Dated: September 27, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB93

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Deposit Insurance Funds Act of 1996 (Funds Act) requires the FDIC to impose a special assessment on institutions holding deposits subject to assessment by the Savings Association Insurance Fund (SAIF). The Funds Act mandates that the special assessment increase the SAIF's net worth as of October 1, 1996 to 1.25 percent of SAIF-insured deposits.

The Funds Act requires the FDIC to determine the amount of the special assessment based on the most recently calculated SAIF balance (August 31, 1996) and insured deposit data reported in the most recent quarterly reports of condition filed not later than 70 days before enactment (reports as of March 31, 1996, filed April 30, 1996). The special assessment will be collected on November 27, 1996. This assessment, which the FDIC estimates to be 65.7 basis points, is required to be applied against SAIF-assessable deposits which generally were held by institutions as of March 31, 1995.

The final rule provides for certain discounts and exemptions related to the special assessment. In addition, the FDIC is establishing guidelines for identifying institutions classified as ''weak'', and therefore exempt from the special assessment. The final rule also adjusts the base for computing the regular semiannual assessments paid by certain institutions, in accordance with the Funds Act.

EFFECTIVE DATE: October 8, 1996.

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SUPPLEMENTARY INFORMATION:

I. The Final Rule

The final rule imposes a special assessment on all institutions that pay assessments to the SAIF, but allows discounts for certain institutions, and exempts others. The final rule also reduces the adjusted attributable deposit amounts (AADAs) of certain Oakar banks: banks that belong to the Bank Insurance Fund (BIF), but hold deposits that are treated as insured by the SAIF pursuant to the Oakar Amendment, 12 U.S.C. 1815(d)(3).

A. The Special Assessment

The Funds Act, Pub. L. 104–208, 110 Stat. 3009 et seq., requires the FDIC's Board of Directors (Board) to impose a special assessment on all institutions that hold SAIF-assessable deposits—that is, on SAIF-member institutions, and on Oakar banks—in an amount sufficient to increase the Savings Association Insurance Fund reserve ratio (SAIF reserve ratio)[1] to the designated reserve ratio (DRR) of 1.25 percent[2] as of October 1, 1996. Funds Act section 2702(a); *see* 12 U.S.C. 1817(b)(2)(a)(4).

The Funds Act requires the special assessment to be applied against the SAIF-assessable deposits held by institutions as of March 31, 1995. If an institution that held deposits on that date has transferred the deposits to another institution after March 31, 1995, and is no longer an insured institution on November 27, 1996 (the collection date for the special assessment), the transferee institution is deemed to have held the transferred deposits as of March 31, 1995, and must pay the assessment due on them. *See* Funds Act section 2710(8)(B).

The Board is also required to take the following exemptions and adjustments into account in determining the amount of the special assessment: (1) The Funds Act decreases by 20 percent the amount of SAIF-assessable deposits against which the special assessment will be applied for certain institutions; (2) the Funds Act grants exemptions to certain specifically defined institutions; and (3) the Funds Act also provides the Board with the authority to exempt weak institutions from paying the special assessment if the Board determines that such an exemption would reduce risk to the SAIF.

1. 20 Percent Discounts

When calculating the amount of special assessment for certain institutions, those institutions' SAIF-assessable deposits, determined as of March 31, 1995, are decreased by 20 percent.

Section 2702(h) of the Funds Act provides the discount to the following Oakar banks:

—Any Oakar bank that, as of June 30, 1995, had an AADA that was less than half of its total domestic (and therefore assessable) deposits. *Id.* section 2702(h)(1)(A).

—Any Oakar bank that met all the following conditions as of June 30, 1995: it had more than $5 billion in total assessable deposits; it had an AADA that was less than 75 percent of that amount; and it belonged to a bank holding company system that, in the aggregate, had more BIF-insured deposits than SAIF-insured deposits. *Id.* section 2702(h)(1)(B).

Section 2702(j) of the Funds Act provides the same discount to the following ''converted'' institutions:

—A SAIF-member federal savings association that had no more than $4 billion of SAIF-assessable deposits as of March 31, 1995, and that had been, or is a successor to, an institution that used to be a state savings bank insured by the FDIC prior to August 9, 1989, and that converted to a federal savings association pursuant to section 5(*i*) of the Home Owners' Loan Act before January 1, 1985. *Id.* section 2702(j)(2)(A).

—A state-chartered SAIF member that had been a state savings bank prior to October 15, 1982, and that was a federal savings association on August 9, 1989. *Id.* section 2702(j)(2)(B).

—An insured bank that was established *de novo* in order to acquire the deposits of a savings association in default or in danger of default, that did not open for business before acquiring the deposits of such savings association, and that was a SAIF member as of the date of enactment of the Funds Act. *Id.* section 2702(j)(2)(C).

—A ''Sasser bank''—that is, a bank that converted its charter from a savings association to a bank, yet remained a SAIF member in accordance with the Sasser Amendment, 12 U.S.C. 1815(d)(2)(G)—that underwent the conversion before December 19, 1991, and that increased its capital by more than 75 percent in conjunction with the conversion. Funds Act section 2702(j)(2)(D).

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[1] The Savings Association Insurance Fund reserve ratio is the ratio of SAIF's net worth to aggregate SAIF-insured deposits. 12 U.S.C. 1817(l)(7).

[2] The DRR is a target ratio that has a fixed value for each year. The value is either (i) 1.25 percent, or (ii) such higher percentage as the Board determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund. *Id.* 1817(b)(2)(A)(iv). The Board has not increased the DRR for the SAIF.

2. Exemptions

Section 2702(f)(3) of the Funds Act grants exemptions from the special assessment to the following institutions:

—A savings association that was in existence on October 1, 1995, but held no SAIF-assessable deposits prior to January 1, 1993. An institution is ''deemed to have held SAIF-assessable deposits prior to January 1, 1993'' if the institution directly held such deposits prior to that date, or if the institution succeeded to, acquired, purchased, or otherwise held any SAIF-assessable deposits as of the date of enactment of the Funds Act that were SAIF-assessable deposits prior to January 1, 1993. *Id*. section 2702(f)(3)(A)(i); *see id*. section 2702(f)(3)(B).

—A federal savings bank that was established *de novo* in April 1994, in order to acquire the deposits of a savings association that was in default or in danger of default, if the acquiring federal savings bank received minority interim capital assistance from the Resolution Trust Corporation under section 21A(w) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(w), in connection with the acquisition. Funds Act section 2702(f)(3)(A)(ii).

—A SAIF-insured savings association that, prior to January 1, 1987, was chartered as a federal savings bank insured by the Federal Savings and Loan Insurance Corporation for the purpose of acquiring all or substantially all of the assets and assuming all or substantially all of the deposit liabilities of a national bank in a transaction consummated after July 1, 1986, and that, as of the date of the transaction, had assets of less than $150,000,000. *Id*. section 2702(f)(3)(A)(iii).

3. Weak institutions

Section 2702(f)(1) of the Funds Act gives the Board authority to grant an exemption to any institution that the Board determines to be ''weak'', if the Board determines that the exemption would reduce risk to the SAIF. Section 2702(f)(2) of the Funds Act requires the Board to prescribe guidelines that set forth the Board's criteria for determining whether an institution is ''weak''. Accordingly, the FDIC is adopting the following guidelines. The first two guidelines refer to the assessment risk classifications set forth in part 327, which are used to determine the regular semiannual assessments that insured institutions pay under the FDIC's risk-based assessment system. The third guideline refers to the supervisory ratings issued by the federal supervisory agencies.

Guideline #1. If a SAIF-member institution or an Oakar bank has so little capital that it currently meets the standards for capital group 3 (''undercapitalized'') pursuant to section 327.4(a)(1)(iii) of the FDIC's regulations, the institution generally presents a significant risk of loss to the SAIF for the purpose of section 2(f) of the Funds Act. The special assessment would deplete such an institution's resources even further: it would diminish the institution's capital, lower its earnings, and reduce its liquidity. Accordingly, the Board has generally determined to exempt all such institutions from the special assessment, on the ground that doing so would reduce the risk to the SAIF.

Guideline #2. The special assessment could itself cause some institutions to meet the standards of capital group 3, and thereby present a significant risk of loss to the SAIF for the purpose of section 2(f) of the Funds Act. The Board has generally determined to exempt these institutions as well, on the same ground.

(3) *Guideline #3: Institutions rated 4 or 5.* If an institution's composite rating by its primary supervisor is 4 or 5, the institution may request the FDIC to consider whether it would be appropriate to exempt the institution from the special assessment. Such an institution is regarded as ''weak'' if the institution would, after having paid the assessment, present a significant risk of loss to the SAIF for the purpose of section 2(f) of the Funds Act. The Board has determined to exempt such institutions for the reason given with respect to Guidelines #1 and #2.

The Board is delegating authority to administer these guidelines to the Director of the FDIC's Division of Supervision (DOS Director). The DOS Director will examine and evaluate the circumstances of each institution that is initially regarded as ''weak'', taking into account all relevant information currently available to the FDIC. The DOS Director will begin by looking to the institution's current assessment risk classification: that is, its risk classification for the second semiannual period of 1996 (which has determined its assessment rate for the regular semiannual assessment for that period). The DOS Director will use later financial information, where available, for the limited purpose of ascertaining whether an institution meets the criteria set forth in the guidelines.[3]

This later information will have no bearing on an institution's current assessment risk classification, or on the regular semiannual assessment it has already paid for the second semiannual period of 1996. The information will only pertain to the question whether an institution is obliged to pay—or is exempt from paying—the special assessment, without regard for the institution's current classification.

The Board believes that it is possible to adopt this approach because, as a practical matter, only a few institutions are likely to present issues that require the use of such data. The Board is pledging that the FDIC will work closely and intensively with each affected institution to determine the institution's classification for purposes of the special assessment.

The Board recognizes that in a particular case an institution may meet the standards for classification in capital group 3 as a formal matter, but may nevertheless be capable of paying the special assessment. If such an institution prefers to pay, and if the DOS Director considers that doing so will not materially increase the risk to the SAIF, the institution will be permitted to make the payment.

The Funds Act specifies that the Board must exempt weak institutions ''by order''. *Id*. section 2702(f)(1). The Board regards the action of issuing exemption orders as a ministerial function, and is delegating authority to take such action to the DOS Director under these guidelines.

Section 2702(f)(2) of the Funds Act requires the FDIC to publish the guidelines in the Federal Register. The FDIC is fulfilling this requirement by publishing the guidelines in connection with this rulemaking proceeding. The FDIC is presenting the guidelines as an appendix to subpart C of part 327 of its assessment regulation, as added by this final rule.

4. Payments by Exempt Institutions

Certain exempt institutions—''weak'' institutions, and those listed in section 2702(f)(3) of the Funds Act (see I.A.2 and 3, *supra*)—must continue to pay regular semiannual assessments to the SAIF according to the rate-schedule that was in effect for SAIF assessments on June 30, 1995.[4] *Id*. section 2702(f)(4)(A). Any such institution must do so through the end of 1999, or until it makes a pro-

[3] The FIDC has a formal procedure pursuant to which an institution may request a review of its current assessment risk classification. See 12 CFR 327.4(d). An institution must invoke the procedure within 30 days after receiving the invoice for the first quarterly payment for the current semiannual period, however. No institution in capital group 3 has done so, however, and the deadline has passed. As a result, the procedure is not available in connection with the special assessment.

[4] Section 2703 of the Funds Act provides that, for semiannual periods beginning after December 31, 1996, amounts authorized to be assessed by the SAIF will not be reduced by amounts assessed by the FICO. Accordingly, the SAIF assessment for the first semiannual period of 1997 will be separate from, and in addition to, the assessment imposed by the FICO. The alternative reading would have the anomalous result that exempt institutions in the highest risk category would pay lower overall semiannual assessments than comparable non-exempt institutions.

rata payment of the special assessment. The pro-rata payment must be equal to the following product: 16.7 percent of the amount the institution would have owed for the special assessment, multiplied by the number of full semiannual periods remaining between the date of the payment and December 31, 1999. *Id*. section 2702(f)(4)(B).

An exempt institution must pay the regular assessment (at the June 30, 1995, rates) for the first semiannual period of 1997. An exempt institution may make a pro-rata payment in any calendar year from 1997 through 1999, and thereby become subject to the rate-schedule applicable to non-exempt institutions. The Funds Act specifies that any such payment is to be made ''upon such terms as the FDIC may announce''. *Id*. section 2702(f)(4)(B). The FDIC expects to specify appropriate terms in the invoice for the special assessment.

5. Computing the Assessment Rate

The Funds Act requires the FDIC to impose the special assessment in accordance with the FDIC's regulations governing assessments. The FDIC will accordingly determine the aggregate amount of the special assessment, and will compute the particular amount that each institution must pay, just as if the assessment were a regular semiannual assessment (except insofar as the Funds Act specifically prescribes another methodology).

Amount needed. For the purpose of computing the special assessment, the FDIC is required to use the SAIF's most recent monthly balance as the numerator for the reserve ratio. *Id*. section 2702(b)(1). On August 31, 1996 (the date for the most recent monthly balance) the SAIF had a balance of $4.1 billion.

The Funds Act requires the FDIC to use the amount of SAIF-insured deposits as reported in the most recent reports of condition filed not later than 70 days before the date of enactment of the Funds Act as the denominator for calculating the reserve ratio. *Id*. section 2702(b)(2). The relevant filing date is April 30, 1996, which is the filing date for the reports of condition for the first calendar quarter of 1996. After adjusting for the 20 percent decrease in the SAIF-assessable deposits of certain Oakar banks, which the FDIC estimates to be $28.2 billion, the amount of SAIF-insured deposits as of March 31, 1996 was $688.1 billion. *Id*. section 2702(h)(1).[5]

The resulting reserve ratio is .60 percent. In order to raise the ratio to 1.25 percent, the special assessment must collect an additional $4.5 billion.

Assessable base. The FDIC must raise this amount by assessing the SAIF-assessable deposits that institutions held (or, in the case of certain transferees, are deemed to have held) as of March 31, 1995 ($726.2 billion). *Id*. section 2702(c). After adjusting for the estimated $36.8 billion decrease in the SAIF-assessable deposits of institutions receiving the 20 percent discount,[6] and the $4.0 billion in SAIF-assessable deposits of exempted institutions,[7] the amount of SAIF-assessable deposits as of March 31, 1995, subject to the special assessment is estimated to be $685.4 billion.

Resulting rate. The special assessment rate is determined by dividing the amount needed ($4.5 billion) by the adjusted SAIF- assessable deposits as of March 31, 1995. The resulting rate is 65.7 basis points (0.657 percent).

The FDIC recognizes that—in principle—there could be revisions in the deposits of individual institutions, and re-evaluations of individual institutions' eligibility for exemption from the special assessment, and that such revisions or re-evaluations could cause adjustments to be made in the data used to compute the aggregate amount of the special assessment. The FDIC does not anticipate that any such adjustments will be so large as to affect materially the aggregate amount needed or the resulting rate, however. If an adjustment is needed, the FDIC will announce the adjustment and the resulting rate on November 13, 1996, when the FDIC mails out the invoices for the special assessment.

6. Collection Procedures

The FDIC expects to send, immediately after adoption of this final rule, a letter to all SAIF members and all Oakar banks. The letter will describe the procedures that the FDIC will follow in determining and collecting the special assessment from the institutions.

The FDIC expects to contact immediately any institution that initially appears to meet the standards for classification in capital group 3; any institution that might, in the FDIC's judgment, do so if the institution were to pay the special assessment; and any institution rated composite 4 or 5 by its primary supervisor.

Together with the letter, the FDIC expects to mail to each institution a statement showing the estimated amount of the special assessment that the institution must pay, together with an explanation of the way the FDIC calculated the amount. In the case of institutions that initially appear to be ''weak'', the FDIC expects to transmit the statement in a more expeditious manner.

Institutions will have until November 1, 1996, to review the statement. If an institution believes the assessed amount is incorrect, the institution may provide whatever information may be necessary to correct it. For example, if the FDIC has improperly failed to identify an institution that is exempt from the special assessment, or one that is eligible for a reduction in the base on which its special assessment is to be computed, the institution will have until the start of November to bring the matter to the FDIC's attention. If the matter cannot be resolved before the final invoice for the special assessment is sent out, the institution will be required to pay the invoiced amount, which will be subject to adjustment (if necessary) after a final determination is made.

In addition, during this interval each institution that the FDIC has initially

[5] Section 2702(i)(2) of the Funds Act reduces the AADAs of certain Oakar banks permanently by 20 percent for the purpose of computing the institutions' regular assessments for the first semiannual period of 1997 and thereafter. *See* 12 U.S.C. 1815(d)(3)(K).

The assessments for that first period are based on the institutions' reports of condition for the second semiannual period of 1996, however: the deposits in these reports therefore reflect the lower AADAs that the institutions have with respect to the prior semiannual period (that is, the second semiannual period of 1996).

The FDIC considers that it is appropriate to regard the AADAs of these institutions as having been likewise reduced for insurance purposes on the effective date of the Funds Act. In this respect, the final rule maintains the relationship between the AADA *for* a semiannual period (which determines the assessment for that period) and the AADA *with respect to* the prior semiannual period (which determines the allocation of loss between the BIF and the SAIF if an Oakar institution fails in that prior semiannual period, and which can be affected immediately by certain changes such as acquisitions of secondary-fund deposits).

The Funds Act directs the FDIC to determine the denominator of the reserve ratio for October 1, 1996, by using the aggregate volume of deposits reported in the quarterly reports of condition for the first quarter of 1996. In accordance with section 2702(b)(3) of the Funds Act, which authorizes the Board to consider ''any other factors that the Board of Directors deems appropriate'', the FDIC has determined to reduce the aggregate volume so reported by 20 percent, in order to reflect the lower insurance liability experienced by the SAIF as of October 1, 1996. The reduction is $28.2 billion.

[6] The Funds Act discounts SAIF-insured deposits of certain BIF-member Oakar banks by 20 percent, or $34.4 billion. *Id*. section 2702(h)(1). It also discounts the deposits of certain ''converted associations'' by 20 percent, or $2.4 billion. *Id*. section 2702(j).

[7] The Funds Act exempts certain institutions from the special assessment, removing an estimated $400 million from the SAIF assessment base. *Id*. section 2702(f)(3). It also authorizes the Board to exempt institutions that the Board classifies as ''weak''. The Board has established criteria for making that determination; several institutions satisfy those criteria, and have been exempted. As a result, an estimated $3.6 billion is removed from the SAIF assessment base. *Id*. section 2702(f)(1) and (2).

identified as ''weak'' may ask for a review of that status, and may provide additional documentation to the FDIC to support its request for reclassification. The FDIC expects to inform any such institution promptly of the FDIC's final determination.

The FDIC expects to send out invoices to all affected institutions on November 13, 1996.

Institutions will pay the special assessment by the same means as they pay their regular semiannual assessments—that is, through the accounts they have designated for that purpose. Each institution must fund its designated account with enough money to pay the amount specified in its invoice. The FDIC will debit each institution's designated account on November 27, 1996.

7. Institutions Facing Hardship

Section 2702(g) of the Funds Act allows certain institutions to elect to pay the special assessment in two installments. The FDIC must consent to the election.

In order to be eligible to make the election, either the institution itself or the depository institution holding company that controls the institution must be subject to terms or covenants in debt obligations or preferred stock outstanding on September 13, 1995. The FDIC must then determine whether payment of the entire special assessment on November 27 would pose a significant risk of causing the depository institution or its depository institution holding company to default on or to violate any of these terms or covenants.

If the institution meets these criteria, the FDIC must decide whether to grant its approval. The FDIC will base its decision on the entire circumstances of the proposed election, including but not limited to the election's effects on the institution, on the SAIF, and on the public interest.

If an institution receives approval to make the election, the institution must pay the first installment on November 27. The first installment is equal to half the special assessment the electing institution would otherwise have to pay.

The second installment is 51 percent of the amount computed by applying the rate for the special assessment to the electing institution's SAIF-assessable deposits either as of March 31, 1996, or as of such other date as the Board may determine. The Board has determined to apply the rate to the institution's SAIF-assessable deposits as of December 31, 1996, on the ground that it is preferable to use current data for the second installment. The Funds Act evidently contemplates the use of current data for this purpose.

The Board has chosen March 31, 1997, as the appropriate date for the second installment. This date is ''practicable'' because institutions make a regular quarterly payment on that date. The FDIC will be able to adapt its regular assessment procedures to the collection of the second installment, thereby minimizing inconvenience both to the FDIC and to the institution. Moreover, it is the first such date that is more than 15 days after the December 31, 1996, assessment-base determination day.

An electing institution must also pay a supplemental special assessment at the same time as it pays the second installment. The supplemental amount is computed as follows: the FDIC must determine whether the institution's SAIF-assessable deposits have decreased from March 31, 1995, to the December 31, 1996, assessment-base determination day, and if so, by how much; multiply the amount of the decrease by 95 percent; and then multiply the result by one-half the rate for the special assessment.

B. Permanent Reduction in AADAs for Certain Oakar Banks

Section 2702(*i*) of the Funds Act makes a permanent change in the computation of the AADAs of certain Oakar banks. The general rule is that the initial component of an Oakar bank's AADA is equal in value to the amount of SAIF-insured deposits that the Oakar bank acquires from another institution pursuant to the Oakar Amendment. Section 2702(*i*) of the Funds Act specifies that, for certain Oakar banks, the amount of such deposits used to fix that initial component is to be reduced by 20 percent in the case of transactions occurring on or before March 31, 1995.

The effect of the change is to reduce the AADAs of the affected Oakar banks prospectively and permanently. The change applies for the purpose of computing regular semiannual assessments for the first semiannual period of 1997 and thereafter.

The change affects any Oakar bank that, as of June 30, 1995, either:

—had an AADA that was less than 50 percent of the institution's deposits of that institution as of June 30, 1995, *see* FDI Act section 5(d)(3)(K)(i), 12 U.S.C. 1815(d)(3)(K)(i); or

—had more than $5 billion in total assessable deposits, had an AADA that was less than 75 percent of its total assessable deposits, and belonged to a bank holding company system that, in the aggregate, had more BIF-insured deposits than SAIF-insured deposits, *see* FDI Act section 5(d)(3)(K)(ii), 12 U.S.C. 1815(d)(3)(K)(ii).

The final rule amends part 327 to incorporate this statutory change.

II. Effective Date

The final rule is effective upon enactment by the Board. The FDIC is choosing to make the rule effective immediately, and not upon publication in the Federal Register, because the Funds Act directs the Board to impose the special assessment, and further specifies that the special assessment is to be ''due'' on October 1. The FDIC wishes to issue invoices to institutions promptly; the rule provides the foundation for the invoices.

For the reasons given below, the FDIC has determined that it is impracticable and unnecessary, and contrary both to public interest and to the intent of the Funds Act, to incur the delay that the ordinary process of notice and public comment would entail. In addition, the FDIC has further determined for the reasons given below that there is good cause for the rule to be made immediately effective, and not after a 30-day delay following publication of the final rule. The FDIC is therefore issuing this rule without notice and public comment (see 5 U.S.C. 553(b)(3)(B)) or a delayed effective date (see *id*. 553(d)(3)(C)).

The FDIC considers that it is impracticable—and contrary to the public interest and to the intent of Congress—to incur either one of the delays because the short deadlines prescribed by the Funds Act. The Funds Act requires the Board to impose a special assessment which is to be due on October 1, 1996, and which is payable not later than November 29, 1996 (sixty days after the date of enactment of the Funds Act); requires the FDIC to allow certain discounts and exemptions from the special assessment; and permits the FDIC to exempt ''weak'' institutions from the special assessment. In order to comply with these directives, the FDIC must undertake a number of administrative tasks that are mechanical in nature: computing each institution's assessment; notifying the institution of the amount to be paid, and date of payment; allowing institutions time to consider and perhaps question the amount; resolving questions not involving material disagreements; and arranging for the collection of the assessments through the payments system. These tasks require careful preparation and time for proper execution. It would not be possible for the FDIC to carry out this mandate within the prescribed deadline if the final rule were subjected either to the notice-and-comment process or to a delayed effective date.

The FDIC further considers that it is unnecessary to seek prior notice and comment on the rule—and to incur the delay thereof—because the FDIC is already in full possession of the information needed to determine the amount of the assessment and the rate that is needed to raise that amount.[8] The Funds Act further gives the Board ''sole discretion'' to exempt institutions that the Board classifies as ''weak''. *Id.* section 2702(f)(1). Accordingly, the notice-and-comment procedure would not serve any useful purpose.

The delayed effective date is also unnecessary, and, therefore, good cause exists for dispensing with the requirement. The purpose of the delay is to give affected parties time to prepare for the rule's coming into effect and take whatever action they deem necessary. In this case, the only requirement imposed by the rule on affected parties is the payment of money. The final rule is being issued more than 30 days before the payment is due, and provides the equivalent of a 30-day delayed effective date. Although the rate is subject to adjustment before final invoices are sent out, any such adjustment is expected to be limited and will be announced 14 days before the special assessment is collected. Moreover, specific provision is made in the rule for institutions for which payment might present a problem. Finally, delaying the effective date would be counterproductive since it would preclude the FDIC from sending out the invoices at the earliest possible date and giving affected parties the maximum amount of time to arrange for payment.

The Funds Act also makes a permanent change in the method for determining the initial component of the AADAs of certain Oakar banks. *Id.* section 2702(*i*); *see* 12 U.S.C. 1815(d)(3)(K). The final rule incorporates the change into the FDIC's assessment regulation. This aspect of the final rule is purely ministerial, however; notice and comment would serve no useful purpose. In addition, this aspect of the final rule is exempt from the notice-and-comment requirement on another ground: incorporating the statutory language into the regulation is purely interpretative, being necessary to conform the regulation to the statute.

III. Paperwork Reduction Act

The FDIC expects to contact all institutions that initially appear to qualify as weak institutions under the guidelines, and also all other institutions that would initially appear to so qualify upon payment of the special assessment. The FDIC will not present identical questions to the subject institutions, however, but will rather conduct an informal inquiry regarding the condition of the particular institution. Accordingly, the FDIC is not engaging in a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995. See 44 U.S.C. 3502(3).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, does not apply to the final rule. The RFA only applies to rulemaking for which notice and comment are required. *See id.* section 603 and 604. For the reasons given above, the Administrative Procedure Act (*id. 553*) does not require notice of proposed rulemaking; no other provision of law does so either.

Furthermore, the RFA's definition for the term ''rule'' excludes ''a rule of particular applicability relating to rates''. *Id.* 601(2). The FDIC considers that the exclusion governs the final rule, because the final rule implements Congress' command to impose a one-time special assessment on SAIF-assessable institutions. The RFA's requirements regarding an initial and final regulatory flexibility analysis (*id.* sectio603 and 604) do not apply on this ground as well.

Finally, the RFA's legislative history indicates that its requirements are inappropriate to this proceeding. The RFA focuses on the ''impact'' that a rule will have on small entities. The legislative history shows that the ''impact'' at issue is a differential impact—that is, an impact that places a disproportionate burden on small businesses:

> Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.

126 Cong. Rec. 21453 (1980) (''Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299'').

The final rule does not impose a uniform cost or requirement on all institutions regardless of size. Rather, it imposes an assessment that is directly proportional to each institution's size. Nor does the final rule cause an affected institution to incur any ancillary costs of compliance—such as the need to develop new recordkeeping or reporting systems, to seek out the expertise of specialized accountants, lawyers, or managers—that might cause disproportionate harm to small entities. As a result, the purposes and objectives of the RFA are not affected, and neither an initial nor a final regulatory flexibility analysis is required.

V. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that, as a general rule, new and amended regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. *See* 12 U.S.C. 4802(b). This restriction is inapplicable to the final rule, which does not impose such additional or new requirements.

VI. Congressional Review

The FDIC is submitting a report to each House of the Congress and to the Comptroller General with respect to the final rule in conformity with the procedures specified in 5 U.S.C. 801. The FDIC is submitting the report voluntarily and not under compulsion of the statute, however. The term ''rule''—as that term is used in section 801—excludes ''any rule of particular applicability, including a rule that proves or prescribes for the future rates * * * .'' *Id.* 804(3). The FDIC considers that the final rule is governed by this exclusion, because the final rule implements Congress' command to impose a one-time special assessment on SAIF-assessable institutions. Accordingly, the requirements of *id.* sections 801–808 do not apply.

In any case, for the reasons given above regarding the need for notice and comment, the FDIC has for good cause found that notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest. The final rule will therefore take effect on the date specified herein. *See id.* section 808.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

For the reasons set out in the preamble, 12 CFR part 327 is amended as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 is revised to read as follows:

[8] In addition, the Funds Act gives the Board ''sole discretion'' to determine the rate at which the special assessment will be imposed. Funds Act section 2702(a).

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Deposit Insurance Funds Act of 1996, Pub. L. 104–208, 110 Stat. 3009 *et seq.*

2. Section 327.32 is amended by revising paragraphs (a)(2)(i)(A) and (a)(3)(i) and by adding a new paragraph (c) to read as follows:

§ 327.32 Computation and payment of assessment.

(a) * * *

(2) * * *

(i) * * *

(A) Except as provided in § 327.43(c)(1), be subject to assessment according to the schedule of assessment rates applicable to SAIF members pursuant to subpart A of this part; and

* * * * *

(3) * * *

(i) The amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction) described in § 327.31(a), but subject to the adjustment specified in paragraph (c) of this section;

* * * * *

(c) *Reduction of deposits acquired by certain institutions.* In the case of a transaction occurring on or before March 31, 1995, the amount determined under paragraph (a)(3)(i) of this section shall be reduced by 20 percent for the purpose of computing the adjusted attributable deposit amount for any semiannual period beginning after December 31, 1996, of a BIF member bank that, as of June 30, 1995:

(1) Had an adjusted attributable deposit amount the value of which was less than 50 percent of the amount of its total deposits; or

(2)(i) Had an adjusted attributable deposit amount the value of which was less than 75 percent of the value of its total deposits;

(ii) Had total deposits greater than $5,000,000,000; and

(iii) Was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the BIF greater than the aggregate amount of deposits insured or treated as insured by the SAIF.

3. A new subpart C, consisting of §§ 327.41 through 327.45, is added to part 327 to read as follows:

Subpart C—Special Assessment

Sec.

Subpart C—Special Assessment

§ 327.41 Special assessment imposed.

(a) *Payment required.* Except as provided in §§ 327.43 and 327.44, each insured depository institution shall pay a special assessment on the SAIF-assessable deposits that the institution held on March 31, 1995, in accordance with the provisions of this subpart C.

(b) *Rate.* Except as provided in § 327.44, the rate for the special assessment shall be 0.657 percentum, subject to such adjustments as the Corporation may deem necessary to cause the Savings Association Fund reserve ratio to achieve the designated reserve ratio for the SAIF on October 1, 1996.

(c) *Due date.* The special assessment shall be due on October 1, 1996.

(d) *Payment date.* Except as provided in § 327.44, each institution shall pay the special assessment to the Corporation on November 27, 1996. Each institution shall make the payment in the manner and according to the procedures set forth in paragraph (e) of this section.

(e) *Procedures*—(1) *Preliminary and final invoices; requests for correction of amount due.* The Corporation will issue a preliminary invoice to each institution showing the amount expected to be due from the institution and the computation of that amount. An institution may request the Corporation to revise the amount due; any such request must be made in writing on or before November 1, 1996. The Corporation will issue a final invoice to each insured depository institution no later than 14 days prior to the date specified in paragraph (d) of this section, showing the amount due from the institution and the computation of that amount.

(2) *Funding of designated accounts.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit the invoiced amount from the deposit account designated by the institution pursuant to § 327.3(a)(2). Each insured depository institution shall, prior to the date specified in paragraph (d) of this section, ensure that funds in an amount at least equal to the invoiced amount are available in the designated account on that date for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the amount due.

(3) *Manner of payment.* The Corporation will cause the invoiced amount to be directly debited on the date specified in paragraph (d) of this section from the deposit account designated by the insured depository institution pursuant to § 327.3(a)(2).

(f) *Deposit of proceeds.* The proceeds of the special assessment, and of the assessments paid pursuant to § 327.44, shall be deposited in the SAIF.

§ 327.42 Assessment base.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, an institution's special assessment shall be computed with reference to the institution's SAIF assessment base on March 31, 1995.

(b) *''Converted'' institutions.* In the case of each of the following SAIF members, the volume of SAIF-insured deposits used to determine the institution's SAIF assessment base on March 31, 1995, shall be reduced by 20 percent:

(1) A federal savings association:

(i) That had deposits subject to assessment by the SAIF which did not exceed $4,000,000,000, as of March 31, 1995; and

(ii) That had been, or is a successor by merger, acquisition, or otherwise to an institution that had been, a state savings bank, the deposits of which were insured by the Corporation prior to August 9, 1989, which institution converted to a federal savings association pursuant to section 5(*i*) of the Home Owners' Loan Act, 12 USC 1464(*i*), prior to January 1, 1985;

(2) A SAIF-member state depository institution that had been a state savings bank prior to October 15, 1982, and was a federal savings association on August 9, 1989;

(3) An insured bank that:

(i) Was established de novo in order to acquire the deposits of a savings association in default or in danger of default;

(ii) Did not open for business before acquiring the deposits of such savings association; and

(iii) Was a SAIF member as of the date of enactment of the Deposit Insurance Funds Act of 1996; and

(4) An insured bank that:

(i) Resulted from a savings association before December 19, 1991, in accordance with section 5(d)(2)(G) of the FDI Act; and

(ii) Had an increase in its capital in conjunction with the conversion in an amount equal to more than 75 percent of the capital of the institution on the day before the date of the conversion.

(c) *Oakar banks.* The special assessment shall be computed with

reference to that portion of an institution's SAIF assessment base for March 31, 1995, which is equal to 80 percent of the institution's adjusted attributable deposit amount for that date, if the institution is a BIF member that, as of June 30, 1995:

(1) Had an adjusted attributable deposit amount that was less than 50 percent of its total domestic deposits; or

(2)(i) Had an adjusted attributable deposit amount equal to less than 75 percent of its total assessable deposits;

(ii) Had total assessable deposits greater than $5,000,000,000; and

(iii) Was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the BIF greater than the aggregate amount of deposits insured or treated as insured by the SAIF.

§ 327.43 Exemptions from the special assessment.

(a) *Mandatory exemptions.* The following institutions are exempt from the special assessment:

(1) An institution that was in existence on October 1, 1995, and held no SAIF-assessable deposits prior to January 1, 1993. For this purpose, an institution shall be deemed to have held SAIF-assessable deposits prior to January 1, 1993, if:

(i) The institution directly held SAIF-assessable insured deposits prior to that date; or

(ii) The institution succeeded to, acquired, purchased, or otherwise held any SAIF-assessable deposits as of September 30, 1996, that were SAIF-assessable deposits prior to January 1, 1993;

(2) A federal savings bank that:

(i) Was established de novo in April 1994 in order to acquire the deposits of a savings association which was in default or in danger of default; and

(ii) Received minority interim capital assistance from the Resolution Trust Corporation under section 21A(w) of the Federal Home Loan Bank Act in connection with the acquisition of any such savings association; and

(3) A savings association, the deposits of which are insured by the SAIF, that:

(i) Prior to January 1, 1987, was chartered as a federal savings bank insured by the Federal Savings and Loan Insurance Corporation for the purpose of acquiring all or substantially all of the assets and assuming all or substantially all of the deposit liabilities of a national bank in a transaction consummated after July 1, 1986; and

(ii) As of the date of that transaction, had assets of less than $150,000,000.

(b) *Weak institutions.* If an institution meets any criterion for designation as ''weak'' under the guidelines set forth in appendix A of this subpart, the institution shall generally be exempt from the special assessment, unless the exemption would not materially reduce risk to the SAIF. Authority to determine whether an institution meets any such criterion, authority to issue orders exempting ''weak'' institutions, authority to determine whether the risk to the SAIF would not be materially reduced if an institution qualifying for exemption as a ''weak'' institution were nevertheless allowed to pay the special assessment, and authority to determine whether an institution rated 4 or 5 by its appropriate federal banking agency would present a substantial risk of loss to the SAIF unless the institution were exempt from the special assessment, are delegated to the Director of the Division of Supervision.

(c) *Semiannual assessments payable to the SAIF*—(1) *Special rate schedule.* Except as provided in paragraph (c)(2) of this section, an institution that is exempt from the special assessment pursuant to paragraph (a) or (b) of this section shall pay regular semiannual assessments to the SAIF from the first semiannual period of 1996 through the second semiannual period of 1999 according to the schedule of rates specified in § 327.9(d)(1) as in effect for SAIF members on June 30, 1995.

(2) *Termination of special rate schedule.* An institution that makes a pro-rata payment of the special assessment shall cease to be subject to paragraph (c)(1) of this section. The pro-rata payment must be equal to the following product: 16.7 percent of the amount the institution would have owed for the special assessment, multiplied by the number of full semiannual periods remaining between the date of the payment and December 31, 1999.

§ 327.44 Hardship exception.

(a) *Applicability.* This section applies to an insured depository institution if:

(1) The institution, or a depository institution holding company that controls the institution, is subject to terms or covenants in any debt obligation or preferred stock outstanding on September 13, 1995; and

(2) The Corporation has determined that payment of the special assessment in accordance with the provisions of § 327.41 would pose a significant risk of causing the depository institution or its depository institution holding company to default on or to violate any term or covenant specified in paragraph (a)(1) of this section.

(b) *Election.* An insured depository institution may elect, with the prior approval of the Corporation, to pay the special assessment prescribed by the Deposit Insurance Funds Act of 1996 in two installments in accordance with the provisions of this section. In deciding whether to grant or withhold approval, the Corporation will consider the entire circumstances of the proposed election, including but not limited to the election's effects on the institution, on the SAIF, and on the public interest.

(c) *Procedures*—(1) *Initial assessment*—(i) *Date.* An institution that makes the election specified in paragraph (b) of this section shall pay the initial installment of the special assessment to the Corporation on November 27, 1996.

(ii) *Amount.* The initial installment shall be equal to 50 percent of the amount that the institution would otherwise be required to pay on November 27, 1996, in accordance with § 327.41.

(iii) *Payment procedures.* The procedures set forth in § 327.41(e) shall apply to the payment of the initial installment.

(2) *Second installment*—(i) *Date.* An institution that makes the election specified in paragraph (b) of this section shall pay a second installment to the Corporation on the regular payment date for the second quarterly payment for the first semiannual period of 1997.

(ii) *Amount.* The second installment shall be an amount computed as follows: the SAIF assessment base of the institution on December 31, 1996, multiplied by the rate specified in § 327.41(b), multiplied by 51 percent.

(iii) *Payment procedures.* The procedures set forth in § 327.41(e) shall apply to the payment of the second installment, except that any reference to the date specified in § 327.41(d) shall be deemed to be a reference to the date specified in paragraph (c)(2)(i) of this section, and that any reference to November 1, 1996, shall be deemed to be a reference to February 1, 1997.

(3) *Supplemental assessment*—(i) *Date.* An institution that makes the election specified in paragraph (b) of this section shall pay a supplemental assessment to the Corporation at the same time as the second installment.

(ii) *Amount.* The supplemental assessment shall be an amount computed as follows: the institution's SAIF assessment base for December 31, 1996, shall be subtracted from the institution's SAIF assessment base for March 31, 1995; if the result is greater than zero, the result shall be multiplied by 95 percent; and the product thereof

shall be multiplied by one-half the rate for the special assessment.

(iii) *Payment procedures.* The procedures set forth in § 327.41(e) shall apply to the payment of the supplemental assessment, except that any reference to the date specified in § 327.41(d) shall be deemed to be a reference to the date specified in paragraph (c)(2)(i) of this section, and that any reference to November 1, 1996, shall be deemed to be a reference to February 1, 1997.

§ 327.45 Definitions.

For the purpose of this subpart C:

(a) *BIF; SAIF*—(1) *BIF.* The term *BIF* refers to the Bank Insurance Fund.

(2) *SAIF.* The term *SAIF* refers to the Savings Association Insurance Fund.

(b) *SAIF-assessable deposits.* The term *SAIF-assessable deposits means all deposits that are subject to assessment by the Corporation for deposit in the SAIF, and, in the case of a BIF member, includes that portion of the deposits of the BIF member that is equal to the BIF member's adjusted attributable deposit amount.*

(c) *Deposits held on March 31, 1995.* A deposit is deemed to have been held on March 31, 1995, by an institution if either:

(1) The institution held the deposit on that date; or

(2)(i) The deposit was held by another institution (''transferring institution'') on that date;

(ii) The institution assumed the deposit from the transferring institution after that date, either directly or indirectly; and

(iii) The transferring institution is not an insured depository institution on the payment date specified in § 327.41(d).

(d) *SAIF assessment base.* The term *SAIF assessment base* for any date means that portion of an institution's assessment base for that date that is subject to assessment by the Corporation for deposit in the SAIF.

Appendix A to Subpart C of Part 327—Guidelines for Exemption of Weak Institutions

(a) The Board of Directors of the Corporation has adopted criteria for identifying institutions that are regarded as ''weak'' within the meaning of section 2702(f) of the Deposit Insurance Funds Act of 1996. The Board has determined that granting exemptions to institutions that meet the criteria would generally reduce the risk to the SAIF.

(b) The criteria apply only to institutions that are members of the Savings Association Insurance Fund (SAIF) or that hold deposits that are treated as insured by the SAIF pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3).

(c) The criteria are as follows:

(1) *Guideline #1: Capital group 3 institutions.* An institution is regarded as ''weak'' if, in the judgment of the Corporation, the institution meets the standards for assignment to capital group 3 (''undercapitalized'') pursuant to § 327.4(a)(1)(iii).

(2) *Guideline #2: Potential capital group 3 institutions.* An institution is regarded as ''weak'' if, in the judgment of the Corporation, the institution would satisfy the criteria set forth in Guideline #1 if the institution were to pay the special assessment imposed under § 327.41(a).

(3) *Guideline #3: Institutions rated 4 or 5.* If an institution has a composite rating of 4 or 5 by its primary supervisor, the institution may request the Corporation to consider whether it would be appropriate to exempt the institution from the special assessment. Such an institution is regarded as ''weak'' if the institution would, after having paid the assessment, present a significant risk of loss to the SAIF for the purpose of section 2(f) of the Funds Act.

By order of the Board of Directors.

Dated at Washington, D.C., this 8th day of October 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–26504 Filed 10–11–96; 10:23 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–4]

Revision of Class D and Class E Airspace; Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D and Class E airspace at Bethel, AK, to accommodate Visual Flight Rules (VFR) traffic in the Bethel area, landing and departing from Hanger Lake located about 2.5 miles northeast of the Bethel VORTAC. Several Bethel Airport user groups, during public discussion on the decommission of the Bethel Approach Control, requested an exclusion area for Hanger Lake to accommodate VFR landings and takeoffs during Instrument Flight Rules (IFR) weather conditions at Bethel, AK. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate exclusion from Bethel, AK, Class D and Class E airspace to accommodate Bethel user group requirements at Hanger Lake, AK.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

History

On June 24, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Bethel was published in the Federal Register (61 FR 32371). Changes to the Bethel airspace will incorporate an exclusion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 nautical miles northeast of the Bethel VORTAC. The changes are required to create a Hanger Lake exclusion area as requested by Bethel Airport user groups for VFR operations when Bethel has IFR weather conditions.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received. Therefore, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations are published in paragraph 5000 and the Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 of FAA Order 7400.9D, dated September 4, 1995, and effective September 16, 1996, which are incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class D and Class E airspace located at Bethel, AK, to create a Hanger Lake exclusion area as requested by Bethel Airport user groups for VFR operations when Bethel has IFR weather conditions.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant