anticipated expenses by expected shipments of California kiwifruit. Kiwifruit shipments for the year are estimated at 10.5 million trays or tray equivalents of kiwifruit which should provide $183,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the August 5, 1996, issue of the Federal Register (61 FR 40506). That rule provided for a 30-day comment period. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action, providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 61 FR 40506 on August 5, 1996, is adopted as a final rule without change.

Dated: September 17, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96–24237 Filed 9–20–96; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 24

**[Docket No. 96–21]**

**RIN 1557–AB46**

## Community Development Corporation and Project Investments and Other Public Welfare Investments

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** As part of its Regulation Review Program, the Office of the Comptroller of the Currency (OCC) is revising its regulation governing national bank investments designed primarily to promote the public welfare. This final rule clarifies banks' authority; renumbers and reorganizes sections of the regulation; modifies the test for determining whether investments primarily promote the public welfare; and simplifies the regulation's investment self-certification and prior approval processes. This final rule reduces regulatory burden and inconsistencies while enhancing the ability of national banks to make community development and other public welfare investments.

**EFFECTIVE DATE:** October 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Karen Bellesi, Acting Deputy Director, Community Development Division, (202) 874–4940; or Michele Meyer, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

### Background

The OCC has reviewed 12 CFR part 24 as part of its Regulation Review Program (Program). Goals of the Program are eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities, updating and modernizing the OCC's rules where appropriate, and clarifying the OCC's regulations to convey more effectively the standards the OCC seeks to apply. Consistent with these goals, this final rule reduces regulatory burden on national banks and clarifies the standards that the OCC applies to national banks' community development and public welfare investment programs.

### The Proposal

On December 28, 1995, the OCC published a notice of proposed rulemaking (NPRM) (60 FR 67091) to revise 12 CFR part 24. Part 24 implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments ''designed primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities (such as through the provision of housing, services, or jobs),'' subject to certain percentage of capital limitations.

As initially written, part 24 placed predominant emphasis on community development investments. Part 24 permitted national banks to make investments in community development corporations (CDCs) and community development projects (CD Projects), consistent with safe and sound banking practices. Under part 24, banks could self-certify certain community development investments. Investments that were not eligible for self-

certification were subject to one of two prior approval processes. The first required a bank to file an investment proposal, which the OCC usually approved or disapproved within 30 days. The second consisted of a five-day review period for investment proposals that the OCC had previously approved for another bank.

In the NPRM, the OCC proposed replacing part 24's public welfare test with modified criteria for determining whether an investment promotes the public welfare, including a non-exhaustive list of permissible public welfare activities. The NPRM also proposed streamlining part 24's investment self-certification and prior approval provisions. In addition, the NPRM removed redundant or otherwise unnecessary provisions from the former rule and made several other changes intended to improve the rule's clarity. Finally, the NPRM asked for comment on whether the OCC should continue its policy of not using part 24 authority as a basis for approving an investment that is otherwise permissible under 12 U.S.C. 24(Seventh).

## The Final Rule and Comments Received

The OCC received seven comments. Most commenters supported the proposed changes. Comments were submitted by three national banks, one savings bank, two trade groups, and one national non-profit organization that provides support for local non-profit CDCs. As discussed later in this preamble, several commenters supported the proposal but suggested that the OCC make additional changes, and one commenter opposed the proposed changes to the former rule's public welfare test and self-certification provisions. The following discussion summarizes these comments and the amendments to part 24.

### *Title*

The NPRM proposed changing the title of part 24 from ''Community Development Corporation and Project Investments'' to ''Community Development Corporation and Project Investments and other Public Welfare Investments.'' This change reflects the OCC's view that national banks can promote the public welfare through a variety of authorized investments, as described in § 24.3, in addition to CDCs and CD Projects. The OCC received no comments on this issue, and accordingly adopts the proposed title change.

### *Authority, Purpose, and OMB Control Number (§ 24.1)*

The NPRM proposed amending the ''purpose'' paragraph of the regulation to reflect that CDCs and CD Projects that develop affordable housing, foster revitalization and stabilization of low- and moderate-income areas, or provide equity or debt financing for small businesses are just some of the types of investments that a national bank can make under part 24. The preamble to the NPRM emphasized that the OCC continues to encourage national banks to make these types of investments but also stressed that banks may undertake other kinds of public welfare investments. The OCC received no comments specifically on this proposed section. However, as discussed later in this preamble, the OCC received comments on proposed § 24.3 that resulted in modifications to that section to provide that banks' part 24 investments benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government. Consistent with the change to § 24.3, the OCC adopts proposed § 24.1 with a modification to the ''purpose'' paragraph to clarify that bank efforts to promote the public welfare through small business investment or area revitalization or stabilization must be targeted to low- and moderate-income areas or other redevelopment areas.

### *Definitions (§ 24.2)*

In keeping with the Regulation Review Program's goal of using terminology consistently throughout the OCC's regulations, the NPRM proposed the use of definitions and terms common to other OCC regulations. For example, the definition of ''low-income and moderate-income'' in the NPRM referred to the OCC's CRA Regulation (12 CFR part 25). One commenter supported the OCC's efforts to standardize various definitions in its regulations, but voiced the concern that the CRA definition of ''low-income and moderate-income'' was more restrictive than the definition in the former part 24.

Under the former rule and the OCC's CRA regulation, low- and moderate-income i*ndividuals* are individuals whose incomes are less than 80 percent of the median income of the area in which they live. The former rule defined low- and moderate-income *areas* slightly differently from the OCC's CRA regulation, however. The former rule defined low- and moderate-income areas as areas where at least 51 percent of the residents are low- and moderate-income persons and families. The CRA regulation defines low- and moderate-income areas as areas where at least 50 percent of the families have incomes less than 80 percent of the area median family income. 12 CFR 25.12. Thus, the CRA regulation is slightly more expansive in its definition of low- and moderate-income areas than the former rule. The OCC believes that the difference between the two definitions is insignificant and that adopting the CRA regulation definition of low-and moderate-income in this final rule will enhance its clarity and reduce the burden associated with having different definitions of the same terms in the OCC's regulations. Accordingly, the OCC adopts the proposed definition of ''low-income and moderate-income.''

The NPRM also proposed using the same definition of ''capital and surplus'' as the OCC's Lending Limit Regulation, 12 CFR part 32, which refers to components of capital that national banks calculate for purposes of determining their risk-based capital under 12 CFR part 3. The OCC received no comments on this section and, accordingly, adopts the proposed definition of ''capital and surplus.''

The NPRM omitted the former rule's definitions of community development limited partnership and community-based development corporation as unnecessary further examples of vehicles that national banks may use to make investments under this part. The OCC received no comments on this proposed removal, and accordingly adopts the proposed change. This change does not affect a national bank's authority to invest in a community development limited partnership or community based development corporation. Consistent with the requirements of this part, a national bank may continue to invest in these and other vehicles.

The NPRM proposed adding a definition of ''eligible bank'' that is the same as the ''eligible bank'' definition proposed by the OCC for corporate applications in its November 29, 1994 notice of proposed rulemaking concerning 12 CFR part 5 (59 FR 61034). The NPRM proposed allowing a bank to self-certify investments for purposes of part 24 if it has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System, has at least a satisfactory CRA rating, is well capitalized, and is not subject to any current OCC enforcement actions. One commenter suggested that the final rule limit self-certification eligibility to only banks with outstanding CRA ratings. The OCC declines to make this change for two reasons. First, part 24

investments represent an important mechanism for banks to improve their CRA records. Second, limiting self-certification to banks with outstanding CRA ratings would result in far fewer banks benefiting from the streamlined self-certification processes proposed in the NPRM. The OCC accordingly adopts the proposed definition of ''eligible bank'' with only a technical clarification that the definition applies to the self-certification process.

The NPRM also clarified that a national bank that is at least adequately capitalized and that has a composite rating of at least 3 with improving trends may submit a letter to the OCC's Community Development Division requesting permission to self-certify investments. The OCC received no comments on this clarification. Accordingly, the final rule permits a national bank that is at least adequately capitalized and that has a composite rating of at least 3 with improving trends to submit a letter to the OCC's Community Development Division requesting permission to self-certify investments.

In addition, in a change from the former rule, the NPRM proposed permitting a bank that is subject to a current OCC enforcement action to seek permission to self-certify investments. As explained in the preamble to the NPRM, the OCC believes this modification is appropriate in light of the final rule's expanded self-certification opportunities for banks (*See* § 24.6.) Accordingly, the final rule adopts this change.

In addition, the NPRM proposed changing the definition of ''significant risk to the deposit insurance fund'' to include risk to all Federal deposit insurance funds. The OCC received no comments on this proposed section and, accordingly, adopts the proposed change.

Finally, the NPRM proposed making two changes concerning the small business definitions in former part 24. First, the NPRM proposed removing the definition of ''minority-owned small businesses'' because these businesses are encompassed by the regulation's provisions concerning all small businesses. Second, the NPRM proposed updating the citation to the Small Business Administration regulations referenced in the definition of ''small businesses'' in the former regulation. The OCC received no comments on these proposed changes and, accordingly, adopts them with the clarification that the definition of ''small business'' includes minority-owned small business.

*Public Welfare Investments (§ 24.3)*

Former part 24 delineated a public welfare test that consisted of four requirements. Under former § 24.4, an investment in a CDC or CD Project was designed primarily to promote the public welfare only if: (1) the investment primarily benefited low- and moderate-income persons and families or small businesses; (2) the investment addressed community development needs not met by the private market in one or more communities served by the bank; (3) there was nonbank community involvement in the CDC or CD Project; *and* (4) the profits and distributions from a CDC or CD Project were reinvested in activities that primarily promote the public welfare.[1]

Based on the OCC's experience since it adopted part 24, the NPRM proposed replacing the public welfare test with modified criteria for determining whether an investment primarily promotes the public welfare. That list retained the first element of the public welfare test, the requirement for a primary benefit to low- and moderate-income individuals or small businesses, but made clear that this benefit could be provided in a variety of ways. For example, § 24.3(a) of the NPRM permitted banks to invest in affordable housing, community revitalization projects, small business financing or ''other activities, services, or facilities conducive to the public welfare.'

The list of public welfare investment criteria also modified the private market financing and community involvement elements of the current public welfare test. Proposed § 24.3(b) required a bank to demonstrate only that it was difficult, rather than impossible, to obtain private market financing. Section 24.3(c) of the proposal also required a bank to demonstrate community support for or participation in a proposed investment, but, unlike the former rule, it did not prescribe any particular method of demonstrating that support or participation.[2]

In addition, § 24.3(d) of the NPRM permitted a bank to make an investment that also benefitted an area outside those where the bank provides its core banking services. However, the bank would still have been required to demonstrate the extent to which its investment benefits the communities where it provides these services. These proposed revisions to the public welfare test reflected the OCC's willingness to consider a wider range of public welfare investments than under the former rule.

All but one of the commenters voiced strong support for the proposed revisions to the public welfare test. The objecting commenter, a national non-profit organization that provides support for local non-profit CDCs, strongly supported the former rule and expressed concern that the proposal undermines the intent of 12 U.S.C. 24(Eleventh), because the revised criteria would discourage banks from taking on difficult community development projects, such as those targeted to low- and moderate-income areas where private market financing is difficult to obtain. The OCC appreciates these concerns and has modified § 24.3 to clarify that investments must benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government. The OCC has also modified § 24.3 to require that a bank demonstrate that it is not *reasonably practicable* to obtain other private market financing for a proposed investment. In addition, the OCC agrees with the commenter's opinion that the phrase ''conducive to the public welfare'' in proposed § 24.3(a)(4) could be misinterpreted by some readers as a lowering of the statutory requirement that banks' investments must ''primarily promote the public welfare.'' Accordingly, the OCC has revised § 24.3(a)(4) to clarify that all investments under this part must primarily promote the public welfare.

Two commenters, although supportive of the proposed changes to the community participation requirement, requested that the final rule include a list of examples for demonstrating community support for, or participation in, a proposed investment. Based on these comments, the OCC has revised the community participation criterion to include the following examples:

- In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;
- Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

[1] On December 28, 1995, the OCC published a final rule eliminating part 24's reinvestment requirement. 60 FR 67049.

[2] The former rule required a bank to demonstrate nonbank community involvement in a CDC or CD project by indicating support from the affected primary beneficiaries and representatives of local government. In the case of a CD entity with a board of directors, a bank was required to demonstrate such support by the composition of the organization's board of directors.

- Formation of a formal business relationship with a community-based organization in connection with the proposed investment;
- Contractual agreements with community partners to provide services in connection with the proposed investment;
- Joint ventures with local small businesses in the proposed investment; and
- Financing for the proposed investment from the public sector or community development organizations.

The OCC emphasizes, however, that these examples are by no means exhaustive; banks and their community partners may determine other acceptable ways to demonstrate community support for, or participation in, investments under this part.

To improve clarity, the final rule reverses the order of the sections concerning community participation and benefit to communities otherwise served by the bank. Thus, the community participation section is now set forth at § 24.3(d) of the final rule, and the section concerning benefit to communities otherwise served by the bank is set forth at § 24.3(c).

Finally, the NPRM proposed removing as unnecessary former § 24.4(e), which provided that a bank must manage its CDC and CD Project investments in a prudent manner. The OCC received no comments on the proposed removal and, accordingly, adopts the proposed change. This change streamlines the regulation and, of course, reflects no change in the applicable standard that national banks must manage their part 24 investments—as with all their investments—consistent with safe and sound banking practices.

*Investment Limits (§ 24.4)*

The former rule contained investment limit provisions at § 24.4(b) and (d). For ease of reference, the NPRM grouped the provisions concerning part 24 investment limits into a separately titled section. Section 24.4(a) of the NPRM clarified that, as provided in 12 U.S.C. 24(Eleventh), a bank's aggregate outstanding investments under part 24 may not exceed 5 percent of its capital and surplus unless the bank is at least adequately capitalized and the OCC determines, by written approval of a proposed investment, that a higher amount, up to 10 percent, will pose no significant risk to the deposit insurance fund.

One commenter suggested that the final rule permit an adequately capitalized bank with assets up to $150 million to commit up to ten percent of its capital and surplus to part 24 investments. As explained earlier, however, the statute requires a bank to seek OCC approval of investments that exceed 5 percent of capital. Accordingly, the OCC adopts the statutory limitation proposed in the NPRM.

*Public Welfare Investment Self-Certification and Prior Approval Procedures (§ 24.5)*

The NPRM proposed changes to the self-certification and prior approval procedures set forth in § 24.11 of the former rule. Former § 24.11 provided three processes for approval of authorized investments. The first required a bank to file an investment proposal, which the OCC usually approved or disapproved within 30 days. The second process consisted of a five-day review period by the OCC for investment proposals that the OCC had previously approved for another bank. The third was a self-certification process for certain investments, under which a bank filed a notice with the OCC within 10 days after it makes an investment, and the OCC sent a confirmation of receipt within five days.

The NPRM proposed eliminating the second approval process. Thus, under § 24.5(a) and § 24.6(a) of the NPRM, a bank would be permitted to self-certify an investment previously approved by the OCC for another bank. The preamble to the NPRM further provided that the OCC will continue its practice of sending a simple confirmation of receipt of a bank's self-certification notice within five days. The NPRM also made clear that the OCC will not retroactively review a self-certified investment proposal, but simply will review the self-certification documents to ensure that they meet the self-certification requirements set forth in § 24.5(a). The OCC received no comments on the proposed elimination of the approval process for investments previously approved by the OCC for another bank and, accordingly, adopts this change.

Section 24.5(b) of the NPRM sets forth the prior approval procedures for investment proposals that do not qualify for self-certification.[3] In considering a bank's investment proposal under the NPRM, the OCC will consider whether the investment satisfies the requirements of § 24.3 and whether it is consistent with the bank's safe and sound operation and the OCC's policies. As explained in the NPRM's preamble, the OCC will continue its practice of sending a simple confirmation of receipt of an investment proposal within five days. Consistent with the former rule, the NPRM permitted a bank, unless notified otherwise by the OCC, to make a proposed investment 30 calendar days after the date on which the OCC received the bank's investment proposal. The NPRM further provided that the OCC may notify the bank that it is extending the review period. If so notified, the bank could make the investment only with the OCC's written approval. One commenter suggested that the final rule require that, within 30 days of the OCC's receipt of a bank's investment proposal, the OCC notify the bank of the proposal's status by facsimile or telephone. The OCC declines to include this level of detail in the final rule but will endeavor to notify banks of proposal status as quickly as possible. Accordingly, the OCC adopts the proposed procedures for prior approval of investment proposals.

Former rule § 24.11(b) contained a limit on the size of investments eligible for self-certification by banks with more than $250 million in assets. Those banks were required to seek prior OCC approval for investments that exceeded the lesser of 2 percent of their unimpaired capital and surplus or $10 million. The NPRM proposed removing this additional limitation in light of the proposed new standards that define the banks eligible to use the self-certification process (discussed earlier). The OCC received no comments on this proposed removal and, accordingly, the final rule adopts the proposed change.

*Investments Eligible for Self-Certification (§ 24.6)*

Section 24.6 of the NPRM proposed replacing former rule § 24.13, which limited self-certification to investments using certain structures as well as certain activities. These structures included multi-bank CDCs; CDCs established by state or local government; community-based organizations; and certain community development limited partnerships. A CDC subsidiary was not an eligible structure for self-certification.

The OCC believes that a structure-based self-certification limitation is no longer necessary. This limitation was intended to allow the OCC to ensure that particular investments did not expose banks to safety and soundness risks or unlimited liability, particularly relating to then-novel structures, such as limited liability companies and CD

[3] The NPRM proposed removing the former rule's provision for optional review as unnecessary. The OCC received no comments on this proposed removal, and accordingly adopts the proposed change. A national bank may, however, continue to request prior OCC review and approval of any investment proposal, including one that qualifies for self-certification.

banks. However, since self-certification is limited to eligible banks (as defined in § 24.2(e) of the final rule), the OCC believes it is reasonable to rely on bank management to determine the appropriate structures for part 24 investments. The OCC received no comments on the proposed elimination of the list of eligible structures and, accordingly, adopts the proposed change.

In addition to eliminating the list of eligible structures, § 24.6(a) of the NPRM proposed an expanded list of activities eligible for self-certification to reflect the industry's innovation in part 24 investing and the OCC's experience with self-certification under part 24. Part 24's self-certification provisions encourage community development and other public welfare investments by banks by reducing the regulatory steps associated with making the investments. In order to maximize the use of self-certification as an incentive for banks to make investments that primarily promote the public welfare, and to encourage banks' creativity in making these investments, the OCC identified in proposed § 24.6(a) a clear and expanded list of eligible activities. In addition to the former rule's list of eligible activities, the NPRM's list included, but was not limited to, certain investments that benefit low- and moderate-income persons and small businesses, investments that previously have been determined by the OCC to be permissible under part 24, and investments previously approved by the Federal Reserve Board (FRB) under 12 CFR 208.21 for state member banks.

One commenter suggested several changes to the proposed list of activities eligible for self-certification. The commenter recommended deleting from the list investments in an entity that acquires housing for low- and moderate-income persons. The OCC believes, however, that this activity, which was eligible for self-certification under the former rule, promotes the public welfare and that permitting self-certification of such investments is therefore consistent with the statute and accordingly declines to remove it from the proposed list. The commenter also requested that the list clarify that a bank may self-certify investments as a limited partner, or as a partner in an entity that it itself a limited partner, in a project with a general partner that is, or is primarily owned and operated by, a 26 U.S.C. 501(c) (3) or (4) non-profit corporation and that qualifies for the Federal low-income housing tax credit. The OCC agrees with this suggestion and accordingly adopts the proposed clarification.

In addition, the commenter suggested that the final rule bar from self-certification any bank that self-certifies an investment the OCC later determines was ineligible for self-certification. The OCC believes that this concern is addressed by the remedial action provisions of proposed § 24.7(c). Finally, the commenter objected to the proposed inclusion of investments of a type approved by the FRB in the list of eligible activities. The OCC believes that national banks and the beneficiaries of their investments will benefit by the increased flexibility and reduced burden associated with this provision, but agrees that no investment can be self-certified, even if that type of investment has been approved by the FRB, unless it meets the criteria for public welfare investments set forth in § 24.3. Accordingly, this provision has been modified in the final rule.

As discussed earlier, the OCC has modified § 24.3 to require that bank investments be targeted to low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment. The OCC has decided, however, to modify the list of activities eligible for self-certification proposed in § 24.6(a) of the NPRM to clarify that a bank may self-certify an investment only if it primarily benefits low- and moderate-income individuals or areas. National banks must therefore submit for prior approval by the OCC proposals for other types of investments. The distinction between what is a permissible investment under § 24.3 and what is eligible for self-certification under § 24.6 reflects the OCC's view that investments targeted to low- and moderate-income individuals or areas necessarily primarily promote the public welfare. Other types of investments may primarily promote the public welfare also, but the OCC believes that some prior review of such investments is an appropriate means to ensure that they satisfy the criteria set forth in § 24.3. Accordingly, the OCC adopts the list of eligible activities proposed in § 24.6(a) of the NPRM with two modifications. The first modification limits self-certification to investments that benefit low- and moderate-income individuals or areas; and the second modification reflects the commenter's suggestion concerning limited partnerships investments.[4]

Notwithstanding the activities eligible for self-certification listed in § 24.6(a), § 24.6(b) of the NPRM provided that a bank may not self-certify investments that involve properties carried on the bank's books as ''other real estate owned'' (OREO properties) or that fund projects outside the states or metropolitan areas in which the bank's main office or branches are located. The latter limitation is similar to the limit on self-certification that appears in former part 24 but was revised in the NPRM to reflect that some national banks now have branches in more than one state. One commenter suggested that the final rule permit self-certification of investments in portfolio projects, such as regional funds that invest in affordable housing projects located in several states, where no more than 25 percent of the affordable housing projects are located outside the states or metropolitan areas served by the bank. The OCC agrees that a bank should not be discouraged from investing in innovative projects that primarily benefit the communities it serves because a small portion of the investment benefits other areas. Accordingly, under the final rule, a bank may not self-certify an investment where more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches. If a portion of a bank's investment funds projects in areas outside of those in which the bank maintains its main office or branches, the bank must certify under § 24.5(a)(3)(vii) that no more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches.

*Examination, Records, and Remedial Action (§ 24.7)*

The NPRM proposed replacing former § 24.21, which set forth the former rule's examination, records, and remedial action provisions, with proposed § 24.7 without substantive change. The OCC received no comments on this proposed revision, and accordingly adopts the proposed change.

*Accounting for Public Welfare Investments (Current § 24.4(c))*

Section 24.4(c) of the former rule provided that a bank's investments in CDCs and CD Projects generally could be recorded as ''other assets at cost.'' The former rule also set forth circumstances under which a bank would be required to consolidate its investments on a line-by-line basis or account for them under the equity method of accounting. The NPRM proposed eliminating this section as

[4] In response to another commenter, the OCC clarifies that permissible investments in a rural community in which a bank has its main office or branch may be self-certified.

unnecessary, because banks generally look to other sources for their accounting instructions. The OCC received no comments on this proposed removal, and accordingly adopts the proposed change. Banks should record their investments, as appropriate, pursuant to the instructions for Consolidated Reports of Condition and Income published by the Federal Financial Institutions Examination Council.

Policy Issue Regarding Dual Sources of Authority

In the past, the OCC has not used 12 U.S.C. 24(Eleventh), as implemented by part 24, to approve activities permissible under other provisions of the National Bank Act, 12 U.S.C. 1 *et seq*. This position was intended to prevent banks' activities from being subjected unnecessarily to part 24's limitation on the amount of capital a bank may commit to community development and public welfare investments. For example, a bank could make certain affordable housing loans under both 12 U.S.C. 24(Seventh) and 24(Eleventh). If the bank made such a loan under the authority of 24(Eleventh), the loan would be subject to a capital limitation that is stricter than the generally applicable lending limits. Because the bank would have used unnecessarily some of its limited part 24 authority to make a loan that is also permissible under 24(Seventh), the bank would be left with less capital to commit to investments that are permissible only under part 24. Therefore, the OCC would usually conclude that 24(Seventh) provided the authority for the loan. This position, however, does not reflect the OCC's general approach of allowing banks to decide how best to structure their investments.

The NPRM requested comment on whether the OCC should continue its policy of not using part 24 as a basis for approving activities otherwise permissible under the National Bank Act. One commenter opined that part 24 provides limited authority that should be restricted only to those activities motivated by concern for the public welfare, rather than regular business considerations. The OCC believes that part 24 affords banks the opportunity to implement activities that supplement and enhance otherwise permissible activities but may, in some cases, provide authority that overlaps with other authority under the National Bank Act. The OCC has decided that, where a choice is available, a bank will be permitted to choose whether an investment activity will be undertaken pursuant to authority under 24(Seventh) or 24(Eleventh). When a bank seeks to rely on 24(Eleventh), however, the OCC will advise the bank that the proposed investment is permissible under both authorities to ensure that the bank is aware of the full range of its legal investment opportunities and of the effect of the applicable investment limitations.

Derivation Table

This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed provision is based.

| Revised section | Original section | Comments |
|---|---|---|
| § 24.1 | § 24.1 | Modified. |
| § 24.2(a) | § 24.2(a) | Modified. |
| (b) | § 24.2(m) | Substantial change. |
| (c) | § 24.2(b) | Modified. |
| (d) | § 24.2(e) | Modified. |
| (e) | | Added. |
| (f) | § 24.2 (g) ,(h) | Substantial change. |
| (g) | § 24.2(k) | Modified. |
| (h) | § 24.2(l) | Modified. |
| | § 24.2(c) | Removed. |
| | § 24.2(d) | Removed. |
| | § 24.2(f) | Removed. |
| | § 24.2(i) | Removed. |
| (i) | § 24.2(a) | Modified. |
| | § 24.2(j) | Removed. |
| § 24.3 | § 24.4(a) | Substantial change. |
| § 24.4 | § 24.4 (b), (d) | Modified. |
| | § 24.4(c) | Removed. |
| | § 24.4(e) | Removed. |
| § 24.5(a) | § 24.11(a) | Substantial change. |
| (b) | § 24.11 (b), (d), (e) | Substantial change. |
| | § 24.11(c) | Removed. |
| § 24.6(a) | § 24.13(b) | Substantial change. |
| (b) | § 24.11(b) | Modified. |
| | § 24.13(a) | Removed. |
| § 24.7 | § 24.21 | Modified. |

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule will reduce the regulatory burden on national banks, regardless of size, by replacing part 24's public welfare test with modified criteria for determining whether an investment promotes the public welfare, streamlining the self-certification and prior approval sections of the rule, and eliminating unnecessary provisions. Although beneficial, these changes will not have a material impact on affected banks.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The OCC has determined that this final rule will not result in expenditures by state, local and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

The collection of information requirements in this final rule are found in 12 CFR 24.5. This information is required for the public welfare investment self-certification and prior approval procedures. The likely respondents are national banks.

*Estimated average annual burden hours per respondent:* 1.05 hours.

*Estimated number of respondents:* 400.

*Estimated total annual reporting burden:* 418 hours.

*Start-up costs to respondents:* None.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends title 12, chapter I, part 24, of the Code of Federal Regulations as set forth below.

## PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

Sec.



Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

### § 24.1 Authority, purpose, and OMB control number.

(a) *Authority:* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24(Eleventh), 93a, and 481.

(b) *Purpose.* This part implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income areas or individuals, such as by providing housing, services, or jobs. It is the OCC's policy to encourage national banks to make investments described in § 24.3, consistent with safety and soundness. The OCC believes that national banks can promote the public welfare through a variety of investments, including those in community development corporations (CDCs) and community development projects (CD Projects) that develop affordable housing, foster revitalization or stabilization of low- and moderate-income areas or other areas targeted for redevelopment by local, state, tribal or Federal government, or provide equity or debt financing for small businesses that are located in such areas or that produce or retain permanent jobs for low- and moderate-income persons. This part provides:

(1) The standards that the OCC uses to determine whether an investment is designed primarily to promote the public welfare; and

(2) The procedures that apply to these investments.

(c) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0194.

### § 24.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adequately capitalized* has the same meaning as adequately capitalized in 12 CFR 6.4.

(b) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set out in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.

(c) *Community development corporation (CDC)* means a corporation established by one or more insured financial institutions, or by insured financial institutions and other investors, to make one or more investments that meet the requirements of § 24.3.

(d) *Community development Project (CD Project)* means a project to make an investment that meets the requirements of § 24.3.

(e) *Eligible bank* means, for purposes of § 24.5, a national bank that:

(1) Is well capitalized;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(3) Has a Community Reinvestment Act (CRA) rating of ''Outstanding'' or ''Satisfactory''; and

(4) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6, subpart B) or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank may be treated as an ''eligible bank'' for purposes of this part.

(f) *Low-income and moderate-income* have the same meanings as ''low-income'' and ''moderate-income'' in 12 CFR 25.12(n).

(g) *Significant risk to the deposit insurance fund* means a substantial probability that any Federal deposit insurance fund could suffer a loss.

(h) *Small business* means a business, including a minority-owned small business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company loan programs in 13 CFR 121.301.

(i) *Well capitalized* has the same meaning as well capitalized in 12 CFR 6.4.

### § 24.3 Public welfare investments.

A national bank may make an investment under this part if:

(a) The investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones) by providing or supporting one or more of the following activities:

(1) Affordable housing, community services, or permanent jobs for low- and moderate-income individuals;

(2) Equity or debt financing for small businesses;

(3) Area revitalization or stabilization; or

(4) Other activities, services, or facilities that primarily promote the public welfare;

(b) The bank demonstrates that it is not reasonably practicable to obtain other private market financing for the proposed investment;

(c) The bank demonstrates the extent to which the investment benefits communities otherwise served by the bank; and

(d) The bank demonstrates non-bank community support for or participation

in the investment. Community support or participation may be demonstrated in a variety of ways, including but not limited to:

(1) In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) Contractual agreements with community partners to provide services in connection with the proposed investment;

(5) Joint ventures with local small businesses in the proposed investment; and

(6) Financing for the proposed investment from the public sector or community development organizations.

**§ 24.4 Investment limits.**

(a) *Limit on aggregate outstanding investments.* A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of the bank's proposed investment(s), that a higher amount will pose no significant risk to the deposit insurance fund. In no case may a bank's aggregate outstanding investments under this part exceed 10 percent of its capital and surplus.

(b) *Limited liability.* A national bank may not make an investment under this part that would expose the bank to unlimited liability.

**§ 24.5 Public welfare investment self-certification and prior approval procedures.**

(a) *Self-certification of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment described in § 24.6(a) without prior notification to, or approval by, the OCC if the bank follows the self-certification procedures prescribed in this section.

(2) To self-certify an investment, an eligible bank shall submit, within 10 working days after it makes an investment, a letter of self-certification to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's letter of self-certification must include:

(i) The name of the CDC, CD Project, or other entity in which the bank has invested;

(ii) The date the investment was made;

(iii) The type of investment (equity or debt), the investment activity listed in § 24.6(a) that the investment supports, and a brief description of the particular investment;

(iv) The amount of the bank's total investment in the CDC, CD Project or other entity, and the bank's aggregate outstanding investments under this part, including commitments and the investment being self-certified;

(v) The percentage of the bank's capital and surplus represented by the bank's aggregate outstanding investments under this part, including commitments and the investment being self-certified;

(vi) A statement certifying compliance with the requirements of § 24.3 and § 24.4; and

(vii) If a portion of the investment funds projects outside of the areas in which the bank maintains its main office or branches, a statement certifying that no more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches.

(4) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to self-certify investments. The Community Development Division considers these requests on a case-by-case basis.

(b) *Investments requiring prior approval.* (1) If a national bank or its proposed investment does not meet the requirements for self-certification set forth in paragraph (a) of this section, the bank shall submit a proposal for an investment to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) The bank's investment proposal must include:

(i) The name of the CDC, CD Project, or other entity in which the bank intends to invest;

(ii) The date on which the bank intends to make the investment;

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment supports, and a description of the particular investment;

(iv) The amount of the bank's total investment in the CDC, CD Project or other entity, and the bank's aggregate outstanding investments under this part (including commitments and the investment being proposed);

(v) The percentage of the bank's capital and surplus represented by the bank's aggregate outstanding investments under this part (including commitments and the investment being proposed); and

(vi) A statement certifying compliance with the requirements of § 24.3 and § 24.4.

(3) In reviewing a proposal, the OCC considers the following factors and other available information:

(i) Whether the investment satisfies the requirements of § 24.3 and § 24.4;

(ii) Whether the investment is consistent with the safe and sound operation of the bank; and

(iii) Whether the investment is consistent with the requirements of this part and the OCC's policies.

(4) Unless otherwise notified in writing by the OCC, and subject to § 24.4(a), the proposed investment is deemed approved after 30 calendar days from the date on which the OCC receives the bank's investment proposal.

(5) The OCC, by notifying the bank, may extend its period for reviewing the investment proposal. If so notified, the bank may make the investment only with the OCC's written approval.

(6) The OCC may impose one or more conditions in connection with its approval of an investment under this part. All approvals are subject to the condition that a national bank must conduct the approved activity in a manner consistent with any published guidance issued by the OCC regarding the activity.

**§ 24.6 Activities eligible for self-certification.**

(a) *Eligible activities.* In accordance with the process described in § 24.5(a), a bank may self-certify the following investments without prior notice to, or approval by, the OCC:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(3) Investments that provide credit counseling, job training, community

development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(4) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(5) Investments as a limited partner, or as a partner in an entity that is itself a limited partner, in a project with a general partner that is, or is primarily owned and operated by, a 26 U.S.C. 501(c) (3) or (4) non-profit corporation and that qualifies for the Federal low-income housing tax credit;

(6) Investments in low- and moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(7) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(8) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.21 for state member banks that are consistent with the requirements of § 24.3; and

(9) Investments of a type previously determined by the OCC to be permissible under this part.

(b) *Ineligible activities.* Notwithstanding the provisions of this section, a bank may not self-certify an investment if:

(1) The investment involves properties carried on the bank's books as ''other real estate owned'';

(2) More than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches; or

(3) The OCC determines, in published guidance, that the investment is inappropriate for self-certification.

**§ 24.7 Examination, records, and remedial action.**

(a) *Examination.* National bank investments under this part are subject to the examination provisions of 12 U.S.C. 481.

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that it is in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC finds that an investment under this part is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to a Federal deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

Dated: September 13, 1996.

Eugene A. Ludwig,

*Comptroller of the Currency.*

[FR Doc. 96–23986 Filed 9–20–96; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 141

**[Docket No. RM96–17–000; Order No. 590]**

## Changes in Form No. 1 Instructions

Issued September 16, 1996.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final Rule.

**SUMMARY:** The Federal Energy Regulatory Commission is modifying the instructions for the filing of FERC Form No. 1, ''Annual report of Major electric utilities, licensees and others,'' to make them clearer and to make it easier to file the Form electronically.

**EFFECTIVE DATE:** This final rule is effective on October 23, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St. N.E., Washington, D.C. 20426, (202) 208–2128

Robert J. Lynch (Technical Information), Office of the Chief Accountant, Federal Energy Regulatory Commission, 888 First St. N.E., Washington, D.C. 20426, (202) 219–3012.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street. NE., Washington, DC. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally, or 1–800–856–3920 if dialing long distance. CIPS is also available through the FedWorld System (by modem or Internet). To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street NE., Washington, DC. 20426.

Issued: September 16, 1996.

I. Introduction

On December 29, 1994, the Commission amended its regulations to provide for the electronic filing of FERC Form No. 1, ''Annual report of Major electric utilities, licensees and others'' (Form No. 1).[1] The Commission directed that, beginning with reporting year 1994 (for which reports were due on or before May 31, 1995),[2] parties would submit to the Commission a computer diskette with the Form No. 1 information on it, in addition to the required number of paper copies. The Commission concluded that the change would yield significant benefits, including more timely analysis and publication of data and reduced cost of data entry and retrieval. Aside from requiring electronic filing of Form No. 1, the Commission otherwise left Form No. 1 unchanged.

The Commission is now amending the instructions for filing Form No. 1 to eliminate ambiguity and to make it easier to file the form electronically.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information under the final rule will remain unchanged for Form No. 1, since the only modifications are to the instructions for the filing of the form to make them clearer and to make it easier to file the form electronically.

[1] Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant, Order No. 574, 60 FR 1716 (Jan. 5, 1995), FERC Stats. & Regs. Regulations Preambles 1991–1996 ¶ 31,013 (1994) (*Electronic Filing I*), *reconsid. denied*, 70 FERC ¶ 61,330 (1995) (*Electronic Filing II*).

[2] *Electronic Filing II*, 70 FERC at 62,020.