potatoes 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) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 947.114 is added to Subpart—Rules and Regulations to read as follows:

§ 947.114 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

§ 947.247 [Amended]

3. Section 947.247 is amended by removing the words ''July 1, 1996,'' and adding in its place the words ''July 1, 1997,'' and by removing ''$0.005'' and adding in its place ''$0.004.''

Dated: May 12, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–12999 Filed 5–16–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is preserving the current adjusted rate schedule for assessments paid to the Bank Insurance Fund (BIF) for the second semiannual period of 1997 (July–December), and for subsequent semiannual periods subject to review on a semiannual basis. Absent action by the FDIC, the BIF rates would revert to the base rates, which are 4 basis points higher. The resulting assessments would exceed the amount allowed by law.

The FDIC is issuing the final rule without prior notice and comment under the procedure established by the FDIC's regulations for making limited adjustments to base assessment rates.

The final rule removes obsolete provisions regarding the special assessment and pre-1997 rates, and clarifies other provisions without altering their substance.

EFFECTIVE DATE: Effective May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Carns, Assistant Director, Division of Insurance, (202) 898–3930; William Farrell, Chief, Assessment Management Section, Division of Finance, (202) 416–7156; Richard Osterman, Senior Counsel, (202) 898–3523, or Jules Bernard, Counsel, (202) 898–3731, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. The Final Rule

A. Background

In accordance with section 7(b) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b), the FDIC has adopted a risk-based assessment program for the BIF. The program has two main components. The first component is a set of base rates that are appropriate for the BIF over the long term. These rates, which are presented in the BIF Base Assessment Schedule, *see* 12 CFR 327.9(a)(2)(i), will be changed only after full notice-and-comment rulemaking. The second component is a mechanism for making limited and relatively short-term adjustments to the BIF base rates. The adjustments are made by rulemaking without prior notice and comment, *see id.* 327.9(c), but are revisited by the FDIC on a semiannual basis. The adjusted rates are presented in the BIF Adjusted Assessment Schedule. *See id.* 327.9(b)(2)(i). The adjusted rates are the effective ones—that is, the rates that BIF-assessable institutions currently pay to the BIF.[1]

The BIF base assessment rates are appropriate, over the long term, to generate assessments that maintain the BIF's capitalization at the level prescribed by statute. The base rates reflect a thorough historical analysis of FDIC experience, including consideration of recent statutory changes that may moderate future deposit insurance losses (*e.g.*, prompt corrective action authority and the least-cost resolution requirement). *See* 60 *FR* 42680 (Aug. 16, 1995). The BIF base rates range from 4 basis points (bp) for institutions in the best assessment risk classification (1A institutions) to 31 bp for institutions in the least favorable one. The final rule does not alter these rates.

Over the short term, however, the BIF base rates would produce a continued rise in the Bank Insurance Fund reserve ratio (BIF reserve ratio)—that is, in the ratio of the BIF's net worth to the aggregate estimated deposits that the BIF insures. *See* 12 U.S.C. 1817(l)(6). The BIF reserve ratio is currently above the target ratio prescribed by statute, and is rising. (See discussion at I.B., below). The FDIC's Board of Directors (Board) has therefore adopted a temporary adjustment to the BIF base rates. *See* 61 *FR* 64609 (Dec. 6, 1996). The adjustment has lowered the base rates by 4 bps. The resulting adjusted rates (which are now in effect) range from zero to 27 bp.

The adjustment only applies to the current semiannual period (January-June 1997), and expires at the end of it. *See* 12 CFR 327.9(b)(2)(ii). Absent this final rule, the effective BIF rates would revert to the long-term rates set forth in the BIF Base Assessment Schedule.

The final rule preserves the effective BIF rates at their current levels for the second semiannual period of 1997 (July–December) and indefinitely thereafter. The final rule does so by making an adjustment to the BIF Base Assessment Schedule in accordance with the procedure prescribed in *id.* 327.9(c). The adjustment lowers the rates in the BIF Base Assessment Schedule by four bp. The adjustment is of indefinite duration, but is reviewed semiannually.

B. Statutory and Regulatory Framework for Adjusting the Base Assessment Rates

1. Statutory Provisions

The touchstone for setting a fund's assessments is the fund's reserve ratio. When that ratio is below the ''designated reserve ratio'' (DRR),[2] the

[1] An institution that holds BIF-assessable deposits must also pay an assessment to the Financing Corporation (FICO) based on those deposits. 12 U.S.C. 1441(f)(2); *see* Deposit Insurance Funds Act of 1996 (Funds Act), Pub. L. 104–208, section 2703, 110 Stat. 3009, 3009–479 *et seq.* (Sept. 30, 1996). The FICO payment is separate from, and in addition to, the BIF assessment.

The FDIC will continue to collect the FICO assessments on the FICO's behalf. The FDIC's quarterly invoices will reflect the current amount of the FICO assessment.

[2] The DRR is a target ratio that has a fixed value for each year. The default value is 1.25 percent. The FDIC may set a higher value under certain

Continued

FDIC must set assessments to increase the fund's reserve ratio to the DRR. When the reserve ratio is at or above the DRR—as is now the case for the BIF—the FDIC must set assessments to maintain the reserve ratio at the target DRR. 12 U.S.C. 1817(b)(2)(A)(i). The FDIC may not generally set assessments in excess of the amounts needed to meet these goals. *Id.* 1817(b)(2)(A)(iii). But the FDIC may set such assessments for institutions that exhibit financial, operational, or compliance weaknesses or are not well capitalized. *Id.* 1817(b)(2)(A)(v).[3]

In order to determine the aggregate amount to be collected for a fund, the FDIC must consider: (1) The fund's expected operating expenses; (2) the fund's case resolution expenditures and income; (3) the effect of assessments on the earnings and capital of fund members; and (4) any other factors that the FDIC deems appropriate. *Id.* 1817(b)(2)(A)(ii).[4]

2. Regulatory Provisions

The FDIC has adopted a special procedure for making limited and relatively short-term adjustments to a fund's base rates in order to maintain the fund's reserve ratio at the target DRR. *See* 12 CFR 327.9(c).

Adjustments are subject to strict constraints. An adjustment must apply uniformly to every rate in the base assessment schedule. No adjustment may, when aggregated with prior adjustments, cause the adjusted rates to deviate at any time from the base rates by more than 5 bp. No one adjustment may constitute an increase or decrease of more than 5 bp. And no adjustment may result in a negative assessment rate. *Id.* 327.9(c)(1).

In line with the statutory requirements for setting assessments, an adjustment is determined by (1) the amount of assessment revenue necessary to maintain the fund's reserve ratio at the DRR, and (2) the assessment schedule that would provide the amount so needed considering the risk profile of the institutions that pay assessments to the fund. *Id.* To determine the assessment revenue needed for a fund, the FDIC considers the fund's expected operating expenses, its case resolution expenditures and income, the effect of assessments on the earnings and capital of the institutions paying assessments to the fund, and any other relevant factors. *Id.* 327.9(c)(2).

C. The BIF Adjusted Assessment Schedule

For the reasons given below, the FDIC considers that there is no current need for assessment income to maintain the BIF's reserve ratio at the target DRR. Accordingly, the final rule adjusts the rates in the BIF Base Assessment Schedule by lowering each rate 4 bp, effective July 1, 1997, thereby retaining the rates currently in effect. The adjusted rates are as follows:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

1. Maintaining the BIF Reserve Ratio at the Target DRR. As of December 31, 1996 (unaudited), the latest date for which complete data are available, the BIF had a balance of $26.854 billion (see Table 3) and a reserve ratio of 1.34 percent. The industry's performance in recent months has been strong; the growth of the BIF reserve ratio has been robust. Accordingly, the near-term outlook for the BIF reserve ratio is favorable.

Expected operating expenses. Operating expenses were approximately $505 million during 1996. They averaged $42 million per month for the year, but increased to an average of $55 million per month during the last quarter of 1996 (a full-year equivalent figure of $656 million). For 1997, operating expenses are projected to be $652 million. The savings from corporate downsizing is offset by a higher allocation of overhead expenses to corporate, a result of fewer receiverships.

Case resolution expenditures and income. Expected case resolution expenditures and income are reflected in projected insurance losses, which consist of two components: a contingent liability for future failures, and an allowance for losses on institutions that have already failed. Using the FDIC's current estimates of failed-bank assets and a 20 percent loss rate on such assets, the change in the contingent liability for future failures is estimated to be between $100 million (low estimate) and $300 million (high estimate) for calendar year 1997.

While annual changes in the allowance for losses on past failures, as a percent of the estimated net recovery value of closed banks,[5] have been as high as +13 percent and as low as −16 percent over the last five years, the change in 1994 was −5.75 percent , +10.2 percent in 1995, and −3.0 percent in 1996. An estimated range of +5 percent to −5 percent was used in the projections detailed below.

Table 1 summarizes the effect of these assumptions on projections of the provision for losses:

TABLE 1.—CHANGES IN CONTINGENT LIABILITIES AND ALLOWANCE FOR LOSSES (1)

	Low loss estimate (million)	High loss estimate (million)
Contingent Liability for Future Cases	$100	$300
Allowance for Losses: Closed Banks (2)	(200)	200
Total Provision for Losses	(100)	500

Notes:

(1) Both projections assume a continuation of current economic conditions during 1997.

(2) Assumes a range of −5 percent to +5 percent of the estimated net recovery value of closed banks ($4.34 billion as of 12/31/96).

conditions, but has not exercised that power. *See* 12 U.S.C. 1817(b)(2)(A)(iv).

[3] The FDIC has by regulation interpreted this provision to embrace institutions that have an assessment risk classification other than 1A. *See* 12 CFR 327.10.

[4] The FDIC must base a particular institution's semiannual assessment on the following factors: (1) The probability that the institution will cause a loss to the fund, (2) the likely amount of the loss, and (3) the fund's revenue needs. 12 U.S.C. 1817(b)(1)(C). To that end, the FDIC assigns every institution to an "assessment risk classification," and sets rates for each of the classifications. *See* 12 CFR 327.4 and 327.9.

[5] The estimated recovery value of closed banks was $4.34 billion as of December 31, 1996.

Assessment Income. Based on the distribution of the assessment base across the BIF assessment rate matrix as of January 1, 1997, BIF assessment income for 1997 would be $23 million under the existing assessment rate schedule.

Table 2 summarizes the distribution of institutions across the risk-based assessment matrix:

TABLE 2.—BIF ASSESSMENT BASE DISTRIBUTION (1)

[Deposits as of December 31, 1996; Supervisory Subgroup and Capital Groups in Effect January 1, 1997]

Capital group	Supervisory subgroups					
	A	Percent	B	Percent	C	Percent
1. Well:						
Number	9,362	95.0	304	3.1	57	0.6
Base ($billion)	2,597.0	98.3	29.4	1.1	2.4	0.1
2. Adequate:						
Number	84	0.9	17	0.2	15	0.2
Base ($billion)	9.7	0.4	1.2	0.1	1.2	0.1
3. Under:						
Number	0	0.0	2	0.0	11	0.1
Base ($billion)	0.0	0.0	0.4	0.0	0.8	0.0

Estimated annual assessment revenue—$23 million
Assessment Base—$2,642 billion
Average annual assessment rate (bp)—0.09 bp
Notes: (1) ''Number'' reflects the number of BIF members, including BIF-member Oakar institutions; ''Base'' reflects all BIF-assessable deposits.

With 99.0 percent of the number of institutions and 99.8 percent of the assessment base in the three lowest assessment risk classifications (1A, 1B and 2A), the current distribution in the matrix reflects little fundamental difference from the previous period when the percentages were 98.7 percent and 99.2 percent, respectively. The slightly lower number of institutions in these three categories (down 229) reflects continuation of industry consolidation trends, as the overall total declined by 247 institutions. There are only 102 institutions outside the three lowest assessment risk classifications compared to 120 during the previous period, and only 490 outside the 1A classification as compared with 561 in the previous period.

Interest Income. Income from the estimated average investment portfolio of $24.5 billion is estimated at $1.485 billion for 1997 (6.06 percent yield). Given a range of + or −19 bp for the yield (5.87 percent to 6.25 percent) for 1997, based on a range for interest rate changes of + or −100 bp, interest income is projected to be between $1.438 billion and $1.531 billion.

Table 3 summarizes the effects on the fund balance of the low and high estimates that define the ranges assumed for interest income and insurance losses:

TABLE 3.—FUND BALANCE

[$ in millions]

	Low projected estimate	High projected estimate
Revenue [1]:		
Assessments [2]	$23	$23
Interest Income [3]	1,438	1,531
Total Revenue	1,461	1,554
Expenses & Losses [1]:		
Operating Expenses	652	652
Provision for Losses	500	(100)
Total Expenses & Losses	1,152	552
Net Income [1]	309	1,002
Fund Balance (Unaudited)—12/31/96	26,854	26,854
Projected Fund Balance—12/31/97	27,163	27,856

Notes:
[1] Figures are for the full year ending December 31, 1997.
[2] Assumes that the current assessment rate schedule remains in effect through December 31, 1997.
[3] Portfolio yield is estimated to be between 5.87 percent (low) and 6.25 percent (high), reflecting variation of + or −100 bp in interest rates. The average invested fund balance is estimated to be $24.5 billion.

Growth of insured deposits. Insured deposit growth has been volatile. Since 1986, annual growth of BIF-insured deposits has been as high as 7.1 percent and annual shrinkage as much as 2.1 percent:

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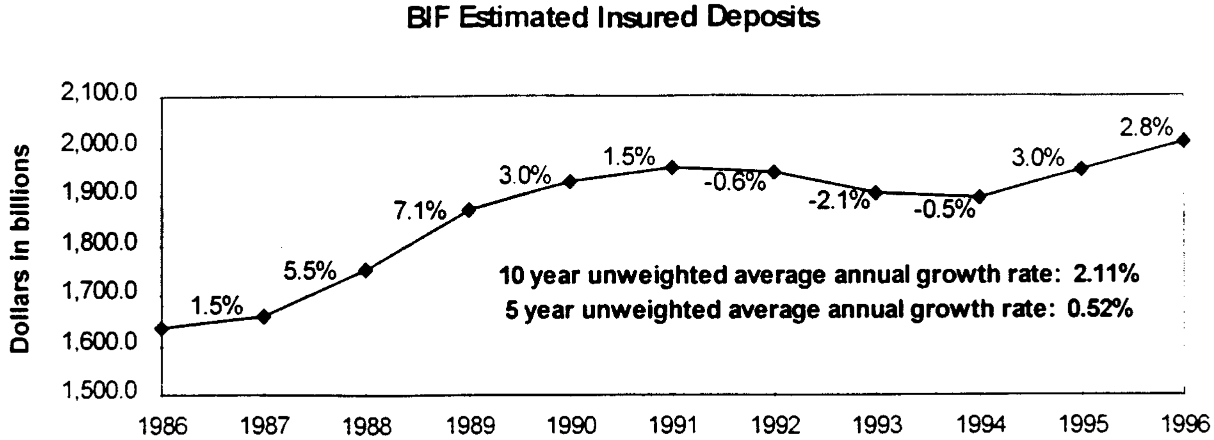
Figure 1



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The recent trend has been toward growth. Over the last two years there have been only two quarters in which insured deposits have shrunk, and even then the shrinkage has been slight (.01 percent and .03 percent). It is difficult to determine whether this development primarily reflects the incentives created by reduced BIF assessment rates, including the incentive for deposit-shifting from the Savings Association Insurance Fund (SAIF) to the BIF, or whether it indicates a change in the pattern of BIF-insured deposit growth due to other causes. With the passage of the Funds Act and the recent revision of FDIC rules governing the allocation of deposit growth or shrinkage between the BIF and the SAIF, both of which should inhibit deposit-shifting, the primary causes of recent BIF-insured deposit growth should become clearer. In the interim, considering the experience of the last five years taken together, the FDIC considers that BIF-insured deposits are likely to experience a growth rate in the range of −2 percent to +5 percent between year-end 1996 and year-end 1997.

Based on the projected BIF balance and the growth of the insured deposit base, the FDIC projects the BIF reserve ratio to be within the range of 1.29 to 1.42 at December 31, 1997:

TABLE 4.—PROJECTED BIF RESERVE RATIOS

[$ in millions]

	December 31, 1996	Low Estimate [1]—December 31, 1997	High Estimate [2]—December 31, 1997
Fund Balance (Unaudited) / Projected Fund Balance	$26,854	$27,163	$27,856
Estimated Insured Deposits	$2,007,447	$2,107,819	$1,967,298
BIF Ratio / Estimated BIF Ratio	1.34	1.29	1.42

Notes:

[1] The low estimate refers to the scenario of lower interest income (portfolio yield: 5.87 percent), higher insurance losses ($500 million) and a higher insured deposit growth rate (+5 percent).

[2] The high estimate refers to the scenario of higher interest income (portfolio yield: 6.25 percent), a reduction in insurance losses (−$100 million) and a shrinkage of the insured deposit base (−2 percent).

The low estimate produces a 5 bp decrease below the December 31, 1996, ratio. It reflects an assumed increase in the insured deposit base (+5 percent for 1997) and a small offset from an increase in the fund balance. (The fund balance in the low-estimate scenario increases because the higher projected insurance losses still do not fully offset interest income.) The high-estimate scenario produces an 8 bp increase above the December 31, 1996, ratio. It reflects an assumed shrinkage of the BIF-insured deposit base (−2 percent for 1997) and a strong increase in the BIF balance due to low insurance losses and high interest income.

In light of recent trends and current conditions in the banking industry, the FDIC considers that the low-estimate scenario is not likely to be realized. Even if it were, however, the current rate schedule still would be sufficient to maintain the BIF's reserve ratio at the DRR through year-end 1997.

2. Impact on Institutions' Earnings and Capital

The estimated annual costs to BIF-assessable institutions, before taxes, from the existing rate schedule is $23 million, down from the $43 million estimate based on July 1, 1996, classifications. This decline is largely due to the assessment base of 1A institutions increasing from 96.8 percent to 98.3 percent of the total. Additionally, the estimated total base increased $148.0 billion while the 1A base increased $181.3 billion.

Institutions having approximately $45 billion in deposits, out of a total base of approximately $2,642.0 billion (1.7 percent), will be charged a non-zero risk-based assessment. Having considered the impact on these institutions' earnings and capital, the FDIC believes that the BIF adjusted rates will have no unwarranted adverse effects.

3. Assessment Schedule Needed to Generate the Revenue

The FDIC does not presently need to collect assessment revenues from 1A institutions in order to maintain the BIF reserve ratio at the DRR over the short term.[6] The FDIC is therefore lowering the rates in the BIF Base Assessment Schedule by four bp. The adjustment results in an effective assessment rate for 1A institutions of zero bp. The BIF effective rates are set forth in the BIF Adjusted Assessment Schedule.

D. Technical Changes

1. Removal of Pre-1997 SAIF Adjusted Rates

The final rule removes provisions pertaining to pre-1997 SAIF adjusted rates. These provisions are obsolete.

[6] The assessments payable by non-1A institutions reflect the amounts needed to maintain a risk-based assessment system for the BIF.

Removing them simplifies and clarifies the current regulation.

During the final calendar quarter of 1996, a particular group of SAIF-assessable institutions—namely, SAIF-member savings associations—were subject to a special interim set of adjusted rates. The interim rates expired on December 31, 1996. From the start of 1997 forward, all SAIF-assessable institutions have been subject to the same SAIF adjusted rates. The references to the pre-1997 SAIF adjusted rates—and, in particular, to the special interim rates—are no longer needed.

The final rule does not alter either the SAIF Base Assessment Schedule or the SAIF Adjusted Assessment Schedule now in effect, but merely republishes these schedules. The effective SAIF rates, which range from zero to 27 bp, remain at the current levels.

2. Removal of Special-Assessment Provisions

The final rule eliminates subpart C of part 327, which is chiefly concerned with the special assessment imposed by the Funds Act. The FDIC has assessed and collected the special assessment. The vast majority of subpart C has therefore become obsolete.

A few provisions of Subpart C—those that pertain to institutions that were exempted from the special assessment—have a continuing vitality. The Funds Act requires these institutions (and their successors) to pay SAIF assessments at the rates in effect on June 30, 1995, for three years. Funds Act section 2702(f)(4)(A). The Funds Act also gives the institutions (and their successors) the power to terminate that obligation by paying a pro rata share of the amount otherwise due for the special assessment. Funds Act section 2702(f)(4)(B). The final rule retains but relocates the provisions from subpart C that pertain to these matters.

3. Definitions

The final rule adds an introductory phrase to 12 CFR 327.8, which sets forth definitions. The introductory phrase makes it clear that § 327.8's definitions apply throughout part 327, and not just within subpart A.

The final rule retains the provisions, heretofore found in subpart C, defining ''BIF'' and ''SAIF.''

E. Rulemaking Procedures; Effective Date

1. The BIF Rate Adjustment

The Board is issuing this final rule in pursuant to *id.* 327.9(c), which enables the Board to adjust the rates in a fund's base assessment schedule without engaging in notice-and-comment rulemaking proceedings for each adjustment. The final rule is therefore effective immediately upon adoption. The adjustment made by the final rule, and the BIF adjusted rates specified in the final rule, apply during the second semiannual period of 1997 (July-December, 1997) and subsequent semiannual periods.

The Board has found it necessary to establish this procedure because the FDIC must set ''semiannual'' assessments, *see* 12 U.S.C. 1817(b)(2)(A), and therefore reviews the assessment schedule for each insurance fund every six months. Moreover, the FDIC ''shall set assessments when necessary, and only to the extent necessary'' to maintain an insurance fund's reserve ratio at the DRR, or to raise an insurance fund's reserve ratio to that level, *id.* 1817(b)(2)(A)(i); conversely, the FDIC ''shall not set assessment rates in excess of the amount needed'' for those purposes, *id.* 1817(b)(2)(A)(iii). These twin commands require the FDIC to respond quickly in order to keep each fund's assessments commensurate with its level of capitalization.

As discussed in more detail in the **Federal Register** of December 24, 1996, in which the FDIC established the current procedure for adjusting the base rates, and also in the **Federal Register** of August 16, 1995, in which the FDIC adopted its prior procedure for adjusting the BIF base rates temporarily by means of a Board resolution, the FDIC recognizes and understands the concern for the possibility of assessment rate increases without the benefit of full notice-and-comment rulemaking. *See* 61 *FR* 67687, 67693-67694 (Dec. 24, 1996); see also 60 FR 42680, 42739–42740 (Aug. 16, 1995). Nevertheless, for the reasons given below, the FDIC considers that notice and public participation with respect to the adjustment made by this final rule would generally be ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of 5 U.S.C. 553(b). For the same reasons, the FDIC considers that it has ''good cause'' within the meaning of *id.* 553(d) to make the final rule effective immediately, and not after a 30-day delay.

Notice-and-comment rulemaking procedures are ''unnecessary'' in this case because BIF-assessable institutions are already on notice with respect to: (1) The benchmark rates that are set forth in the BIF Base Assessment Schedule; (2) the need for making routine semiannual adjustments to those rates; and (3) the maximum amount of the adjustment. In short, institutions are fully aware that the effective rates are subject to some limited amount of variability, and that any variations in the rates are directly tied to the capitalization of the BIF.

Notice-and-comment rulemaking procedures are also ''unnecessary'' because they would not provide additional relevant information. Institutions provide part of the needed information in their quarterly reports of condition. The FDIC generates the rest of the information internally: *e.g.*, the current balance and expected operating expenses of the BIF, and the BIF's case resolution expenditures and income.

Notice-and-comment rulemaking procedures are ''impracticable'' and ''contrary to the public interest'' in this case because they are not compatible with the need to satisfy two competing interests. On one hand, the FDIC must comply with the statutory directive to maintain the BIF's reserve ratio at the target DRR. The FDIC must monitor the BIF closely, and must use data that are as current as possible to set BIF assessments on a semiannual basis. On the other hand, the FDIC must give institutions adequate notice of those assessments. In the current case, the assessment is due on June 30. *See* 12 CFR 327.3(c)(2). The FDIC must issue invoices by May 31. *See id.* 327.3(d)(1). The FDIC must announce the rates—and therefore must adopt the final rule—by May 16. *See id.* 327.9(c)(4). Notice-and-comment procedures entail delays that are incompatible with these tight scheduling requirements.

2. Other Changes

The other changes made by the final rule are ''housekeeping'' measures of a purely interpretative nature. Neither prior notice and comment, nor a delayed effective date, are required for such rules. 5 U.S.C. 553(b) and (d).

II. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this rule. Accordingly, no information has been submitted to the Office of Management and Budget for review.

III. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, does not apply to this rule. The RFA defines ''rule'' to exclude ''a rule of particular applicability relating to rates''. *Id.* 601(2). The FDIC considers that the rule is governed by this exclusion.

In addition, the legislative history of the RFA indicates that its requirements are inappropriate to this proceeding.

The RFA focuses on the ''impact'' that a rule will have on small entities. The legislative history shows that the ''impact'' at issue is a differential impact—that is, an impact that places a disproportionate burden on small businesses:

Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule. 126 Cong. Rec. 21453 (1980) (''Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299'').

The final rule does not impose a uniform cost or requirement on all institutions regardless of size. Rather, it imposes an assessment that is directly proportional to each institution's size. Nor does the rule cause an affected institution to incur any ancillary costs of compliance (such as the need to develop new recordkeeping or reporting systems, to seek out the expertise of specialized accountants, lawyers, or managers) that might cause disproportionate harm to small entities. As a result, the purposes and objectives of the RFA are not affected, and an initial regulatory flexibility analysis is not required.

IV. Riegle Community Development and Regulatory Improvement Act

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires that, as a general rule, new and amended regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. *See* 12 U.S.C. 4802(b). This restriction is inapplicable because the final rule would not impose such additional or new requirements. Nevertheless, the changes made by the final rule apply beginning July 1, 1997, in line with the Riegle Act's specification.

V. Congressional Review

As a general matter, when an agency adopts a final rule, the agency must submit to each House of Congress and to the Comptroller General a report containing a copy of the rule, a general statement relating to the rule, and the rule's proposed effective date. 5 U.S.C. 801(a)(1). But the term ''rule'' excludes ''any rule of particular applicability, including a rule that approves or prescribes for the future rates''. *Id.* 804(3). The final rule is governed by this exclusion, because the final rule sets assessment rates and relates to the computations associated with assessment rates. Accordingly, the reporting requirement of *id.* 801(a)(1), and the more general requirements of *id.* sections 801–808, do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 327 of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

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

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Section 327.8 is amended by adding introductory text and by revising paragraphs (f) and (g) to read as follows:

§ 327.8 Definitions.

For the purpose of this part 327:

* * * * *

(f) *BIF; BIF member.* (1) *BIF.* The term *BIF* means the Bank Insurance Fund.

(2) *BIF member.* The term *BIF member* means a depository institution that is a member of the BIF.

(g) *SAIF; SAIF member.* (1) *SAIF.* The term *SAIF* means the Savings Association Insurance Fund.

(2) *SAIF member.* The term *SAIF member* means a depository institution that is a member of the SAIF.

* * * * *

3. Section 327.9 is amended by revising paragraph (b) to read as follows:

§ 327.9 Assessment schedules.

* * * * *

(b) *Adjusted assessment schedules*—(1) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, institutions shall pay semiannual assessments at the rates specified in this paragraph (b) whenever such rates have been prescribed by the Board.

(2) *Adjusted rates for BIF members.* The Board has adjusted the BIF Base Assessment Schedule by reducing each rate therein by 4 basis points for the first semiannual period of 1997 and thereafter. Accordingly, the following adjusted assessment schedule applies to BIF members:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

(3) *Adjusted rates for SAIF members*—(i) *In general.* The Board has adjusted the SAIF Base Assessment Schedule by reducing each rate therein by 4 basis points for the first semiannual period of 1997 and thereafter. Accordingly, except as provided in paragraph (b)(3)(ii) of this section, the following adjusted assessment schedule applies to SAIF members:

SAIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24

SAIF ADJUSTED ASSESSMENT SCHEDULE—Continued

Capital group	Supervisory subgroup		
	A	B	C
3	10	24	27

(ii) *Institutions exempt from the special assessment*—(A) *Rate schedule.* An institution that, pursuant to former § 327.43 (a) or (b) as in effect on November 27, 1996 (See 12 CFR 327.43 as revised January 1, 1997.), was exempt from the special assessment prescribed by 12 U.S.C. 1817 Note shall pay regular semiannual assessments to the SAIF from the first semiannual period of 1996 through the second semiannual period of 1999 according to the schedule of rates specified in former § 327.9(d)(1) as in effect for SAIF members on June 30, 1995 (See 12 CFR 327.9 as revised January 1, 1996.), as follows:

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

(B) *Termination of special rate schedule.* An institution that makes a pro-rata payment of the special assessment shall cease to be subject to paragraph (b)(3)(ii)(A) of this section. The pro-rata payment must be equal to the following product: 16.7 percent of the amount the institution would have owed for the special assessment, multiplied by the number of full semiannual periods remaining between the date of the payment and December 31, 1999.

* * * * *

Subpart C—[Removed]

4. Subpart C is removed.

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of May 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–12587 Filed 5–16–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 543, 552, and 571

[No. 97–48]

RIN 1550–AA76

De Novo Applications for a Federal Savings Association Charter

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing its final regulation describing the requirements for *de novo* applications for federal savings association charters. The term ''*de novo* application'' generally refers to any application to establish a new federal savings association, rather than applications from existing institutions that merely wish to convert to federal savings association charters. This final rule converts the agency's existing policy statement on *de novo* applications into a regulation, conforms the regulation to current law, and simplifies the regulatory requirements for establishing a *de novo* federal association, thereby reducing compliance costs.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Masters, Financial Analyst, Corporate Activities Division (202) 906–6729; Edward O'Connell, Project Manager, Thrift Policy (202) 906–5694; Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office (202) 906–6962; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6439, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is issuing a new regulation to revise and update its treatment of *de novo* applications for federal savings association charters.

The Federal Home Loan Bank Board (FHLBB), the OTS's predecessor agency, originally promulgated a policy statement (policy statement), which currently appears at 12 CFR 571.6, to explain its policies relating to the approval of applications for *de novo* federal associations. When the policy statement was issued, the FHLBB was the operating head of the Federal Savings and Loan Insurance Corporation, the insurance fund for thrifts. At that time, *de novo* applications included not only applications for permission to organize and requests for a federal charter, but also applications for insurance of accounts.

Subsequently enacted statutes, including the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [1] (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act of 1991 [2] (FDICIA), made significant changes in the federal regulatory structure for savings associations. Under FIRREA, the OTS succeeded to the chartering and supervisory functions of the FHLBB, but the insurance function was transferred to the Federal Deposit Insurance Corporation (FDIC). FIRREA and FDICIA also revised much of the law applicable to the *de novo* approval process. [3] Accordingly, the OTS determined that revisions were needed to update and streamline the *de novo* application requirements.

Accordingly, on March 6, 1995, the OTS published in the **Federal Register** a notice of proposed rulemaking

[1] Pub. L. 101–73, 103 Stat. 183 (1989).

[2] Pub. L. 102–242, 105 Stat. 2236 (1991).

[3] The preamble to the proposed rule included a detailed discussion of the statutory requirements regarding *de novo* applications. *See* 60 FR 12103 (March 6, 1995).