsoring company for the purpose of making payments on stored value cards are "deposits.'' This conclusion is incorporated in the proposed rule.

A separate question is whether the "deposits'' in such a system can be insured on a "pass-through'' basis to the cardholders (as opposed to being insured to the sponsoring company). Under the FDIC's insurance regulations, funds deposited by an agent or custodian on behalf of a principal or principals are insured not to the agent but to the principal(s) (in aggregation with any other deposits owned by the principal(s) at the same insured depository institution). *See* 12 CFR 330.7(a). In other words, the insurance coverage "passes through'' the agent to the principal(s). Such "pass-through'' coverage is not available, however, unless certain requirements are satisfied. First, the fiduciary status of the nominal accountholder must be disclosed in the deposit account records of the insured depository institution. *See* 12 CFR 330.5(b)(1). Second, the interests of the principals or actual owners must be ascertainable either from the account records of the insured depository institution or records maintained in good faith by the agent or other party. *See* 12 CFR 330.5(b)(2). Third, the agency or custodial relationship must be genuine. Through this relationship, the deposit actually must belong not to the nominal agent but to the alleged owners. *See* 12 CFR 330.3(h); 12 CFR 330.5(a)(1).

Under the rules summarized above, an account funded by a sponsoring company for the purpose of making payments to cardholders cannot be insured on a "pass-through'' basis to the cardholders unless (1) the account records reflect a custodial relationship between the sponsoring company and the cardholders (*e.g.*, "Sponsoring Company as Custodian for Cardholders''); (2) the depository institution or the sponsoring company or some other party maintains records reflecting the interest of each cardholder; and (3) the deposit is owned in fact by the cardholders.

Satisfaction of the third requirement will depend upon the agreements between the sponsoring company and the cardholders. One factor would be whether the sponsoring company retains the right to recover the funds under certain circumstances (*e.g.*, upon the expiration of a card). Such a right would indicate that the funds in the account actually belong to the sponsoring company, not the cardholders. If the funds belong to the sponsoring company, "pass-through'' coverage will be unavailable.

B. Pooled "Reserve Accounts'' With Individual Subaccounts

As previously discussed, the FDIC in GC8 identified two types of systems in which the stored value cards are issued by an insured depository institution. These systems are the "Bank Primary-Reserve System'' and the "Bank Primary-Customer Account System.'' In the former system, the insured depository institution maintains a pooled "reserve account'' for all cardholders. In the latter system, the

insured depository institution maintains an individual account for each cardholder. Under GC8, only the funds in the latter system are ''deposits.''

The FDIC has learned that some insured depository institutions have combined the two systems in issuing stored value cards. The hybrid system used by these depository institutions is similar to a ''Bank Primary-Reserve System'' in that the institution maintains a pooled self-described ''reserve account'' for all cardholders. On the other hand, the system also is similar to a ''Bank Primary-Customer Account System'' in that the institution maintains a subaccount for each cardholder. In some cases, the depository institution maintains the subaccounts through a processing agent. In this notice of proposed rulemaking, the term ''subaccount'' is used to mean any supplemental records maintained by the insured depository institution (directly or through an agent) that enable the institution to determine the amounts of money owed to particular persons (*i.e.*, that enable the institution to calculate a balance for each of the persons who holds a card).

Through this notice of proposed rulemaking, the FDIC is proposing to treat the funds in a hybrid system (*i.e.*, a system in which a ''reserve account'' is supplemented by subaccounts) as ''deposits.''

An argument could be made that the funds in a hybrid system should not be treated as ''deposits'' because neither the pooled ''reserve account'' nor any of the individual subaccounts in a hybrid system is a conventional ''commercial, checking, savings, time, or thrift account'' as those terms are interpreted in GC8. Therefore, under the reasoning in GC8, it could be argued that the funds are not ''deposits'' under paragraph 3(l)(1) of the statutory definition. *See* 61 FR 40490. Moreover, the funds are used by the bank customers to engage in miscellaneous and unrelated transactions. Under the logic set forth in GC8, it could be argued that the funds are not ''deposits'' under paragraph 3(l)(3). *See* 61 FR 40490.

On the other hand, the FDIC in GC8 applied paragraph 3(l)(3) to pooled ''reserve accounts'' but never applied paragraph 3(l)(3) to individual accounts or subaccounts. In the case of a ''Bank Primary-Customer Account System,'' the FDIC did not apply paragraph 3(l)(3) to the individual accounts because the FDIC assumed that the individual accounts would be conventional ''commercial, checking, savings, time, or thrift accounts'' and therefore ''deposits'' under paragraph 3(l)(1). *See* 61 FR 40490. Even if the individual accounts in a ''Bank Primary-Customer Account System'' or hybrid system are not conventional ''commercial, checking, savings, time, or thrift accounts'' as those terms are interpreted in GC8, an argument can be made that the funds in each of these accounts or subaccounts are ''deposits'' under paragraph 3(l)(3) because they are held by the insured depository institution for the ''special or specific purpose'' of satisfying the institution's obligations to a specific customer, *i.e.*, the cardholder. In fact, the FDIC staff has endorsed this legal analysis in a published advisory opinion involving a stored value product. *See* FDIC Advisory Opinion No. 97–4 (May 12, 1997).

Moreover, in a hybrid system, the fact that the pooled self-described ''reserve account'' may not qualify as a ''commercial, checking, savings, time, or thrift account'' under paragraph 3(l)(1) does not mean that the individual subaccounts do not qualify as ''commercial, checking, savings, time, or thrift accounts'' under paragraph 3(l)(1).

In summary, the funds in a hybrid system qualify as ''deposits'' under paragraph 3(l)(3) and paragraph 3(l)(1). Accordingly, the FDIC is proposing to treat the funds in a hybrid system as ''deposits.'' Comments are requested.

C. ''Payroll Cards''

Another new type of stored value card is the ''payroll card.'' In paying wages, some employers are distributing ''payroll cards'' to their employees in lieu of checks.

Prior to the distribution of the cards, the employer places funds at an insured depository institution. After the distribution of the cards, the employees may withdraw the funds by using their cards. Specifically, the employees may withdraw the funds at automated teller machines or transfer the funds to merchants through the merchants' point of sale terminals.

The FDIC's staff position with respect to ''payroll cards'' is set forth in FDIC Advisory Opinion No. 02–03 (August 16, 2002). In that opinion, the staff addressed the question of whether the funds placed at the insured depository institution by the employer are insurable on a ''pass-through'' to the employees. As explained in that opinion, the issue depends upon the actual ownership of the funds. If the funds belong to the employer (as in the case of a traditional corporate payroll account), the funds are insurable to the employer. In other words, in the event of the failure of the insured depository institution, the funds would be aggregated with the employer's other funds (if any) at the same insured depository institution and insured up to $100,000. *See* 12 CFR 330.11(a) (providing that the deposit accounts of a corporation are added together and insured up to $100,000). On the other hand, the funds would be insurable on a ''pass-through'' basis to the employees (assuming the satisfaction of the FDIC's requirements for ''pass-through'' insurance coverage as previously explained) if ownership of the funds has passed to the employees (as in the case of direct deposits made by an employer on behalf of employees) prior to the failure of the insured depository institution.

The actual ownership of the funds would depend upon the agreement between the parties. One factor would be whether the employer retains a reversionary interest in the funds (*e.g.*, in the event of the expiration of a card). The retention of a reversionary interest would indicate that the funds actually belong to the employer and not the employees.

As explained above, the issue addressed in FDIC Advisory Opinion No. 02–03 was whether deposits underlying certain ''payroll cards'' were eligible for ''pass-through'' insurance coverage to the employees. In contrast, the issue addressed by this proposed rulemaking is whether certain funds qualify as ''deposits.'' The two issues are distinct. The former issue (whether coverage is limited to $100,000 in aggregation with the employer's other deposits) may be moot depending upon the resolution of the latter issue (whether the funds qualify as ''deposits'').

In regard to the former issue as to the insurance coverage of deposits underlying ''payroll cards,'' this proposed rulemaking does not conflict with FDIC Advisory Opinion No. 02–03. In fact, the proposed rule includes no special provisions dealing with ''payroll cards.'' Likewise, the proposed rule includes no special provisions dealing with ''prepaid cards'' or ''debit cards'' or ''check cards.'' Rather, the proposed rule would apply equally to all types of stored value bank cards. Under the proposed rule, the funds underlying all such types of cards—including ''payroll cards''—would be ''deposits'' except under the following circumstances: (1) The issuer of the cards (*i.e.*, the party that promises to make payments on the cards) is the insured depository institution (and not the employer or other sponsoring company); and (2) the depository institution maintains a pooled ''reserve account'' but maintains no subaccounts or other supplemental records reflecting the amount of money owed to particular cardholders.

In a case involving ''payroll cards,'' the FDIC would apply the proposed rule in determining whether the underlying funds qualify as ''deposits.'' If a determination is made that the funds are ''deposits,'' the FDIC then would apply the principles set forth in FDIC Advisory Opinion No. 02–03 in determining whether the deposits are entitled to ''pass-through'' insurance coverage.

Comments are requested as to whether the treatment outlined above is the appropriate treatment of funds underlying ''payroll cards'' and other types of stored value bank cards.

Whether funds underlying stored value bank cards are ''deposits'' has implications in a number of areas, including but not limited to those discussed below.

V. Acquisitions and Mergers

Section 3(d) of the Bank Holding Company Act (''BHC Act'') and section 44(b) of the FDI Act allow the appropriate federal banking agency to approve an interstate bank acquisition or merger only if, among other things, the resulting organization and its affiliates, upon consummation, would not control more than 10 percent of the total amount of ''deposits'' of insured depository institutions in the United States. *See* 12 U.S.C. 1831u(b); 12 U.S.C. 1842(d). For purposes of this restriction, the term ''deposit'' is defined by reference to section 3(l) of the FDI Act. *See* 12 U.S.C. 1842(d)(2)(E). Comments are requested on whether this rulemaking could materially affect the operation of the deposit limit on interstate acquisitions or mergers under section 3(d) of the BHC Act or section 44(b) of the FDI Act.

VI. The Definition of ''Stored Value Card''

In GC8, the FDIC described a ''stored value card'' as follows: ''A stored value card stores information electronically on a magnetic stripe or computer chip and can be used to purchase goods or services. The balance recorded on the card is debited at a merchant's point of sale terminal when the consumer makes a purchase.'' 61 FR 40490.

Some stored value card systems may be designed in such a manner that a balance is not recorded on the card itself through a magnetic stripe or computer chip. Rather, the system might be designed so that the cardholder or merchant must contact the bank to determine the cardholder's balance. In any event, a stored value card is a device that enables the cardholder to transfer the underlying funds (*i.e.*, the funds received by the issuer of the card in exchange for the issuance of the card) to a merchant at the merchant's point of sale terminal.

As explained in GC8, stored value cards may be ''loaded'' in a variety of ways. If the cards are issued by a sponsoring company, a card will be ''loaded'' when the cardholder gives cash to the sponsoring company (directly or through the sponsoring company's receiving agent) in exchange for the card. If the cards are issued by an insured depository institution, a card will be ''loaded'' when (1) The cardholder gives cash to the depository institution in exchange for the card; or (2) the cardholder directs the depository institution to draw funds from a pre-existing account in exchange for the card. Some cards are ''reloadable''; others are not. *See id.*

A stored value card is not cash. Rather, a stored value card is a device that stores information electronically (*e.g.*, on a magnetic stripe or computer chip). A stored value card enables a consumer to transfer the underlying funds (*i.e.*, the funds received by the issuer of the card in exchange for the issuance of the card) to a merchant at the merchant's point of sale terminal. When used by a consumer, a stored value card (or the information on the card) moves through a ''clearing'' process. In GC8, the FDIC explained this point as follows: ''Although it may not be apparent to the consumer, a stored value card transaction must typically move through a complex payment system before a payment is completed. Moreover, what is actually stored on stored value cards is information that, through the use of programmed terminals, advises a prospective payee that rights to a sum of money can be transferred to the payee, who in turn can exercise such right and be paid.'' 61 FR 40490.

Different types of stored value cards function in different ways. For example, a stored value card transaction may be ''on-line'' in that the card may provide direct access to a database for the purpose of obtaining payment authorization. On the other hand, the transaction may be ''off-line'' in that the card may not provide direct access to a database. Rather, information concerning the transaction may be captured at the merchant's point of sale terminal and then transmitted—after some delay—to a data facility. *See* 61 FR 19696 (May 2, 1996). In either case, ''clearing'' will occur when payment is made to the merchant by the insured depository institution.

For purposes of this proposed rulemaking, the distinction between ''on-line'' transactions and ''off-line'' transactions is unimportant. The distinction that matters to the FDIC is whether the stored value card provides access (directly or indirectly) to money received and held by an insured depository institution. Assuming that money is held by an insured bank, the proposed rule would govern the question of whether the money qualifies as ''deposits.'' In the absence of any such money, however, the existence of ''deposits'' is impossible. *See FDIC* v. *Philadelphia Gear Corporation,* 106 S. Ct. 1931 (1986). Thus, the proposed rule would not apply to a ''closed'' stored value card system (such as a ''gift card'' system sponsored by a retailer) in which the merchant receives prepayment from the cardholder and does not receive payment through a bank. *See* footnote 1, supra.[3]

The description of a ''stored value card'' in GC8 has been used in defining ''stored value card'' in the proposed rule. Comments are requested on the proposed definition.

VII. Insurance Coverage

The proposed regulation does not set forth any special rules regarding the insurance coverage of any ''deposits'' underlying stored value cards. Rather, the proposed regulation merely states that the insurance coverage of any such ''deposits'' shall be governed by the FDIC's insurance regulations at 12 CFR part 330.

Under the FDI Act and the insurance regulations, the FDIC must aggregate all ''deposits'' owned by a particular depositor in a particular ownership capacity in applying the $100,000 insurance limit. *See* 12 U.S.C. 1821(a)(1)(C); 12 CFR 330.3(a). In identifying the owners of ''deposits'' for insurance purposes, the FDIC is entitled to rely upon the account records of the failed insured depository institution. *See* 12 U.S.C. 1822(c); 12 CFR 330.5. The application of these basic principles may be difficult in the case of ''deposits'' underlying certain stored value cards. For example, an insured depository institution might offer a type of stored value card that can be transferred from the original purchaser to some other person. Assuming the existence of such transferable cards, the depository institution might keep records as to the identities of the original purchasers but no records as to the ultimate cardholders. In the absence of such

[3] In a ''closed'' system sponsored by a retailer, the possibility may exist that data-processing is provided by an insured depository institution. This circumstances would not affect the conclusion above that the funds are not ''deposits'' provided that the funds are not received or held by the insured depository institution.

records, the FDIC may be unable to identify the ultimate cardholder in the event of the failure of the institution. In light of such possibilities, comments are requested as to whether the FDIC should adopt any special rules governing the insurance coverage of any ''deposits'' underlying stored value cards or other stored value products.

Of course, insurance coverage will not be an issue if the funds do not qualify as ''deposits'' under the proposed rule. As previously explained, the funds will not be ''deposits'' if (1) the issuer of the cards is the insured depository institution (and not a sponsoring company); and (2) the depository institution maintains a pooled ''reserve account'' but maintains no subaccounts or supplemental records reflecting the amount of money owed to particular cardholders (*i.e.*, the institution maintains no supplemental records reflecting the amount of money owed to the original cardholder or any subsequent cardholder in the case of a transferable card).

VIII. Required Disclosures

In a press release dated June 24, 1997 (PR–44–97), subsequent to the issuance of GC8, the FDIC stated that it ''expects insured depository institutions to clearly and conspicuously disclose to customers the insured or non-insured status of the stored-value cards they offer to the public.''

The FDIC continues to be concerned that some purchasers of stored value cards may not understand whether the funds given to an insured depository institution in exchange for such cards are covered by federal deposit insurance. In order to avoid confusion on the part of customers, depository institutions must accurately disclose the insurability of the funds underlying any stored value product in a manner that is clear and conspicuous. For example, in cases in which the funds qualify as ''deposits,'' the cards might include the following statement: ''Member FDIC—Funds accessible by this card are insured by the Federal Deposit Insurance Corporation.'' On the other hand, in cases in which the funds do not qualify as ''deposits,'' the cards might include this statement: ''NOT FDIC INSURED—Funds accessible by this card are NOT insured by the Federal Deposit Insurance Corporation.'' In addition, any advertisements for the stored value product (including written materials provided by the depository institution when a card is delivered to a consumer) must state whether the underlying funds are insured by the FDIC. Also, any advertisements for insured ''deposit'' products must comply with the membership advertisement requirements of 12 CFR 328.3.

In the case of cards issued by sponsoring companies (and not issued by an insured depository institution), the company should not suggest that the customer will be protected by the FDIC. Even if the sponsoring company maintains an account at an FDIC-insured depository institution for the purpose of making payments on its cards, the company should make no representations about FDIC insurance to the customer because the insured depositor will be the company and not the customer (unless the FDIC's requirements for ''pass-through'' insurance coverage have been satisfied as previously explained). False representations about FDIC insurance could be subject to criminal penalties. *See* 18 U.S.C. 709.

Although the proposed regulation does not set forth any new specific disclosure requirements, the FDIC seeks comments on this subject. Specifically, the FDIC requests comments as to whether the proposed rule ought to mandate the disclosures detailed above (or similar disclosures).

Request for Comments

The FDIC is seeking comments on whether the agency should adopt a regulation to clarify the meaning of the term ''deposit'' as that term relates to funds at insured depository institutions underlying stored value cards. Under the proposed regulation, the funds would be ''deposits'' unless (1) the institution itself has issued the cards against a pooled ''reserve account'' representing multiple cardholders; and (2) the institution maintains no supplemental records or subaccounts reflecting the amount owed to each cardholder.

Comments are requested on the proposed rule. Commenters may wish to address each of the following specific questions:

1. Should the FDIC promulgate a new section to part 303 to clarify the meaning of ''deposit'' as that term relates to funds at insured depository institutions underlying stored value cards?

2. If so, should the FDIC adopt the proposed rule? Why?

3. In the alternative, should the FDIC adopt some other rule? Under what circumstances should funds received by an insured depository institution not be insurable as ''deposits''?

4. What should be the treatment of funds underlying ''payroll cards''?

5. Will the proposed rule affect the operation of the deposit limitations in section 3(d) of the Bank Holding Company Act or section 44(b) of the FDI Act?

6. Should the FDIC adopt the proposed definition of ''stored value card''? Can this definition be improved? What are the differences (if any) between ''stored value cards'' and other types of bank cards such as ''prepaid cards,'' ''debit cards,'' ''check cards'' and ''payroll cards''?

7. Should the FDIC adopt specific disclosure requirements? If so, do the disclosures provided as examples in the preamble adequately address consumer confusion about the insurability of funds underlying stored value products? Are there ways to reduce the costs or burdens associated with providing disclosures about the insurability of such funds?

8. Should the FDIC adopt any special rules governing the insurance coverage of any ''deposits'' underlying stored value cards?

9. Are insured depository institutions offering stored value products or systems that are not addressed in this notice of proposed rulemaking? Please explain.

10. In the case of a stored value card system in which the cards are issued by an insured depository institution, and the depository institution maintains a pooled ''reserve account'' reflecting its liabilities for all cards but does not maintain individual accounts or subaccounts reflecting its liabilities to individual cardholders, how does the institution keep track of its liabilities? What technology is used? How does the institution know when and whether to make payments to merchants?

Paperwork Reduction Act

The FDIC believes that insured depository institutions—in issuing stored value cards—must make clear and accurate disclosures as to whether the underlying funds are insured. The subject of disclosures is discussed in Section VIII.

Requiring the disclosure of information to the public may qualify as a ''collection of information'' for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). *See* 5 CFR 1320.3(c). In this case, however, the required disclosure is not a ''collection of information'' because the FDIC (in Section VIII) is providing specific language that insured depository institutions may use in disclosing information to the public. *See* 5 CFR 1320.3(c)(2). Moreover, insured depository institutions must ascertain the information in question—whether funds underlying stored value cards qualify as ''deposits''—in completing

their Call Reports. Thus, nothing in this notice of proposed rulemaking requires an insured depository institution to collect information that the institution otherwise would not collect.

In summary, no collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Request for Comments

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the FDIC must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the required analysis or certification, depository institutions with total assets of $150 million or less are considered to be "small entities.''

For the reasons set forth below, the FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Economic Impact

This proposed rulemaking is not intended to apply to any issue except the meaning of "deposit'' under the FDI Act. Though this rulemaking may affect the manner in which some insured depository institutions report "deposits'' in their Call Reports, the rulemaking generally will not impose new obligations on insured depository institutions because such institutions—irrespective of this rulemaking—must file Call Reports.

Notwithstanding the above, the FDIC may be imposing new obligations on insured depository institutions in directing such institutions—when issuing stored value cards—to make clear and conspicuous disclosures as to whether the underlying funds are insured. The subject of disclosures is discussed in Section VIII. The FDIC believes that clear, conspicuous disclosures are necessary in order to prevent confusion on the part of the public. *See* 12 U.S.C. 1819 (investing the FDIC with general rulemaking authority with respect to deposit insurance). In any event, the FDIC believes that the cost of adding clear and conspicuous disclosures to stored value cards will not result in a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the cost will involve the design of a depository institution's stored value cards, not the production of such cards. Adding a one-sentence disclosure to a card should involve at most only a minimal cost. Indeed, the addition of a clear and conspicuous disclosure about insurance coverage may reduce the institution's costs in answering questions from the public about FDIC insurance coverage.

Although this proposed rulemaking should not create a significant adverse economic impact on an insured depository institution, and may even result in a modest net benefit, the FDIC believes that insured depository institutions should be given an opportunity to provide comments on the subject. Accordingly, comments are requested (*see* below).

The FDIC is not aware of any Federal rules that would duplicate, overlap or conflict with a requirement that stored value cards issued by insured depository institutions must include clear and conspicuous disclosures about insurance coverage.

Request for Comments

The FDIC requests comments as to the cost of adding a clear and conspicuous disclosure about insurance coverage to stored value cards issued by insured depository institutions. Commenters may wish to address the following: (1) The number of small entities that are issuing stored value cards or may issue stored value cards; (2) the manner and impact of adding a clear and conspicuous disclosure about insurance coverage to stored value cards; and (3) alternative methods of preventing confusion on the part of the public.

Impact on Families

The proposed rule would 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).

List of Subjects in 12 CFR Part 303

Administrative practice and procedures, Authority delegations (Government agencies), Banks, Banking, Bank merger, Branching, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 303 of Title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1835a, 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.16 is added to read as follows:

§ 303.16 The definition of "deposit'' as that term relates to funds underlying stored value cards

(a) *Purpose.* The term "deposit'' is defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). The purpose of this section is to clarify the meaning of "deposit'' as that term relates to funds at insured depository institutions underlying stored value cards.

(b) *Funds received from cardholders, or funds received from others on behalf of cardholders or for payment to cardholders, in exchange for stored value cards issued by the insured depository institution.* In the case of funds received by an insured depository institution from cardholders, or funds received from others on behalf of cardholders or for payment to cardholders, in exchange for stored value cards issued by the depository institution, the funds are "deposits'' unless:

(1) The depository institution records its liabilities for such funds in an account representing multiple cardholders; and

(2) The depository institution (directly or through an agent) maintains no supplemental records or subaccounts reflecting the amount owed to each cardholder. Nothing in this subparagraph (b)(2) is intended to suggest that an insured depository institution may ignore any law or regulation that may otherwise require the depository institution to maintain records reflecting the amount owed to each cardholder.

(c) *Funds received from cardholders in exchange for stored value cards issued by a sponsoring company.* In the case of funds received by an insured depository institution from cardholders in exchange for stored value cards issued by a company ("sponsoring company'') and not issued by the insured depository institution (*i.e.*, the insured depository institution serves as an agent of the sponsoring company in collecting funds and distributing cards), the funds shall be classified as follows:

(1) The funds are "deposits'' if the depository institution bears an obligation to forward the funds to the sponsoring company or to hold the funds for the sponsoring company. After the forwarding of such funds to the sponsoring company, or the withdrawal of such funds by the sponsoring company from the depository institution, the funds shall cease to be "deposits'' at the depository institution.

(2) The funds are not "deposits'' if the depository institution bears no obligation to forward or hold the funds (*e.g.*, the depository institution purchases the cards from the sponsoring company and then resells the cards to the cardholders).

(d) *Funds placed by sponsoring companies.* In the case of funds placed at an insured depository institution by a sponsoring company for the purpose of making payments on stored value cards issued by that company, the funds are "deposits.''

(e) *Insurance coverage.* In the case of any funds that qualify as "deposits'' under this section, the insurance coverage of such funds shall be governed by the rules set forth in part 330 of this chapter.

(f) *Definition of* "*stored value card.''* For the purposes of this section, the term "stored value card'' means a device that enables the cardholder to transfer the underlying funds (*i.e.*, the funds received by the issuer of the card in exchange for the issuance or reloading of the card) to a merchant at the merchant's point of sale terminal.

Dated at Washington, DC, this 6th day of April, 2004.

Authorized to be published in the **Federal Register** by Order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–8613 Filed 4–15–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. Models S10, S10–V, and S10–VT Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Stemme GmbH & Co. Models S10, S10–V, and S10–VT sailplanes. This proposed AD would require you to remove the drive shaft assembly and ship it to the service department of Stemme GmbH & Co. The engine is mounted behind the two side-by-side seats. The engine combined with the carbon fiber drive shaft turn the centrifugally extended propeller. After an initial visual inspection, the service department will perform an operational check to determine whether the drive shaft can be further used or must be replaced. Once corrective action is identified, a drive shaft will be shipped to you for installation. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect and correct incorrectly glued drive shafts, which could result in drive shaft failure. During self-takeoff or critical periods of landing, failure of the drive shaft could lead to loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by May 26, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–58–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Stemme GmbH & Co. AG, Flugplatzstraβe F 2, Nr. 7, D–15344 Strausberg, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–58–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Stemme GmbH & Co. Models S10, S10–V, and S10–VT sailplanes. The LBA reports that two drive shafts have failed during normal operation of the sailplane. The flanges of the drive shafts started to rotate within the carbon fibre reinforced plastics-tube (CFRP-tube), while the drive shafts still appeared to be intact when looking at them from the outside. The metal flanges on both ends of the drive shafts might not have been properly glued to the CFRP-tube.

What are the consequences if the condition is not corrected? Incorrectly glued drive shafts could result in drive shaft failure. This failure could lead to loss of control of the sailplane.

Is there service information that applies to this subject? Stemme GmbH & Co. has issued Service Bulletin No. A31–10–058, dated November 8, 2001.

What are the provisions of this service information? The service bulletin includes procedures for the inspection of the drive shaft.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number 2002–113, dated May 2, 2002, to ensure the continued airworthiness of these sailplanes in Germany.