The attached final rule regarding Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers was published in the Federal Register on September 8, 2003.

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.
This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 562

[No. 2003–45]

RIN 1550–AB54

Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting as final an interim final rule that amended its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. This change made OTS’s requirements more consistent with those of the other federal banking agencies and avoided the potential regulatory burden from imposing unnecessary additional restrictions.


FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

Background

Savings associations that are publicly traded, have assets of $500 million or more\(^2\), or have a 3, 4, or 5 CAMEL rating\(^3\) must obtain and file an annual independent audit. Small, non-public, 1- or 2-rated savings associations are not required to obtain an independent audit. OTS regulations had required that public accountants conducting these independent audits (whether required or voluntary) follow the SEC independence rules, including those governing outsourcing of non-audit services. 12 CFR 562.4 (d) and (e) (2002).

On July 30, 2002, Congress passed the Sarbanes-Oxley Act of 2002.\(^4\) Title II of that act sets forth standards for auditor independence. The standards include section 201(g)(5), which prohibits a registered public accountant from performing an audit for a public company contemporaneously with providing that company with delineated non-audit services, including internal audit outsourcing services. This congressional mandate affected a change in the SEC independence rules.

As reflected in the interim final rule, OTS believed that if its rules remained unchanged, a savings association obtaining a voluntary audit may not use its external auditors to perform non-auditing services.\(^5\) Although OTS encourages non-publicly held savings associations that voluntarily file audits with the agency to follow the prohibition from Sarbanes-Oxley, OTS was concerned that an absolute prohibition in this manner may be unnecessarily detrimental to some voluntary filers. Specifically, OTS believed that small institutions with less complex operations and limited staff, may, in some instances, use their independent public accountant to perform both an external audit and some or all of an audit client’s non-audit activities consistent with the OTS’s safety and soundness objectives. Some of these institutions may not have access to a full range of qualified public accountants such that they could engage both an external auditor and a different outside firm to perform non-audit functions. Other institutions may reasonably have determined that the costs of having a full time in-house staff to perform those services exceed the benefits.

Since OTS issued the interim rule, the SEC, based on provisions from the Sarbanes-Oxley Act, added new provisions to its independence rules, including ones governing prohibited non-audit services (such as the prohibition on internal audit outsourcing), pre-approval requirements, auditor partner rotation, auditor reports to the audit committee, and conflict of interest. Without the OTS rule change, voluntary filers would also be subject to these SEC provisions on independence. The OTS is equally concerned that these additional SEC independence rules may unnecessarily burden voluntary filers.

Moreover, none of the other banking agencies require that institutions that file voluntary audits follow the SEC independence rules. OTS believed that requiring savings associations to do so might place these savings associations at an unnecessary competitive disadvantage as these requirements became more restrictive.

For all of these reasons, OTS is finalizing its interim rule that amended its regulation to eliminate the requirement that institutions voluntarily filing audits comply with the SEC independence rules while retaining the requirement that institutions filing voluntary audits comply with the AICPA Professional Conduct Code, including those sections that address independence.\(^6\)

Discussion of Comments

OTS received two public comments, both from trade associations. Both trade associations strongly supported the interim rule, noting that the rule change encourages voluntary filers to continue to file audits with the OTS. Moreover, the commenters heralded the fact that the same rule that applies to smaller banks by other federal banking regulators would now also apply to smaller savings associations.


\(^{2}\) 12 CFR 363.2 (2002). These institutions file annual audits with the Federal Deposit Insurance Corporation and OTS.

\(^{3}\) 12 CFR 562.4(b). These savings associations file annual audits with OTS.


\(^{5}\) These services include bookkeeping, financial information systems design, appraisal, valuation, and actuarial services, and internal audit outsourcing services. For a complete list of prohibited activities, see id. at section 201.

\(^{6}\) OTS understands that passage of the Sarbanes-Oxley Act may place increased responsibilities on small publicly held savings associations, including the prohibitions against outsourcing internal non-audit services to the association’s external auditor. Nothing in this rule affects those requirements.
Findings and Certifications

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this final rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. It removes a requirement that could, if left unchecked, inadvertently lead to potential additional regulatory burden. The final rule, which is written in plain language, reduces regulatory burden.

C. Unfunded Mandates Act of 1995


D. Effective Date

For the reasons stated in the interim rule, published on November 25, 2002 (67 FR 70529), OTS is making this final rule effective immediately.

E. Paperwork Reduction Act

The OTS has determined that this interim final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 12 CFR Part 562

Accounting, Reporting and recordkeeping requirements. Savings associations.

PART 562—REGULATORY REPORTING STANDARDS

Accordingly, the Office of Thrift Supervision adopts as final, without change, the interim rule published on November 25, 2002 at 67 FR 70529 amending part 562 in Title 12, Chapter V, Code of Federal Regulations.


By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–22779 Filed 9–5–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–53–AD; Amendment 39–13294; AD 2003–18–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting the hydraulic brake hose (hose) for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose, if necessary. This amendment also requires inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary.

The directionGenerale De L’Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3. The DGAC advises of receiving a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe.

Eurocopter has issued Alert Telex No. 32A004, for Model EC 365N, N1, N2, and N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. These alert telexes specify checks of the condition of the hose, as well as ensuring that there is no interference between the hose and the emergency flotation gear pipe when the landing gear is retracted. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–475–007(A) for Model EC 155 B helicopters, and AD No. 2002–474–058(A), for Model AS 365 N, N1, N2, and N3 helicopters, both dated September 18, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the