sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

By order of the Board of Governors of the Federal Reserve System.

Date: June 26, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–16841 Filed 7–02–96; 8:45am]

Billing Code 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its assessment regulations by adopting interpretive rules regarding certain provisions therein that pertain to so-called Oakar institutions: institutions that belong to one insurance fund (primary fund) but hold deposits that are treated as insured by the other insurance fund (secondary fund). Recent merger transactions and branch-sale cases have revealed weaknesses in the FDIC's procedures for attributing deposits to the two insurance funds and for computing the growth of the amounts so attributed. The interpretive rules would repair those weaknesses.

In addition, the FDIC is proposing to simplify and clarify the existing rule by making changes in nomenclature.

DATES: Comments must be received by the FDIC on or before September 3, 1996.

ADDRESSES: Send comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. (FAX number: 202/898–3838. Internet address: comments@fdic.gov). Comments will be available for inspection in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan K. Long, Assistant Director, Division of Finance, (703) 516–5559; Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance (202) 898–8658; Jules Bernard, Counsel, Legal Division, (202) 898–3731, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: This proposed interpretive regulation would alter the method for determining the assessments that Oakar institutions pay to the two insurance funds. Accordingly, the proposed regulation would directly affect all Oakar institutions. The proposed regulation would also indirectly affect non-Oakar institutions, however, by altering the business considerations that non-Oakar institutions must take into account when they transfer deposits to or from an Oakar institution (including an institution that becomes an Oakar institution as a result of the transfer).

I. Background

Section 5(d)(2) of the FDI Act, 12 U.S.C. 1815(d)(2), places a moratorium on inter-fund deposit-transfer transactions: mergers, acquisitions, and other transactions in which an institution that is a member of one insurance fund (primary fund) assumes the obligation to pay deposits owed by an institution that is a member of the other insurance fund (secondary fund). The moratorium is to remain in place until the reserve ratio of the Savings Association Insurance Fund (SAIF) reaches the level prescribed by statute. *Id.* 1815(d)(2)(A)(ii); see *id.* 1817(b)(2)(A)(iv) (setting the target ratio at 1.25 percentum).

The next paragraph of section 5(d)—section 5(d)(3) of the FDI Act—is known as the Oakar Amendment. *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73 section 206(a)(7), 103 Stat. 183, 199–201 (Aug. 9, 1989); 12 U.S.C. 1815(d)(3). The Amendment permits certain deposit-transfer transactions that would otherwise be prohibited by section 5(d)(2) (Oakar transactions).

The Oakar Amendment introduces the concept of the ''adjusted attributable deposit amount'' (AADA). An AADA is an artificial construct: a number, expressed in dollars, that is generated in the course of an Oakar transaction, and that pertains to the buyer. The initial value of a buyer's AADA is equal to the amount of the secondary-fund deposits that the buyer acquires from the seller. The Oakar Amendment specifies that the AADA then increases at the same underlying rate as the buyer's overall deposit base—that is, at the rate of growth due to the buyer's ordinary business operations, not counting growth due to the acquisition of deposits from another institution (*e.g.*, in a merger or a branch purchase). *Id.* 1815(d)(3)(C)(iii). The FDIC has adopted the view that ''growth'' and ''increases'' can refer to ''negative growth'' under the FDIC's interpretation of the Amendment, an AADA decreases when the institution's deposit base shrinks.

An AADA is used for the following purposes:

—*Assessments.* An Oakar institution pays two assessments to the FDIC—one for deposit in the institution's secondary fund, and the other for deposit in its primary fund. The secondary-fund assessment is based on the portion of the institution's assessment base that is equal to its AADA. The primary-fund assessment is based on the remaining portion of the assessment base.

—*Insurance.* The AADA measures the volume of deposits that are ''treated as'' insured by the institution's secondary fund. The remaining deposits are insured by the primary fund. If an Oakar institution fails, and the failure causes a loss to the FDIC, the two insurance funds share the loss in proportion to the amounts of deposits that they insure.

For assessment purposes, the AADA is applied prospectively, as is the assessment base. An Oakar institution has an AADA for a current semiannual period, which is used to determine the institution's assessment for that period.[1] The current-period AADA is calculated using deposit-growth and other information from the prior period.

II. The proposed rule

A. Attribution of transferred deposits

1. The FDIC's Current Interpretation: The ''Rankin'' Rule

The FDIC has developed a methodology for attributing deposits to the Bank Insurance Fund (BIF) on one hand and to the SAIF on the other when the seller is an Oakar institution. *See* FDIC Advisory Op. 90–22, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4452 (1990) (Rankin letter). The Rankin letter adopts the following rule: an Oakar institution transfers its primary-fund deposits first, and only begins to

[1] Technically, each Oakar transaction generates its own AADA. Oakar institutions typically participate in several Oakar transactions. Accordingly, and Oakar institution generally has an overall or composite AADA that consists of all the individual AADAs generated in the various Oakar transactions, plus the growth attributable to each individual AADA. The composite AADA can generally be treated as a unit as a practical matter, because all the constituent AADAs (except initial AADAs) grow at the same rate.

transfer its secondary-fund deposits after its primary-fund deposits have been exhausted.

The chief virtue of this approach is that of simplicity. Sellers rarely transfer all their primary-fund deposits. A seller ordinarily has the same AADA after the transaction as before, and a buyer does not ordinarily become an Oakar institution. The Rankin letter's approach also has the virtue of being a well-established and well-understood interpretation.

Nevertheless, the Rankin letter's approach has certain weaknesses. For example, if a seller transfers a large enough volume of deposits, the seller becomes insured and assessed entirely by its secondary fund—even though it remains a member of its primary fund in name, and even though its business has not changed in character.

The Rankin letter's approach may also lend itself to ''gaming'' by Oakar institutions. Oakar banks—and their owners—have an incentive to eliminate their AADAs, because the SAIF assessment rates are currently much higher than the BIF rates. If an Oakar bank belonged to a holding company system, the holding company could purge the AADA from the system as a whole by having the Oakar bank transfer all its BIF-insured deposits to an affiliate, and then allowing the remnant of the Oakar bank to wither away.

2. ''Blended'' deposits

An alternative approach would be to adopt the view that an Oakar institution transfers a blend of deposits to the assuming institution. The transferred deposits would be attributed to the two insurance funds in the same ratio as the Oakar institution's overall deposits were so attributed immediately prior to the transfer. This ''blended deposits'' approach would have the virtue of maintaining the relative proportions of the seller's primary-fund deposit-base and the secondary-fund deposit base, just as they are preserved in the ordinary course of business.

As a general rule, the ratio would be fixed at the start of the quarter in which the transfer takes place. If the institution were to acquire deposits after the start of the quarter but prior to the transfer, the acquired deposits would be added to the institution's store of primary-fund and secondary-fund deposits as appropriate, and the resulting amounts would be used to determine the ratio.

This procedure would be designed to exclude intra-quarter growth from the calculation of the ratio. The FDIC considers that it would be desirable to do so for two main reasons: it would keep the methodology simple; and (in the ordinary case) it would make use of numbers that are readily available to the parties.

At the same time, the ''blended deposits'' approach would create a new Oakar institution each time a non-Oakar institution acquired deposits from an Oakar institution. Accordingly, this approach would generally subject buyers to more complex reporting and tracking requirements. This approach would also require more disclosure on the part of sellers, because buyers would have to be made aware that they were acquiring high-cost SAIF deposits. But the ''blended deposits'' approach could remove some uncertainty because the buyer would know that it was acquiring such deposits whenever the seller was an Oakar institution.

In cases where the seller has acquired deposits prior to the sale but during the same semiannual period as the sale, the blended-deposit approach could be more complex. The acquisition of deposits would change the seller's AADA-to-deposits ratio, which would need to be calculated and made available in conjunction with the sale. At first, the FDIC considered that this problem could be addressed by using the ratio at the beginning of the quarter for all transactions during that quarter. But the FDIC later came to the view that this technique could open up the blended-deposit approach to gaming strategies that institutions could use to decrease their AADAs.

Finally, under the blended-deposit approach, Oakar banks—which are BIF members—could find it difficult (or expensive) to transfer deposits to other institutions, due to market uncertainty regarding the prospect of a special assessment to capitalize SAIF and the alternative prospect of a continued premium differential between BIF and SAIF.

Any change to a blended-deposit approach would only apply to transfers that take place on and after January 1, 1997. Accordingly, the change would not affect any assessments that Oakar institutions have paid in prior years. Nor would it affect the business aspects of transactions that have already occurred, or that may occur during the remainder of 1996.

B. FDIC Computation of the AADA; Reporting Requirements

The FDIC currently requires all institutions that assume secondary-fund deposits in an Oakar transaction to submit an Oakar transaction worksheet for the transaction. The FDIC provides the worksheet. The FDIC provides the name of the buyer and the seller, and the consummation date of the transaction. The buyer provides the total deposits acquired, and the value of the AADA thereby generated. In addition, Oakar institutions must complete a growth adjustment worksheet to re-calculate their AADA as of December 31 of each year. Finally, Oakar banks report the value of their AADA, on a quarterly basis, in their quarterly reports of condition (call reports).

To implement the proposal to adjust AADAs on a quarterly basis, and to ensure compliance with the statutory requirement that an AADA does not grow during the semiannual period in which it is acquired, *see* 12 U.S.C. 1815(d)(3)(C)(iii), the FDIC initially considered replacing the current annual growth adjustment worksheet with a slightly more detailed quarterly worksheet. The FDIC was concerned that this approach might impose a burden on Oakar institutions, however. The FDIC was further concerned that this approach could result in an increase in the frequency of errors associated with these calculations. Accordingly, the FDIC now believes it might be more appropriate to relieve Oakar institutions of this burden by assuming the responsibility for calculating each Oakar institution's AADA, and eliminating the growth adjustment worksheet entirely. The FDIC would calculate the AADA as part of the current quarterly payment process. The calculation, with supporting documentation, would accompany each institution's quarterly assessment invoice.

If the FDIC assumes the responsibility for calculating the AADA, Oakar institutions would no longer have to report their AADAs in their call reports. But they would have to report three items on a quarterly basis. Oakar institutions already report two of the items as part of their annual growth adjustment worksheets: total deposits acquired in the quarter, and secondary-fund deposits acquired in the quarter. Oakar institutions would therefore have to supply one other item: total deposits sold in the quarter.

These items will be zero in most quarters. Even in quarters in which some transactions have occurred, the FDIC considers that the items should be readily available and easy to calculate.

While for operational purposes, the FDIC would prefer to add these three items to the call report, an alternative approach would be simply to replace the current growth adjustment worksheet with a very simple quarterly worksheet essentially consisting only of these items. The FDIC expects this specific issue to be addressed in a Request for Comment on Call Report

Revisions for 1997 currently expected to be issued jointly by the three banking agencies in July.

In addition, if the FDIC adopts the blended-deposit approach for attributing transferred deposits, the FDIC would need an additional quarterly worksheet from Oakar institutions in order to calculate AADAs accurately. The additional worksheet would report the date and amount of deposits involved in each transaction in which the Oakar institution transferred deposits to another institution during the quarter. This information is not currently collected.

C. Treatment of AADAs on a Quarterly Basis

The FDIC is proposing to adopt the view that—under its existing regulation—an AADA for a semiannual period may be considered to have two quarterly components. The increment by which an AADA grows during a semiannual period may be considered to be the result of the growth of each quarterly component.

1. Quarterly Components

a. Propriety of quarterly components. The FDIC's assessment regulation speaks of an institution's AADA ''for any semiannual period''. 12 CFR 327.32(a)(3). The FDIC currently interprets this phrase to mean that an AADA has a constant value throughout a semiannual period. The FDIC has taken this view largely for historical reasons. Recent changes in the Oakar Amendment give the FDIC room to alter its view.

The FDIC's ''constant value'' view derives from the 1989 version of the Oakar Amendment. *See* 12 U.S.C. 1815(d)(3) (Supp. I 1989). That version of the Amendment said that an Oakar bank's AADA measured the ''portion of the average assessment base'' that the SAIF could assess. *Id.* 1815(d)(3)(B). The FDI Act (as then in effect) defined the ''average assessment base'' as the average of the institution's assessment bases on the two dates for which the institution was required to file a call report. *Id.* 1817(b)(3). As a result, an AADA—even a newly created one, and even one that was generated in a transaction during the latter quarter of the prior semiannual period—served to allocate an Oakar bank's entire assessment base for the entire current semiannual period. The FDIC issued rules in keeping with this view. 54 FR 51372 (Dec. 15, 1989).

Congress decoupled the AADA from the assessment base at the beginning of 1994, as part of the FDIC's changeover to a risk-based assessment system. *See* Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, section 302(e) & (g), 105 Stat. 2236, 2349 (Dec. 19, 1991); *see also* Defense Production Act Amendments of 1992, Pub L. 102–558, section 303(b)(6)(B), 106 Stat. 4198, 4225 (Oct. 28, 1992) (amending the FDICIA in relevant part); *cf.* 58 FR 34357 (June 23, 1993). The Oakar Amendment no longer links the AADA directly to the assessment base. The Amendment merely declares, ''[T]hat portion of the deposits of [an Oakar institution] for any semiannual period which is equal to [the Oakar institution's AADA] * * * shall be treated as deposits which are insured by [the Oakar institution's secondary fund]''. *See* 12 U.S.C. 1815(d)(3).

The FDIC has not changed its rules for assessing Oakar institutions, and has continued to interpret the rules in the same manner as before. Accordingly, the ''constant value'' concept of the AADA has continued to be the view of the FDIC.

But the FDIC is no longer compelled to retain this view. Furthermore, as discussed below, the FDIC has found that this approach has certain disadvantages. The FDIC is therefore proposing to re-interpret the phrase ''for any semiannual period'' as it appears in § 327.32(a)(3) in the light of the FDIC's quarterly assessment program. The FDIC would take the position that an Oakar institution's AADA for a semiannual period may be determined on a quarter-by-quarter basis—just as the assessment base for a semiannual period is so determined—and may be used to measure the portion of each quarterly assessment base that is to be assessed by the institution's secondary fund. The FDIC would also take the view that, if an AADA is generated in a transaction that takes place during the second calendar quarter of a semiannual period, the first quarterly component of the AADA for the current (following) semiannual period is zero; only the second quarterly component is equal to the volume of the secondary-fund deposits that the buyer so acquired.

The FDIC considers that this view of the phrase ''for any semiannual period'' is appropriate because the phrase is the counterpart of, and is meant to interpret, the following language in the Oakar Amendment:

(C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period * * *

12 U.S.C. 1815(d)(3)(C).

This passage speaks of the assessment—not the AADA—''for any semiannual period''. Insofar as the AADA is concerned, the statutory language merely specifies the semiannual period for which the AADA is to be computed: the period for which the assessment is due. The FDIC believes that the phrase ''for a semiannual period'' may properly be read to have the same meaning.

Moreover, while the Amendment says the AADA must ''be taken into account'' in determining a semiannual assessment, the Amendment does not prescribe any particular method for doing so. The FDIC considers that this language provides enough latitude for the FDIC to apply the AADA in a manner that is appropriate to the quarterly payment program.

The FDIC's existing regulation is compatible with this interpretation. The regulation speaks of an assessment base for each quarter, not of an average of such bases. The regulation further says that an Oakar institution's AADA fixes a portion of its ''assessment base''. *See* 12 CFR 327.32(a)(2) (i) & (ii). Accordingly, the FDIC is not proposing to modify the text that specifies the method for computing AADAs.

b. Need for the re-interpretation. Under certain conditions, the FDIC's ''constant value'' view of the AADA appears to be tantamount to double-counting transferred deposits for a calendar quarter.

The appearance of ''double-counting'' occurs when an Oakar institution acquires secondary-fund deposits in the latter half of a semiannual period—*i.e.,* in the second or fourth calendar quarter. The seller has the deposits at the end of the first (or third) quarter; its first payment for the upcoming semiannual period is based on them. At the same time, the buyer's secondary-fund assessment is approximately equal to an assessment on the transferred deposits for both quarters in the semiannual period.[2]

[2] The correlation is not so close as it first appears. Various factors distort the relation between an Oakar institution's deposit base on one hand and its primary-fund and secondary-fund assessment bases on the other.

The chief factor is the so-called float deduction, which is equal to the sum of one-sixth of an institution's demand deposits plus one percentum of its time and savings deposits. *See* 12 CFR 327.5(a)(2). An Oakar institution's secondary-fund assessment base is equal to the full value of its AADA, however. *See id.* 327.32(a)(2). The impact of the float deduction falls entirely on the primary-fund assessment base.

Accordingly, neither the primary-fund assessment base nor the secondary-fund assessment base is directly proportional to the institutional's total deposits. Nor does the split between the

Continued

The source of this apparent effect is that, under the FDIC's current interpretation of its rule, an AADA—even a newly generated one—applies to an Oakar institution's entire assessment base for the entire semiannual period. The following example illustrates the point. The example focuses on the average assessment base, in order to show the relationship between the AADA and the assessment base up to the time the FDIC adopted the quarterly-payment procedure:

	Seller (SAIF)	Buyer (BIF)	Industry total
Before the transaction:			
Starting assessment bases (ignoring float, &c.):			
SAIF	$200	$0	$200.
BIF	0	100	100.
	200	100	300.
The transaction:			
March call report	200	100	300.
Deposits sold	(100)	+100 (AADA)	Neutral.
June call report	100	200	300.
After the transaction:			
Ending assessment bases (ignoring float, &c.):			
SAIF	100	100 (AADA)	200.
BIF	0	100	100.
	100	200	300.
Average assessment bases:			
(Ignoring float, &c.):			
SAIF	150	100 (AADA)	250.
BIF	0	50	50.
	150	150	300.

The SAIF-assessable portion of the buyer's average assessment base is $100. If the SAIF-assessable portion were based directly on the average of the buyer's SAIF-insured deposits for the prior two quarters—rather than on the buyer's AADA—that portion would only be $50. The difference is equivalent to attributing the transferred $100 to the buyer for an extra one-half of the semiannual period: by implication, for the first (or third) quarter as well as for the second (or fourth) quarter.

The anomaly is most apparent from the standpoint of the industry as a whole. The aggregate amount of the SAIF-assessable deposits temporarily balloons to $250, while the aggregate amount of the BIF-assessable deposits shrinks to $50. The anomaly only lasts for one semiannual period, however. In the following period, the seller's assessment base is $100 for both quarters, making its average assessment base $100. The buyer's AADA remains $100. Accordingly, the aggregate amount of SAIF-assessable deposits retreats to $200 once more; and the aggregate amount of BIF-assessable deposits is back to the full $100.

Broadening the focus to include both funds also brings out a more subtle point: the anomaly is not tantamount to double-counting the transferred deposits for a quarter, but rather to re-allocating the buyer's assessment base from the BIF to the SAIF. The BIF-assessable portion of the buyer's average assessment base is $50, not $100. The difference is equivalent to cutting the buyer's BIF assessment base by $100 for half the semiannual period.

The FDIC's quarterly-payment procedure has brought attention to these anomalous effects. The quarterly-payment schedule is merely a new collections schedule, not a new method for determining the amount due. *See* 59 FR 67153 (Dec. 29, 1994). Accordingly, under current procedures, the buyer and the seller in the illustration would pay the amounts specified therein even under the quarterly-payment schedule.

When an Oakar transaction occurs in the latter half of a semiannual period, however, the buyer's call report for the prior quarter does not show an AADA. The buyer's first payment for the current semiannual period is therefore based on its assessment base for that quarter, not on its AADA. Moreover, the entire payment is computed using the assessment rate for the institution's primary fund. The FDIC therefore adjusts (and usually increases) the amount to be collected in the second quarterly payment in order to correct these defects.

Interpreting the semiannual AADA to consist of two quarterly components would eliminate this anomaly.

2. Quarterly Growth

The Oakar Amendment says that the growth rate for an AADA during a semiannual period is equal to the ''annual rate of growth of deposits'' of the Oakar institution. The FDIC currently interprets the phrase ''annual rate'' to mean a rate determined over the interval of a full year. An Oakar institution computes its ''annual rate of growth'' at the end of each calendar year, and uses this figure to calculate the AADA for use during the following year.

This procedure has a weakness. An Oakar institution's AADA tends to drift out of alignment with the deposit base, because the AADA remains constant while the deposit base changes. At the end of the year, when the institution computes its AADA for the next year, the AADA suddenly—but only temporarily—snaps back into its proper proportion.

The FDIC does not believe that Congress intended to cause such a fluctuation in the relation between an institution's AADA and its deposit base.

institutions two assessment base match the split between the institution's primary-fund and secondary-fund deposits.

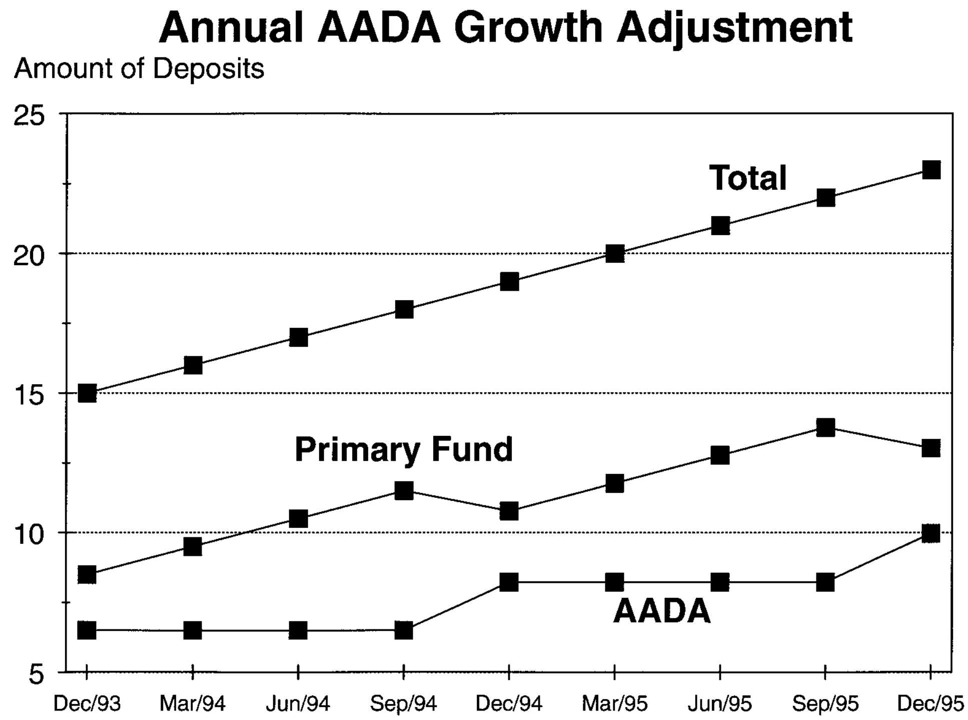
Moreover, from the FDIC's standpoint as insurer, it would be appropriate to maintain a relatively steady correlation between the AADA and the total deposit base. The FDIC is therefore proposing to revise its view, and take the position that—after the end of the semiannual period in which an institution's AADA has been established—the AADA grows and shrinks at the same basic rate as the institution's domestic deposit base (that is, excluding acquisitions and deposit sales), measured contemporaneously on a quarter-by-quarter basis. Over a full semiannual period, any increase or decrease in the AADA would automatically occur at a rate equal to the ''rate of growth of deposits'' during the semiannual period, thereby satisfying the statutory requirement.

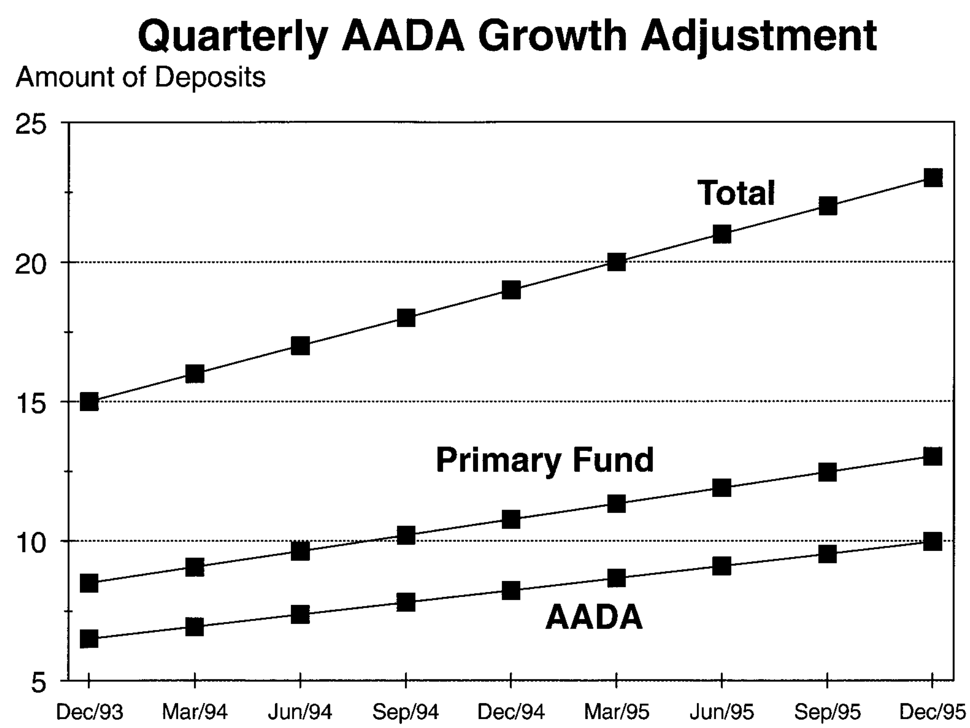
The FDIC considers that the statutory reference to an ''annual rate'' does not foreclose this approach. In ordinary usage, ''annual rate'' can refer to a rate that is expressed as an annual rate, even though the interval during which the rate applies, and over which it is determined, is a shorter interval such as a semiannual period (*e.g.*, in the case of six-month time deposits). For example, until recently, the FDIC's rules regarding the payment of interest on deposits spoke of ''the annual rate of simple interest''—a phrase that pertained to rates payable on time deposits having maturities as short as seven days. See 12 CFR 329.3 (1993).

Comparison of Annual and Quarterly AADA Growth Adjustment Methods

Consider an Oakar institution that has total deposits of $15 as of 12/31/93, with an AADA of $6.5. Further assume that the institution's total deposits grow by $1 every quarter, and that it does not participate in any additional acquisitions or deposit sales. The following graphs show the effects of making growth adjustments to its AADA on an annual basis versus a quarterly basis.

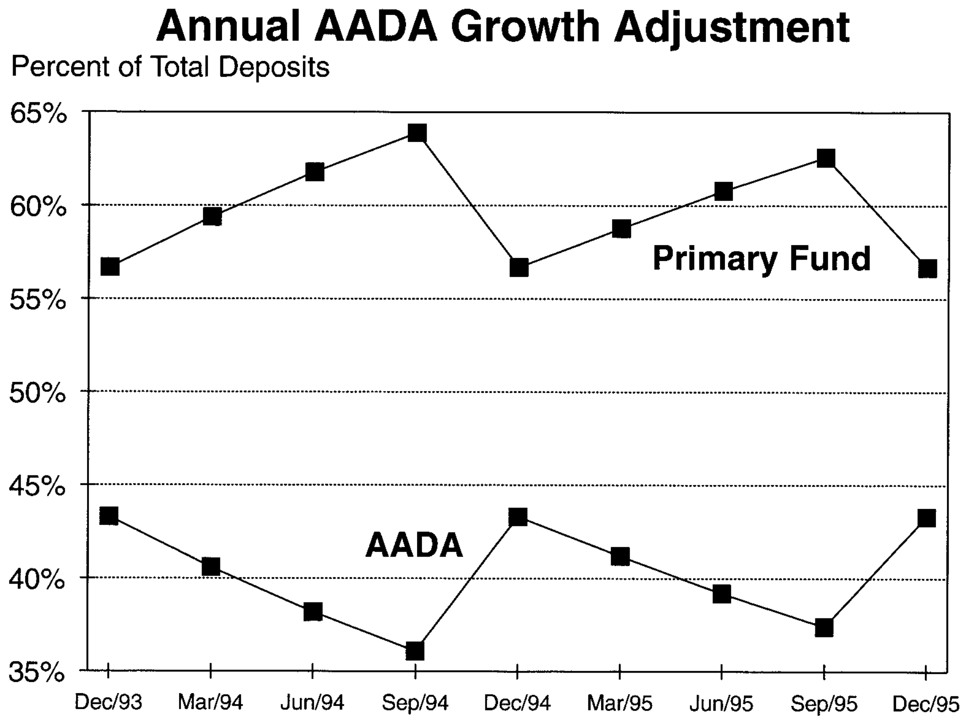
BILLING CODE 6714–01–P

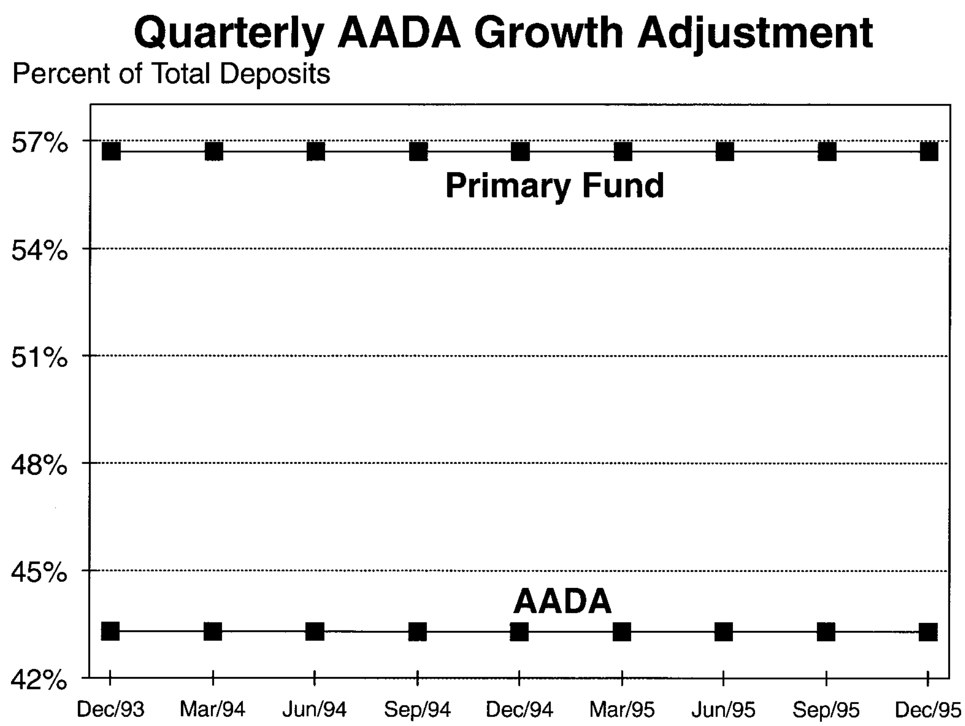




Since an AADA remains constant until a growth adjustment is applied, any change in total deposits is reflected in the institution's primary-fund deposits in the annual-adjustment method, while primary-fund deposits and the AADA vary together with total deposits in the quarterly-adjustment method.

The following graphs express this difference in terms of percents of total deposits.



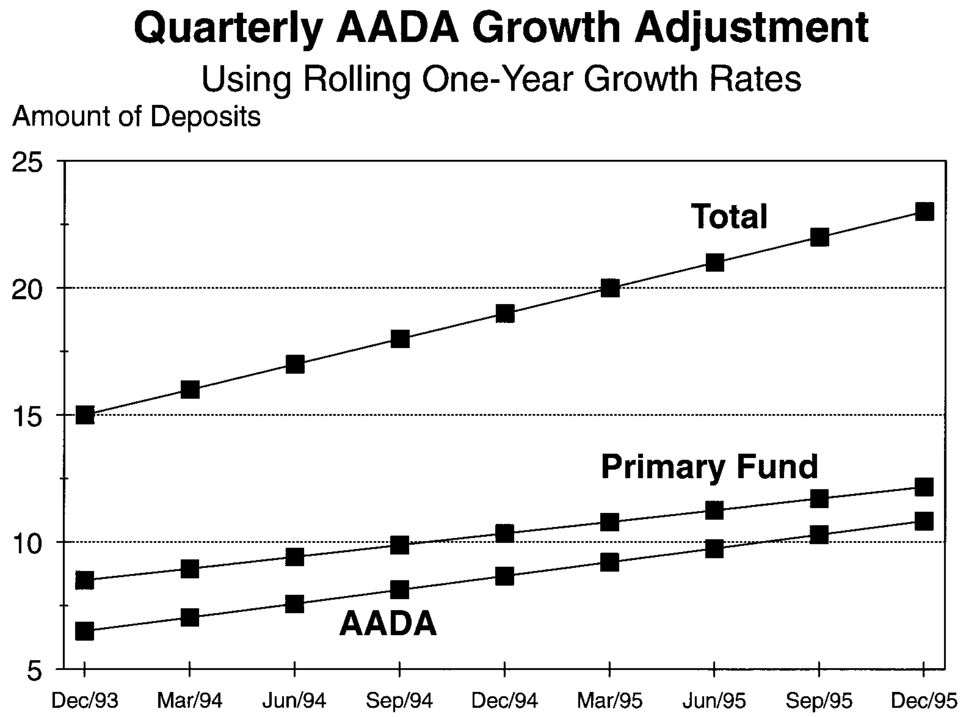


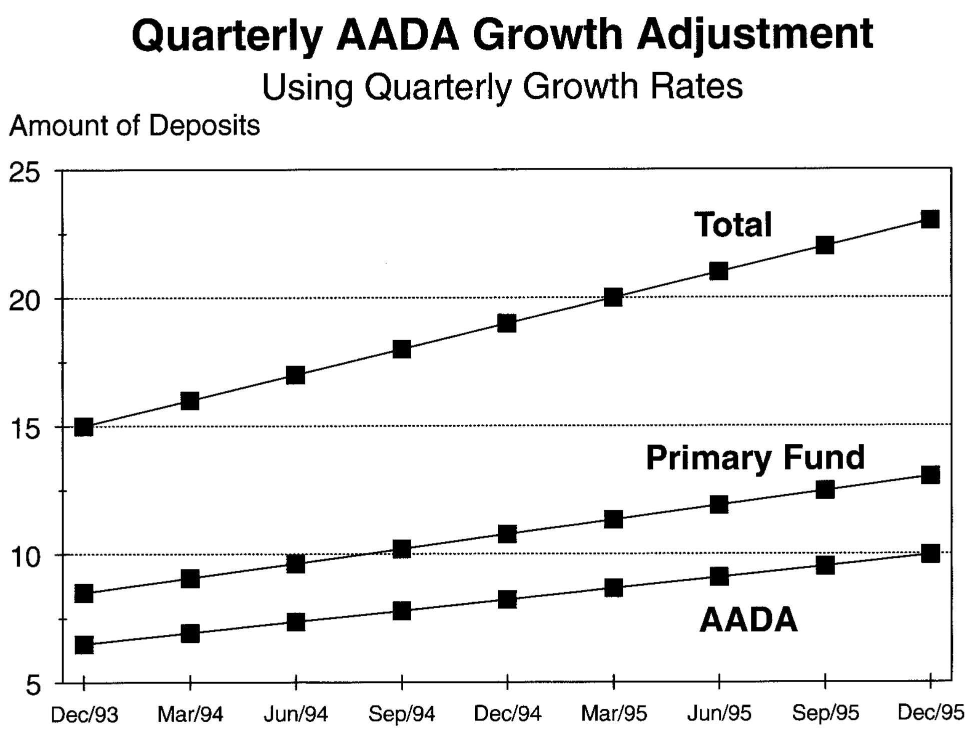
In the annual-adjustment method, the AADA becomes a smaller percent of total deposits as the total grows. In the quarterly-adjustment method, the AADA and the primary-fund deposits remain constant percents of total deposits.

The FDIC considered an alternative approach: using the rate of growth in the institution's deposit base for the prior four quarters, measured from the current quarter. This technique would be as consistent with the letter of the statute as the current method. But the four-prior-quarters method would preserve the lag between the AADA and the deposit base.

Comparison of Quarterly AADA Adjustments Using Different Growth Rate Bases

Consider the same Oakar institution with beginning total deposits of $15 and constant growth of $1 per quarter. The following graphs illustrate the effects on deposits of using total-deposit growth rates on two different bases: rolling one-year growth rates, and quarter-to-quarter growth rates.

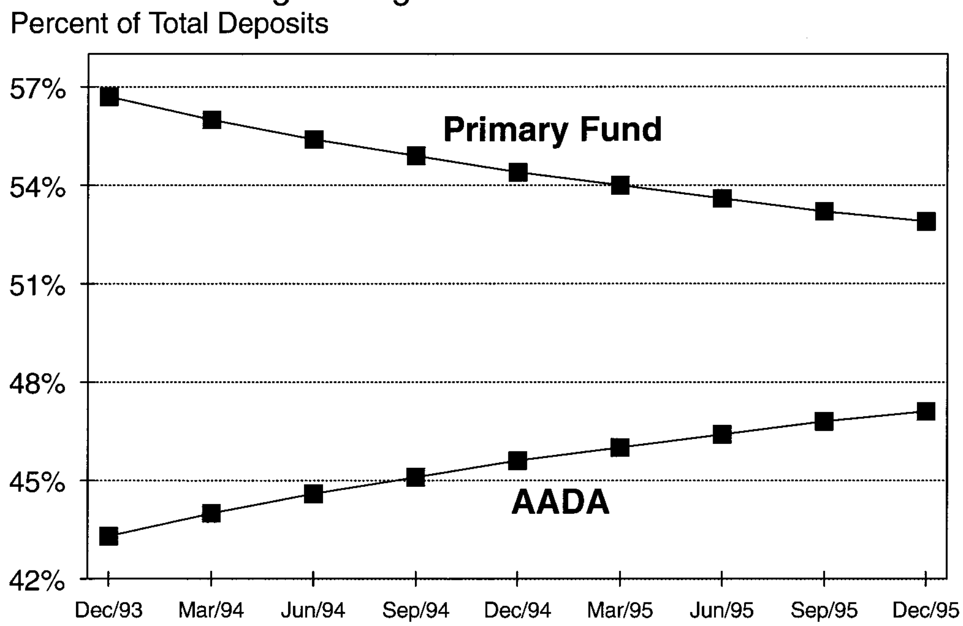




In both cases, the primary-fund deposits and the AADA appear to vary together with total deposits, but it is difficult to discern their precise relationship. Graphs of the same effects in terms of percents of total deposits are more illustrative:

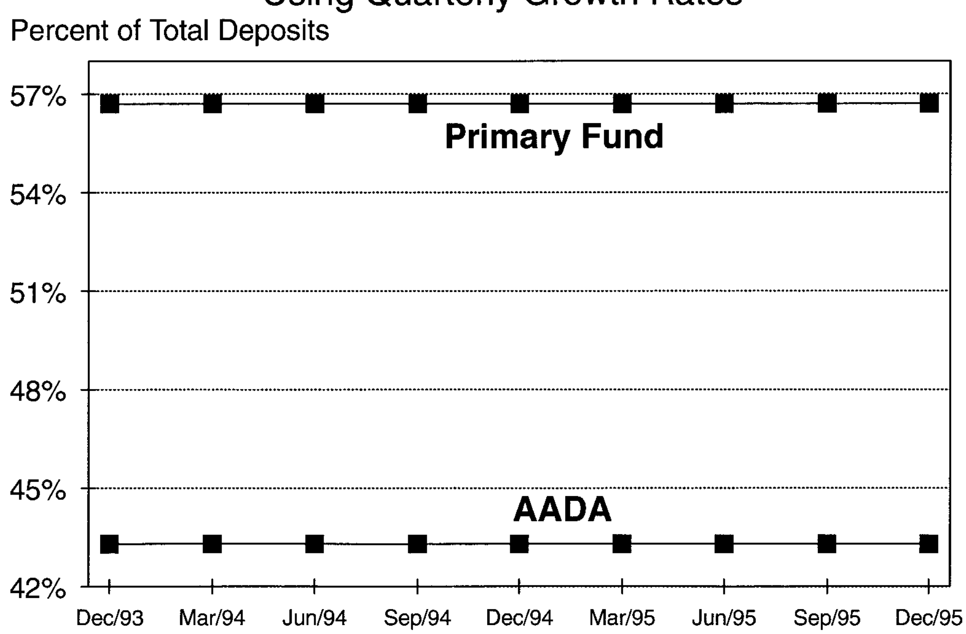
Quarterly AADA Growth Adjustment

Using Rolling One-Year Growth Rates



Quarterly AADA Growth Adjustment

Using Quarterly Growth Rates



BILLING CODE 6714–01–C

In the percent-of-deposits graphs, the AADA and the primary-fund deposits are shown to converge when the AADA growth adjustment is based on rolling one-year growth rates. In this particular example, the effect occurs because the institution's constant growth of $1 per quarter results in a steadily decreasing rate of growth of total deposits. Therefore, a rolling one-year growth rate of those total deposits at any point in time will be more than the actual rate of growth over the quarter to which the rolling rate is being applied. While different growth characteristics for total deposits would yield different relationships between the AADA and the primary fund over time, the general point is that the relationships of the AADA and the primary-fund deposits can vary when the AADA is adjusted, unless the total-deposit rate of growth used for the adjustment is drawn from the same period for which the rate is applied to the AADA.

As shown in the right-hand graph, applying the actual quarterly growth rate for total deposits to the AADA results in stable percents of total deposits for the AADA and primary fund deposits.

In sum, the FDIC considers that the quarterly approach is permissible under the statute, and is preferable to any approach that relies on a yearly interval to determine growth in the AADA.

D. Negative Growth of the AADA

One element of an Oakar institution's AADA for a current semiannual period is ''the amount by which [the AADA for the preceding semiannual period][3] would have increased during the preceding semiannual period if such increase occurred at a rate equal to the annual rate of growth of [the Oakar institution's] deposits''. 12 U.S.C. 1815(d)(3)(C)(iii). The FDIC is proposing to codify its view that the terms ''growth'' and ''increase'' encompass negative growth (shrinkage). But the FDIC is proposing to change its interpretation by excluding shrinkage due to deposit sales.

1. Negative Growth in General

The 1989 version of the Oakar Amendment focused on an Oakar bank's underlying rate of growth for the purpose of determining the Oakar bank's AADA. The 1989 version of the Amendment set a minimum growth rate for an AADA of 7 percent. The Amendment then specified that, if an Oakar bank's deposit base grew at a higher rate, the AADA would grow at the higher rate too. But the Amendment excluded growth attributable to mergers, branch purchases, and other acquisitions of deposits from other BIF members: the deposits so acquired were to be subtracted from the Oakar bank's total deposits for the purpose of determining the growth in the Oakar bank's deposit base (and therefore the rate of growth of the AADA). *See* 12 U.S.C. 1813(d)(3)(C)(3)(iii) (Supp. I 1989).

The 1989 version of the Oakar Amendment spoke only of ''growth'' and ''increases'' in the AADA. *Id.* The statute was internally consistent in this regard, because AADAs could never decrease.

Congress eliminated the minimum growth rate as of the start of 1992. FDICIA section 501 (a) & (b), 105 Stat. 2389 & 2391. As a result, the Oakar Amendment now specifies that an Oakar institution's AADA grows at the same rate as its domestic deposits (excluding mergers, branch acquisitions, and other acquisitions of deposits). 12 U.S.C. 1813(d)(3)(C).

The modern version of the Oakar Amendment continues to speak only of ''growth'' and ''increases,'' however. Congress has not—at least not explicitly—modified it to address the case of an institution that has a shrinking deposit base. Nor has Congress addressed the case of an institution that transfers deposits in bulk to another insured institution.

The FDIC regards this omission as a gap in the statute that requires interpretation. The FDIC does so because, if the statute were read to allow only increases in AADAs, the statute would generate a continuing shift in the relative insurance burden toward the SAIF. Most Oakar institutions—and nearly all large Oakar institutions—are BIF-member Oakar banks. If an Oakar bank's deposit base were to shrink through ordinary business operations, but its AADA could not decline in proportion to that shrinkage, the SAIF's share of the risk presented by the Oakar bank would increase. But the reverse would not be true: if an Oakar bank's deposit base increased, its AADA would rise as well, and the SAIF would continue to bear the same share of the risk. The result would be a tendency to displace the insurance burden from the BIF to the SAIF.[4]

The FDIC further considers that the main themes of the changes that Congress made to the Oakar Amendment in 1991 are those of simplification, liberalization, and symmetry. Congress allowed savings associations to acquire banks, as well as the other way around. Congress allowed institutions to deal with one another directly, eliminating the requirement that the institutions must belong to the same holding company (and the need for approval by an extra federal supervisor). Congress established a mirror-image set of rules for assessing Oakar banks and Oakar thrifts. As noted above, Congress repealed the 7 percentum floor on AADA growth, thereby eliminating the most prominent cause of divergence between an Oakar institution's assessment base and its deposit base. Congress expanded the scope of the Oakar Amendment and made it congruent with the relevant provisions of section 5(d)(2). See FDICIA section 501(a), 105 Stat. 2388–91 (Dec. 19, 1991).

In keeping with this view of the 1991 amendments, the FDIC interprets the growth provisions of the Oakar Amendment symmetrically: that is, to encompass negative growth rates as well as positive ones. The FDIC takes the position that an Oakar institution's AADA grows and shrinks at the same underlying rate of growth as the institution's domestic deposits.

The FDIC considers that this interpretation is appropriate because it accords with customary usage in the banking industry, and because it is consistent with the purposes and the structure of the statute. Under the FDIC's interpretation, each fund continues to bear a constant share of the risk posed by the institution, and continues to draw assessments from a constant proportion of the institution's deposit base.

Moreover, the FDIC's interpretation encourages banks to make the investment that Congress wished to promote. If ''negative increases'' were disallowed, Oakar banks would see their SAIF assessments (which currently carry a much higher rate) grow disproportionately when their deposits shrank through ordinary business operations.

Finally, the interpretation is designed to avoid—and has generally avoided—the anomaly of an institution having an AADA that is larger than its total deposit base.

2. Negative Growth Due to Deposit-Transfers

As noted above, for the purpose of analyzing deposit sales, the FDIC

[3] Theoretically, the growth rate is not applied directly to the prior AADA, but rather to an amount that is computed afresh each time—which amount is the sum of the various elements of the prior AADA.

[4] A shrinking Oakar thrift would have the opposite effect: The BIF's exposure would increase, and the SAIF's exposure would decrease. The Oakar thrifts are comparatively rare, however. The net bias would run against the SAIF.

follows the deposit-attribution principles set forth in the Rankin letter: the Oakar institution transfers its primary-fund deposits until they have been exhausted, and only then transfers its secondary-fund deposits. The FDIC further considers that—consistent with the moratorium imposed by section 5(d)(2)—the deposits continue to have the same status for insurance purposes after the deposit sale as before. The industry-wide stock of BIF-insured and SAIF-insured deposits should remain the same.

The FDIC's procedure for calculating the growth of the AADA upsets that balance, however. The deposit sale reduces the Oakar bank's total deposit base by a certain percentage: accordingly, the Oakar bank's AADA—and therefore its volume of SAIF-insured deposits—is reduced by the same percentage. Its BIF-insured deposits increase correspondingly. In effect, SAIF deposits are converted into BIF deposits, in violation of the moratorium.

This effect occurs without regard for whether the transferred deposits are primary-fund or secondary-fund deposits. Even when a BIF-member Oakar bank transfers deposits to another BIF-member bank—a transfer that, under the Rankin letter, would only involve BIF-insured deposits—the deposit sale serves to shrink the transferring bank's AADA.

The FDIC is proposing to cure this defect by excluding deposit sales from the growth computation. The FDIC continues to believe that the terms ''growth'' and ''increase'' as used in the statute are broad enough to refer to a negative rate as well as a positive one. But the FDIC does not consider that it is required to extend these terms beyond reasonable limits. In particular, the FDIC does not believe that it must necessarily interpret these terms to include a decrease that is attributable to a bulk transfer of deposits. The statute itself excludes the effect of an acquisition or other deposit-assumption from the computation of growth. The FDIC considers that it has ample authority to make an equivalent exclusion for deposit sales.

The FDIC believes its proposed interpretation is sound because deposit sales do not—in and of themselves—represent any change in the industry-wide deposit base of each fund. It is inappropriate for the FDIC to generate such a change on its own as a collateral effect of its assessment procedures. Moreover, the proposed interpretation is in accord with the tenor of the amendments made by the FDICIA, because it treats deposit sales symmetrically with deposit-acquisitions.

E. Value of an Initial AADA

The Oakar Amendment says that an Oakar institution's initial AADA is equal to ''the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction)''. *Id.* 1815(d)(3)(C). The FDIC has by regulation interpreted the phrase ''deposits acquired by the institution''. 12 CFR 327.32(a)(4). The regulation distinguishes between cases in which a buyer assumes deposits from a healthy seller (healthy-seller cases), and cases in which the FDIC is serving as conservator or receiver for the seller at the time of the transaction (troubled-seller cases).[5]

The FDIC proposes to retain but refine its interpretation with respect to healthy-seller cases. The FDIC also proposes to codify its ''conduit'' rule for certain deposits that a buyer promptly retransfers to a third party. The FDIC proposes to eliminate the special provisions for troubled-seller cases.

1. The ''Nominal Amount'' Rule

The general rule is that a buyer's initial AADA equals the full nominal amount of the assumed deposits. 12 CFR 327.32(a)(3)(4).

The FDIC is proposing to retain the substance of this provision. The proposed rule would continue to emphasize the point that the amount of the transferred deposits is to be measured by focusing on the volume divested by the seller. The purpose of the rule is to make it clear that post-transaction events—such as deposit run-off—have no bearing on the calculation of the buyer's AADA.

The FDIC considers that the nominal-value rule is appropriate for two chief reasons. Most importantly, it reflects the manifest intent of the statute, which says that the volume of the acquired deposits are to be ''determined at the time'' of the transaction. Second, the nominal-value rule has the virtues of clarity and precision. A buyer and a seller will both know precisely the value of an AADA that is generated in an Oakar transaction. The buyer's expected secondary-fund assessments can be an important cost for the parties to consider when deciding on an acceptable price. The FDIC considers that the nominal-value rule reduces uncertainty on this point.

The proposed rule would update this aspect of the regulation in two minor ways. The existing rule is somewhat obsolete: it presumes that the buyer assumes all the seller's deposits, and that all such deposits are insured by the buyer's secondary fund. The reason for these presumptions is purely historical. At the time the regulation was adopted, the Oakar Amendment only spoke of cases in which the seller merged into or consolidated with the buyer, or in which the buyer acquired all the seller's assets and liabilities. *See* 12 U.S.C. 1815(d)(3)(A) (Supp. I 1989). The Amendment did not allow for less comprehensive Oakar transactions (*e.g.*, branch sales). Nor did it contemplate a transaction in which the seller was an Oakar institution in its own right.

The proposed rule would make it clear that the nominal-amount rule applies to all Oakar transactions. The proposed rule would also specify that the AADA is only equal to the nominal amount of the transferred deposits that are insured by the secondary fund of the buyer, not necessarily all the transferred deposits. Both these points represent the current view of the FDIC.

2. Deposits Acquired From Troubled Institutions

The FDIC's current regulation provides various discounts that serve to reduce the buyer's AADA when the seller is in conservatorship or receivership at the time of the sale. *See* 12 CFR 327.32(a)(3)(4). The FDIC is proposing to eliminate the discounts, on the ground that they are no longer needed.

In adopting the rule, the FDIC observed that the deposits that a buyer assumes from a troubled seller are quite volatile: the buyer generally loses a certain percentage of the deposits almost immediately. The FDIC characterized the lost deposits as ''phantom deposits'', and said it would make no sense to require the bank to continue to pay assessments on them. The FDIC further said that such a requirement would impair its ability to transfer the business of such thrifts to healthy enterprises, to the detriment of the communities the thrifts were serving. *See* 54 FR at 51373. The FDIC accordingly adopted an interpretive rule stating that the nominal amount of the deposits transferred in such cases were to be discounted for the purpose of computing the AADA generated in the transaction, as follows:

—*Brokered deposits:* All brokered deposits are subtracted from the nominal volume of the transferred deposits.

—*The ''80/80'' rule:* Each remaining deposit is capped at $80,000. The

[5] The regulation also refers to the Resolution Trust Corporation (RTC). The reference is obsolete, as the RTC no longer exists.

AADA is equal to 80% of the aggregate of the deposits as so capped.

The FDIC explained that these discounts reflected its actual experience—that is, its experience with arranging purchase-and-assumption transactions for institutions in receivership. *Id*. But the discounts were not intended to represent the actual run-off that an individual Oakar institution would sustain in a particular case. Rather, they were an approximation or estimate of the run-off that Oakar institutions ordinarily sustain in troubled-seller cases.

As an historical matter, the FDIC determined that it was appropriate to provide the discounts because the funding decisions for troubled thrift institutions were subject to constraints and considerations that fell outside the normal range of factors influencing such decisions in the market place for healthy thrifts. The sellers had often been held in conservatorship for some time. In order to maintain the assets in such institutions, it often was necessary for the conservator to obtain large and other high-yielding deposits for funding purposes. Both the size of the discounts, and the fact that the discounts were restricted to troubled-seller cases, were known publicly in 1989 and were relevant to every potential buyer's decision to acquire and price a thrift institution.

Although healthy sellers in unassisted transactions also sometimes relied upon volatile deposits for funding, these funding decisions were part of a strategy to maximize the profits of a going concern, and the management of the purchasing institutions were accountable to shareholders. The comparable decisions for troubled sellers in assisted transactions were made by managers of government conservatorships that were subject to funding constraints, relatively inflexible operating rules (necessary to control a massive government effort to sell failed thrifts), and other considerations outside the scope of the typical private transaction.

While the FDIC recognized that it was incumbent upon any would-be buyer to evaluate and price all aspects of a transaction, the FDIC determined that it would be counterproductive to require bidders to price the contingencies related to volatile deposits in assisted transactions, given that these deposits primarily were artifacts of government conservatorships. Considering the objective of attracting private capital in order to avoid additional costs to the taxpayer, the FDIC sought to avoid the potential deterrent effect of including these artificial elements in the pricing equation. In order to reflect the volatile deposits acquired in assisted transactions, the FDIC determined to provide the above-described discounts.

The FDIC adopted this interpretive rule at a time when troubled and failed thrifts were prevalent, and the stress on the safety net for such institutions was relatively severe. The stress has been considerably relieved, however. The FDIC considers that, under current conditions, there is no longer any need to maintain a special set of rules for troubled-seller cases.

Moreover, the discounts are, at bottom, simply another factor that helps to determine the price that a buyer will pay for a troubled institution. The FDIC ordinarily must contribute its own resources to induce buyers to acquire such institutions. Any reduction in future assessments that the FDIC offers as an incentive merely reduces the amount of money the FDIC must contribute at the time of the transaction. The simpler and more straightforward approach is to reflect all such considerations in the net price that buyers pay for such institutions at the time of the transaction.

3. Conduit Deposits

The FDIC staff has taken the position that, under certain circumstances, when an Oakar institution re-transfers some of the secondary-fund deposits it has assumed in the course of an Oakar transaction, the re-transferred deposits will not be counted as ''acquired'' deposits for purposes of computing the Oakar institution's AADA. The Oakar institution is regarded as a mere conduit for the re-transferred deposits. The deposits themselves retain their original status as BIF-insured or SAIF-insured after the re-transfer: whatever their status in the hands of the original transferor, the deposits have that status in the hands of the ultimate transferee.

The FDIC has applied its ''conduit'' principle only in very narrow circumstances. The FDIC has done so only when the Oakar institution has been required to commit to re-transfer specified branches as a condition of approval of the acquisition of the seller; the commitment has been enforceable; and the re-transfer has been required to occur within six months after consummation of the initial Oakar transaction. *See, e.g.,* FDIC Advisory Op. 94–48, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4901–02 (1994).

The FDIC is proposing to codify and refine this view. As codified, secondary-fund deposits would have the status of ''conduit'' deposits in the hands of an Oakar institution only if a Federal banking supervisory agency or the United States Department of Justice explicitly ordered the Oakar institution to re-transfer the deposits within six months, if the institution's obligation to make the re-transfer was enforceable, and if the re-transfer had to be completed in the six-month grace period.

Conduit deposits would be included in the Oakar institution's AADA only on a temporary basis: for one semiannual period, or in some cases two periods, but no more. The deposits would be counted in the ''amount of deposits acquired'' by the Oakar institution—and therefore in its AADA—during the semiannual period in which the transaction occurs. The AADA so computed would be used to determine the assessment due for the following semiannual period. In addition, if the Oakar institution retained the deposits during part of that following period, the deposits would again be included in the ''amount of deposits acquired''—and would again be part of the institution's AADA—for the purpose of computing the assessment for the semiannual period after that. But thereafter the deposits would be excluded from the ''amount of deposits acquired'' by the Oakar institution.

If the conditions were not satisfied, the conduit principle would not come into play, and the deposits would be regarded as having been assumed by the Oakar institution at the time of the original Oakar transaction. Any subsequent transfer of the deposits would be treated as a separate transaction, and analyzed independently of the Oakar transaction.

The FDIC is currently considering alternative methodologies for attributing any deposits that an Oakar institution might transfer to another institution. The conduit principle's economic impact is somewhat greater in the context of one such methodology than in that of the other.

The FDIC currently takes the view that, when an Oakar institution transfers deposits to another institution, the seller transfers its primary-fund deposits until they have been exhausted, and only then transfers its secondary-fund deposits. A BIF-member Oakar bank has a comparatively strong incentive to invoke the conduit principle under this methodology. If an Oakar bank can succeed in characterizing re-transferred deposits as conduit deposits, the bank will escape the full impact of the SAIF assessment on those deposits, which is comparatively high at the present time.

The FDIC is also considering a ''blended'' approach, however. Under this methodology, whenever an Oakar institution transferred any deposits to another institution, the transferred deposits would be regarded as consisting of a blend of primary-fund and secondary-fund deposits. The ratio of the blend would be the same as that of the institution as a whole. This methodology would reduce the incentive for Oakar banks to invoke the conduit principle to some extent, particularly in the case of Oakar banks having large AADAs. An Oakar bank's AADA would shrink as a result of any transfer of deposits, even one that did not involve conduit deposits. The comparative benefit of invoking the conduit rule would be correspondingly reduced.

F. Transitional Considerations

1. Freezing Prior AADAs

In theory, an Oakar institution's AADA is computed anew for each semiannual period. An AADA for a current semiannual period is equal to the sum of three elements:

—*Element 1:* The volume of secondary-fund deposits that the institution originally acquired in the Oakar transaction;
—*Element 2:* The aggregate of the growth increments for all semiannual periods prior to the one for which Element 3 is being determined; and
—*Element 3:* The growth increment for the period just prior to the current period (i.e., just prior to the one for which the assessment is due). Element 3 is calculated on a base that equals the sum of elements 1 and 2.

The FDIC has consistently interpreted its existing rules to mean that, when a growth increment has already been determined for an AADA for a semiannual period, the growth increment continues to have the same value thereafter. *See, e.g.,* FDIC Advisory Op. 92- 19, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4619, 4620–21 (1992). The net effect has been to ''freeze'' AADAs— and their elements—for prior semiannual periods. The proposed rule would codify this principle.

Accordingly, the new interpretations set forth in the proposed rule would apply on a purely prospective basis. They would come into play only for the purpose of computing future elements of future AADAs. The new interpretations would not affect AADAs already computed for prior semiannual periods (or the assessments that Oakar institutions have already paid on them). Nor would they affect the prior-period elements of AADAs that are to be determined for future semiannual periods. In short, the proposed rule would ''leave prior AADAs alone''.

2. 1st-Half 1997 Assessments: Excluding Deposit Sales From the Growth Calculation

The FDIC proposes to follow its existing procedures in computing AADAs for the first semiannual period of 1997, with one exception. In particular, an institution's AADA for the first semiannual period of 1997 would be based on the growth of the institution's deposits as measured over the entire calendar year 1996. The AADA so determined would be used to compute both quarterly payments for the first semiannual period of 1997.

The exception is that, when computing the growth rate for deposits during the second semiannual period of 1996, the FDIC would apply its new interpretation of ''negative'' growth, and would decline to consider shrinkage attributable to transactions that occurred during July–December 1996.

The FDIC acknowledges that its proposed new interpretation would make a significant break with the past. The FDIC further recognizes that the new interpretation could affect the business considerations that the parties must evaluate when they enter into deposit-transfer transactions. The FDIC considers that the industry has ample notice of the proposed exclusion, however, and that the parties to any such transaction can factor in any costs that the exclusion might produce.

At the same time, the FDIC agrees that it would be inappropriate to apply its new interpretation retroactively to transactions that have been completed earlier in 1996. The parties to these transactions did not have notice of the FDIC's proposal. The FDIC would therefore include shrinkage attributable to deposit sales that occurred during the first semiannual period of 1996 when determining the annual growth rate to be used in computing Oakar institutions' AADAs for the first semiannual period of 1997.

3. 2nd-Half 1997 Assessments: Use of Quarterly AADAs

The FDIC proposes to begin measuring AADAs on a quarterly basis during the first semiannual period of 1997. The first payment that would be computed using a quarterly component of an AADA would be the initial payment for the next semiannual period—the payment due at the end of June.

The first time the FDIC would identify and measure a quarterly component of a semiannual AADA would be as of March 31, 1997. The quarterly component with respect to that date would reflect the basic rate of growth of the institution's deposits during the first calendar quarter of 1997 (January–March). The quarterly AADA component so measured would be used to determine the institution's first quarterly payment for the second semiannual period in 1997 (the June payment).

The second quarterly AADA component would reflect the basic rate of growth of the institution's deposits during the second calendar quarter of 1997 (April–June). The quarterly AADA component so measured would be used to determine the institution's second quarterly payment for the second semiannual period in 1997 (the September payment).

G. Simplification and Clarification of the Regulation

In some respects, the proposed rule would simplify and clarify the current regulation without changing its meaning. The FDIC is doing so in response to two initiatives. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994), requires federal agencies to streamline and modify their regulations. In addition, the FDIC has voluntarily committed itself to review its regulations on a 5-year cycle. *See* Development and Review of FDIC Rules and Regulations, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 5057 (1984). The FDIC considers that subpart B of part 327 is a fit candidate for review under each of these initiatives.

The proposed rule would clarify subpart B by defining and using the terms ''primary fund'' and ''secondary fund''. An Oakar institution's primary fund would be the fund to which it belongs; it would be the other insurance fund. Using these terms, the FDIC is proposing to simplify paragraphs (1) and (2) of § 327.32(a) by eliminating redundant language; the changes would not alter the meaning of these provisions.

In addition, the FDIC would clarify § 327.6(a) by changing the nomenclature used therein. ''Deposit-transfer transaction'' would be replaced by ''terminating transaction;'' ''acquiring institution'' would be replaced by ''surviving institution;'' and ''transferring institution'' would be replaced by ''terminating institution''. The terms now found in § 327.6(a) are also used in other provisions of part 327, where they have different and less specialized meaning. The change in nomenclature in § 327.6(a) is intended to avoid any confusion that the current terminology might cause.

III. Proposed Effective Date

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, 2214–15 (1994), requires that new and amended regulations imposing additional reporting, disclosure, or other new requirements on insured depository institutions must generally take effect on the first day of a calendar quarter. In keeping with this requirement, the FDIC is proposing that the rule, if adopted, would take effect on January 1, 1997.

IV. Request for Public Comment

The FDIC hereby solicits comment on all aspects of the proposed rule. In particular, the FDIC solicits comment on the following points: attributing deposits that an Oakar institution transfers to another institution according to principles articulated in the Rankin letter, or treating the transferred deposits as a blend of deposits insured by both funds; having the FDIC, rather than individual institutions, compute AADAs using information provided by the institutions; interpreting AADAs as consisting of quarterly components, and computing the growth of AADAs on a quarterly cycle rather than an annual one; retaining the concept of negative growth for the purpose of computing AADAs; excluding deposit sales from the computation of growth; applying the nominal-amount principle for determining initial AADAs in all cases, including troubled-seller cases; and preserving the conduit-deposit concept.

In addition, in accordance with section 3506(c)(2)(B) of the Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(B), the FDIC solicits comment for the following purposes on the collection of information proposed herein:

—to evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility;

—to evaluate the accuracy of the FDIC's estimate of the burden of the proposed collection of information;

—to enhance the quality, utility, and clarity of the information to be collected; and

—to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The FDIC also solicits comment on all other points raised or options described herein, and on their merits relative to the proposed rule.

V. Paperwork Reduction Act

Under the FDIC's existing procedures, each Oakar institution must compute its AADA at the end of each year, using a worksheet provided by the FDIC (annual growth worksheet). The annual growth worksheet shows the computation of the institution's AADA for the first semiannual period of the current year—that is, the AADA that is used to compute the assessment due for the first semiannual period of the current year—which is based on the institution's growth during the prior year. The institution must provide the annual growth worksheet to the FDIC as a part of the institution's certified statement.

In addition, whenever an institution is the buyer in an Oakar transaction, it must submit a transaction worksheet showing the total deposits acquired on the transaction date. If the seller is an Oakar institution, and if the buyer acquires the entire institution, the buyer must also report the seller's last AADA (as shown in the seller's last call report). The buyer must then subtract this number from the total deposits acquired in order to determine its new AADA.

The proposed rule would change this procedure for the annual growth worksheets for the first semiannual period of 1997 (*i.e.*, for the worksheets that show the growth of deposits during 1996). The change would only affect Oakar institutions that transferred deposits to other institutions during 1996. Such an institution would have to report the total amount of deposits that it transferred in transactions from July 1–December 31, 1996.

Thereafter the FDIC would compute the AADAs for all Oakar institutions, using information taken from their quarterly call reports. Institutions would not have to report additional information in most cases. An Oakar institution that neither acquired nor transferred deposits in the prior quarter would not have to provide any additional information at all. An Oakar institution that acquired deposits would have to provide the same information at the end of the quarter that it now provides at the end of the year; there would be a change in the timing, but no change in burden.

Only an Oakar institution that transferred deposits would have to provide additional information. The items of information needed, and the number of institutions affected, would depend on the deposit-attribution methodology chosen by the FDIC. Under the Rankin letter's approach, the FDIC presently anticipates that approximately 100 institutions per year would report deposit sales. Sellers would have to report the volume of deposits they transferred in the transaction. Under the ''blended deposits'' approach, the FDIC estimates that approximately 250 Oakar institutions per year would report deposit sales. Sellers would have to report both the volume of deposits transferred, and the date of the transaction. In either case, the information would be readily available: the extra reporting burden would be small.

The FDIC expects that the net effect would be to reduce the overall reporting burden on Oakar institutions. The burden of submitting extra information in deposit-sale cases would be more than offset by the elimination of the growth worksheet and by the FDIC's assumption of the burden of computing AADAs.

Accordingly, the FDIC is proposing to revise an existing collection of information. The revision has been submitted to the Office of Management and Budget for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0057), Washington, D.C. 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Room F–400, 550 17th St., N.W., Washington, D.C. 20429. The impact of this proposal on paperwork burden would be to require a one-time *de minimis* report from approximately 100 Oakar institutions for the first semiannual period in 1997, and thereafter to eliminate the annual growth worksheet for all 900 Oakar institutions, which takes an estimated two hours to prepare. The FDIC would then compute each Oakar institution's AADA from the deposit data in the institution's quarterly call report. The effect of this proposal on the estimated annual reporting burden for this collection of information is a reduction of 1,800 hours:

Approximate Number of Respondents: 900.

Number of Responses per Respondent: −1.

Total Annual Responses: 900.

Average Time per Response: 2 hours.

Total Average Annual Burden Hours: −1800 hours.

The FDIC expects the Federal Financial Institutions Examination Council to require (as needed) the information in the quarterly call reports, starting with the report for March 31, 1997. If the Council does recommend these changes, they will be submitted to the Office of Management and Budget for review and approval as part of the call report submission.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the proposed rule. Although the FDIC has chosen to publish general notice of the proposed rule, and to ask for public comment on it, the FDIC is not obliged to do so, as the proposed rule is interpretive in nature. *See id.* 553(b) and 603(a).

Moreover, the FDIC considers that the proposed rule would amount to a net reduction in burden for all Oakar institutions, as they would no longer have to prepare or file regular annual growth worksheets after the worksheet with respect to 1996. Instead, a limited number of Oakar institutions would have to submit one new piece of information, and would have to do so only for quarters in which they transferred deposits.

In addition, although the Regulatory Flexibility Act requires a regulatory flexibility analysis when an agency publishes a rule, the term ''rule'' (as defined in the Regulatory Flexibility Act) excludes ''a rule of particular applicability relating to rates''. *Id.* 601(2). The proposed rule relates to the rates that Oakar institutions must pay, because it addresses various aspects of the method for determining the base on which assessments are computed. The Regulatory Flexibility Act is therefore inapplicable to this aspect of the proposed rule.

Finally, the legislative history of the Regulatory Flexibility Act indicates that its requirements are inappropriate to this aspect of the proposed rule. The Regulatory Flexibility Act is intended to assure that agencies' rules do not impose disproportionate burdens 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 proposed rule would not impose a uniform cost or requirement on all Oakar institutions regardless of size: to the extent that it imposes any costs at all, the costs have to do with the effects that the proposed rule would have on Oakar institutions' assessments. Assessments are proportional to an institution's size. Moreover, while the FDIC has authority to establish a separate risk-based assessment system for large and small members of each insurance fund, *see* 12 U.S.C. 1817(b)(1)(D), the FDIC has not done so. Within the current assessment scheme, the FDIC cannot ''tailor'' assessment rates to reflect the ''size and nature'' of institutions.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, 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 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1–2. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1815, 1817–1819.

3. In § 327.6 the section heading and paragraph (a) are revised to read as follows:

§ 327.6 Terminating transfers; other terminations of insurance.

(a) *Terminating transfer*—(1) *Assessment base computation.* If a terminating transfer occurs at any time in the second half of a semiannual period, each surviving institution's assessment base (as computed pursuant to § 327.5) for the first half of that semiannual period shall be increased by an amount equal to such institution's pro rata share of the terminating institution's assessment base for such first half.

(2) *Pro rata share.* For purposes of paragraph (a)(1) of this section, the phrase ''pro rata share'' means a fraction the numerator of which is the deposits assumed by the surviving institution from the terminating institution during the second half of the semiannual period during which the terminating transfer occurs, and the denominator of which is the total deposits of the terminating institution as required to be reported in the quarterly report of condition for the first half of that semiannual period.

(3) *Other assessment-base adjustments.* The Corporation may in its discretion make such adjustments to the assessment base of an institution participating in a terminating transfer, or in a related transaction, as may be necessary properly to reflect the likely amount of the loss presented by the institution to its insurance fund.

(4) *Limitation on aggregate adjustments.* The total amount by which the Corporation may increase the assessment bases of surviving or other institutions under this paragraph (a) shall not exceed, in the aggregate, the terminating institution's assessment base as reported in its quarterly report of condition for the first half of the semiannual period during which the terminating transfer occurs.

* * * * *

4. Section 327.8 is amended by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 327.8 Definitions.

* * * * *

(h) As used in § 327.6(a), the following terms are given the following meanings:

(1) *Surviving institution.* The term *surviving institution* means an insured depository institution that assumes some or all of the deposits of another insured depository institution in a terminating transfer.

(2) *Terminating institution.* The term *terminating institution* means an insured depository institution some or all of the deposits of which are assumed by another insured depository institution in a terminating transfer.

(3) *Terminating transfer.* The term *terminating transfer* means the assumption by one insured depository institution of another insured depository institution's liability for deposits, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, when the terminating institution goes out of business or transfers all or substantially all its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments by or at the end of the semiannual period during which such assumption of liability for deposits occurs. The term *terminating transfer* does not refer to the assumption of liability for deposits from the estate of a failed institution, or to a transaction in which the FDIC contributes its own resources in order to induce a surviving institution to assume liabilities of a terminating institution.

* * * * *

(j) *Primary fund.* The *primary fund* of an insured depository institution is the insurance fund of which the institution is a member.

(k) *Secondary fund.* The *secondary fund* of an insured depository institution is the insurance fund that is not the primary fund of the institution.

5. In § 327.32, paragraph (a) is amended by revising paragraphs (a)(1) and (a)(2), and by removing paragraphs (a)(4) and (a)(5), to read as follows:

§ 327.32 Computation and payment of assessment.

(a) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as provided in paragraph (a)(2) of this section, and consistent with the provisions of § 327.4, the assessment to be paid by an institution that is subject to this subpart B shall be computed at the rate applicable to institutions that are members of the primary fund of such institution.

(ii) Such applicable rate shall be applied to the institution's assessment base less that portion of the assessment base which is equal to the institution's adjusted attributable deposit amount.

(2) *Rate applicable to the adjusted attributable deposit amount.* Notwithstanding paragraph (a)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution which is equal to the adjusted attributable deposit amount of such institution shall:

(i) Be subject to assessment at the assessment rate applicable to members of the secondary fund of such institution pursuant to subpart A of this part; and

(ii) Not be taken into account in computing the amount of any assessment to be allocated to the primary fund of such institution.

* * * * *

6. New §§ 327.33 through 327.36 are added to read as follows:

§ 327.33 ''Acquired'' deposits.

This section interprets the phrase ''deposits acquired by the institution'' as used in § 327.32(a)(3)(i).

(a) *In general.* (1) *Secondary-fund deposits.* The phrase ''deposits acquired by the institution'' refers to deposits that are insured by the secondary fund of the acquiring institution, and does not include deposits that are insured by the acquiring institution's primary fund.

(2) *Nominal dollar amount.* Except as provided in paragraph (b) of this section, an acquiring institution is deemed to acquire the entire nominal dollar amount of any deposits that the transferring institution holds on the date of the transaction and transfers to the acquiring institution.

(b) *Conduit deposits*—(1) *Defined.* As used in this paragraph (b), the term ''conduit deposits'' refers to deposits that an acquiring institution has assumed from another institution in the course of a transaction described in § 327.31(a), and that are treated as insured by the secondary fund of the acquiring institution, but which the acquiring institution has been explicitly and specifically ordered by the Corporation, or by the appropriate federal banking agency for the institution, or by the Department of Justice to commit to re-transfer to another insured depository institution as a condition of approval of the transaction. The commitment must be enforceable, and the divestiture must be required to occur and must occur within 6 months after the date of the initial transaction.

(2) *Exclusion from AADA computation.* Conduit deposits are not considered to be acquired by the acquiring institution within the meaning of § 327.32(a)(3)(i) for the purpose of computing the acquiring institution's adjusted attributable deposit amount for a current semiannual period that begins after the end of the semiannual period following the semiannual period in which the acquiring institution re-transfers the deposits.

§ 327.34 Application of AADAs.

This section interprets the meaning of the phrase ''an insured depository institution's 'adjusted attributable deposit amount' for any semiannual period'' as used in the opening clause of § 327.32(a)(3).

(a) *In general.* The phrase ''for any semiannual period'' refers to the current semiannual period: that is, the period for which the assessment is due, and for which an institution's adjusted attributable deposit amount (AADA) is computed.

(b) *Quarterly components of AADAs.* An AADA for a current semiannual period consists of two quarterly AADA components. The first quarterly AADA component for the current period is determined with respect to the first quarter of the prior semiannual period, and the second quarterly AADA component for the current period is determined with respect to the second quarter of the prior period.

(c) *Application of AADAs.* The value of an AADA that is to be applied to a quarterly assessment base in accordance with § 327.32(a)(2) is the value of the quarterly AADA component for the corresponding quarter.

(d) *Initial AADAs.* If an AADA for a current semiannual period has been generated in a transaction that has occurred in the second calendar quarter of the prior semiannual period, the first quarterly AADA component for the current period is deemed to have a value of zero.

(e) *Transition rule.* Paragraphs (b), (c) and (d) of this section shall apply to any AADA for any semiannual period beginning on or after July 1, 1997.

§ 327.35 Grandfathered AADA elements.

This section explains the meaning of the phrase ''total of the amounts determined under paragraph (a)(3)(iii)'' in § 327.32(a)(3)(ii). The phrase ''total of the amounts determined under paragraph (a)(3)(iii)'' refers to the aggregate of the increments of growth determined in accordance with § 327.32(a)(3)(iii). Each such increment is deemed to be computed in accordance with the contemporaneous provisions and interpretations of such section. Accordingly, any increment of growth that is computed with respect to a semiannual period has the value appropriate to the proper calculation of the institution's assessment for the semiannual period immediately following such semiannual period.

§ 327.36 Growth computation.

This section interprets various phrases used in the computation of growth as prescribed in § 327.32(a)(3)(iii).

(a) *Annual rate.* The annual rate of growth of deposits refers to the rate, which may be expressed as an annual percentage rate, of growth of an institution's deposits over any relevant interval. A relevant interval may be less than a year.

(b) *Growth; increase; increases.* Except as provided in paragraph (c) of this section, references to ''growth,'' ''increase,'' and ''increases'' may generally include negative values as well as positive ones.

(c) *Growth of deposits.* ''Growth of deposits'' does not include any decrease in an institution's deposits representing deposits transferred to another insured depository institution, if the transfer occurs on or after July 1, 1996.

(d) *Quarterly determination of growth.* For the purpose of computing assessments for semiannual periods beginning on July 1, 1997, and thereafter, the rate of growth of deposits for a semiannual period, and the amount by which the sum of the amounts specified in § 327.32(a)(3) (i) and (ii) would have grown during a semiannual period, is to be determined by computing such rate of growth and such sum of amounts for each calendar quarter within the semiannual period.

7. Section 327.37 is added to read as follows:

ALTERNATIVE ONE

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) acquires deposits from another insured depository institution (transferring institution). For the purpose of determining whether the assumption of deposits (assumption transaction) constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Transferring institution*—(1) *Transfer of primary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by a transferring institution in a transaction, or in a related series of transactions, does not exceed the volume of deposits that is insured by its primary fund (primary-fund deposits) immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the transferred deposits shall be deemed to be insured by the institution's primary fund. The primary institution's volume of primary-fund deposits shall be reduced by the aggregate amount so transferred.

(2) *Transfer of secondary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by the transferring institution in a transaction, or in a related series of transactions, exceeds the volume of deposits that is insured by its primary fund immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the following volume of the deposits so transferred shall be deemed to be insured by the institution's secondary fund (secondary-fund deposits): the aggregate amount of the transferred deposits minus that portion thereof that is equal to the institution's primary-fund deposits. The transferring institution's volume of secondary-fund deposits shall be reduced by the volume of the secondary-fund deposits so transferred.

(b) *Acquiring institution.* The deposits shall be deemed, upon assumption by the acquiring institution, to be insured by the same fund or funds in the same amount or amounts as the deposits were so insured immediately prior to the transaction.

ALTERNATIVE TWO

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) assumes the deposits from another insured depository institution (transferring institution). On and after January 1, 1997, for the purpose of determining whether the assumption of deposits constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Attribution of the deposits as to the transferring institution.* The deposits shall be attributed to the primary and secondary funds of the transferring institution in the same ratio as the transferring institution's total deposits were so attributed immediately prior to the deposit-transfer transaction. The transferring institution's stock of BIF-insured deposits and of SAIF-insured deposits shall each be reduced in the appropriate amounts.

(b) *Attribution of deposits as to the acquiring institution.* Upon assumption by the acquiring institution, the deposits shall be attributed to the same insurance funds in the same amounts as the deposits were so attributed immediately prior to the transaction. The acquiring institution's stock of BIF-insured deposits and of SAIF-insured deposits shall each be increased in the appropriate amounts.

(c) *Ratio fixed at start of quarter.* For the purpose of determining the ratio specified in paragraph (a) of this paragraph for any transaction:

(1) *In general.* The ratio shall be determined at the beginning of the quarter in which the transaction occurs. Except as provided in paragraph (c)(2) of this section, the ratio shall not be affected by changes in the transferring institution's deposit base.

(2) *Prior acquisitions by a transferring institution.* If the transferring institution acquires deposits after the start of the quarter but prior to the transaction, the deposits so acquired shall be added to the transferring institution's deposit base, and shall be attributed to the transferring institution's primary and secondary funds in accordance with this section.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of June 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16349 Filed 7–2–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; De Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8 series airplanes, that currently requires clearly marking the location and means of entering the lavatory. That AD was prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. The actions specified by that AD are intended to prevent inadvertent opening of the airstair door and consequent depressurization of the airplane. This action would limit the applicability of the rule to fewer airplanes.

DATES: Comments must be received by July 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Marc Goldstein, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and