

RESCINDED

Office of Thrift Supervision
Department of the Treasury

June 23, 2003

Transmittal TR-319

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Federal Register, Vol. 68, No. 115, pp. 35589 - 35612

Number TR-319

The Office of Thrift Supervision and the other federal banking agencies published the attached joint notice requesting public comment on their plan to identify and eliminate outdated, unnecessary or unduly burdensome regulations imposed on insured depository institutions.

The agencies are reviewing their regulations for burden reduction pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). EGRPRA requires the agencies to categorize their regulations by type, provide notice, and publish the categories for comment between now and 2006. EGRPRA further requires the agencies to publish a summary of comments that identifies and discusses the issues and, to the extent appropriate, eliminate any unnecessary regulations. Finally, EGRPRA requires the agencies to submit a report to Congress on any significant issues raised by the comments.

The agencies are requesting comment on the following three categories of regulations: Applications and Reporting, Powers and Activities, and International Operations. Chart A of the attached *Federal Register* notice lists the regulations within those categories.

Visit the EGRPRA Web site at www.EGRPRA.gov to access the *Federal Register* notice, charts of categories and regulations, and to make comments to the agencies.

Attachment

FR Doc 03-15088
[Federal Register: June 16, 2003 (Volume 68, Number 115)]
[Proposed Rules]
[Page 35589-35612]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr16jn03-15]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 03-10]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chap. II

[Docket No. R-1151]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chap. III

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chap. V

[No. 2003-20]

Regulatory Publication and Review Under the Economic Growth and
Regulatory Paperwork Reduction Act of 1996

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury;
Board of Governors of the Federal Reserve System (Board); Federal
Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision
(OTS), Treasury.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The OCC, Board, FDIC, and OTS ("we" or "the Agencies") are beginning a review of our regulations to reduce burden imposed on insured depository institutions, as required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. We have categorized our regulations for the purpose of the review and propose to publish 12 categories of regulations for review between now and 2006. The categories, and the regulations that the Agencies consider to be part of those categories, are detailed below. This review presents a

significant opportunity to consider the possibilities for burden reduction among groups of similar regulations. We welcome comment on the categories, the order of review, and all other aspects of the project in order to maximize its effectiveness.

Today, we are publishing our first in a series of public releases, comprising three of the categories--`Applications and Reporting,' `Powers and Activities,' and `International Operations'--for public comment so as to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on insured depository institutions. Since we will publish a series of releases containing requests for comment on the remaining categories, it is not recommended that burden reduction comments be submitted now for any regulations in other categories.

DATES: Written comments must be received no later than September 15, 2003.

ADDRESSES: Due to delays in paper mail delivery in the Washington area, commenters may prefer to submit their comments by alternate means. Comments should be directed to:

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 1-5, Washington, DC 20219, Attention: Docket No. 03-10. Comments will be available for public inspection and photocopying at the same location. You can make an appointment to inspect the comments by calling (202) 874-5043. Facsimiles: Send facsimile transmissions to FAX Number (202) 874-4448. E-mail: Send e-mails to regs.comments@occ.treas.gov. Board: Comments should refer to Docket No. R-1151 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays in accordance with the Board's Rules Regarding Availability of Information, 12 CFR part 261. FDIC: Mail: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. You also may

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electronically mail comments to comments@fdic.gov. Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days. OTS: Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No.2003-20. Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003-20. Facsimiles: Send facsimile transmissions to FAX Number (202) 906--6518, Attention: No. 2003-20. E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention: No. 2003-

20 and include your name and telephone number. Availability of Comments: OTS will post comments and the related index on the OTS Internet site at www.ots.treas.gov. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Please identify the material you would like to inspect to assist us in serving you.)

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090; Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E St., SW., Washington, DC 20219.
Board: Patricia A. Robinson, Senior Counsel, Legal Division, (202) 452-3005; Michael J. O'Rourke, Counsel, Legal Division, (202) 452-3288; David G. Adkins, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452-5259; Federal Reserve Board, 20th St. and Constitution Ave., NW., Washington, DC 20551.
FDIC: Claude A. Rollin, Special Assistant to the Vice Chairman, (202) 898-8741; Steven D. Fritts, Associate Director, Division of Supervision and Consumer Protection, (202) 898-3723; Ruth R. Amberg, Senior Counsel, Legal Division, (202) 898-3736; Thomas Nixon, Senior Attorney, Legal Division, (202) 898-8766; Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, DC 20429.
OTS: Robyn Dennis, Manager, Thrift Policy, Supervision Policy (202) 906-5751; Karen Osterloh, Special Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906-6639; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, Sept. 30, 1996) (EGRPRA), as part of an effort to minimize unnecessary government regulation consistent with safety and soundness, consumer protection, and other public policy goals. Under section 2222, 12 U.S.C. 3311, the Agencies, jointly or individually, must categorize regulations by type, such as "consumer regulations" or "safety and soundness" regulations. Once we have established the categories, we must provide notice and ask for public comment on them. In particular, section 2222 requires that we ask the public to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome. The Agencies must issue these publications for comment at regular intervals such that all of the Agencies' categories of regulations are published for such comment within a 10 year cycle. The first publication cycle will end in September 2006. The EGRPRA review supplements and complements the reviews of regulations that the Agencies conduct under other laws and their internal policies.

\1\ The National Credit Union Administration (NCUA) has participated in the EGRPRA planning process and will separately issue a request for comment. Since the Federal Financial

Institutions Examination Council (FFIEC) has not issued regulations that impose burden on insured institutions, we have not separately captioned the FFIEC in this notice.

Section 2222 requires a two-part regulatory response. First, the Agencies must publish in the Federal Register a summary of the comments received, identifying the significant issues raised and discussing those issues. Second, the Agencies must ``eliminate unnecessary regulations to the extent that such action is appropriate.'' The Agencies may prepare the regulatory response individually or jointly.

Section 2222 further requires the FFIEC to submit a report to the Congress within 30 days after the Agencies publish the comment summary and discussion in the Federal Register. This report must summarize any significant issues raised by the public comments and the relative merits of those issues. The report also must analyze whether the appropriate Federal banking agency involved is able to address the regulatory burdens associated with the issues by regulation, or whether the burdens must be addressed by legislation.

II. The EGRPRA Review's Special Focus

The regulatory review required by section 2222 provides a significant opportunity for the public and the Agencies to step back and look at groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the `forest' of regulations will, we hope, offer a new perspective in identifying opportunities to reduce regulatory burden. Of course, reducing regulatory burden must be consistent with ensuring the continued safety and soundness of insured depository institutions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with our statutory mandates, many of which currently require certain regulations. One of the significant aspects of the EGRPRA review program is the recognition that effective burden reduction in certain areas may require legislative change. We will be soliciting comment on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements, and statutory mandates. This will be a key aspect of the FFIEC report to the Congress.\2\

\2\ Institutions are also subject to regulations issued by other non-banking agencies, such as rules issued by the Department of Housing and Urban Development (under Real Estate Settlement Procedures Act of 1974) and by the Department of the Treasury (under the Bank Secrecy Act including rules required by the USA PATRIOT Act). The rules of these other agencies are beyond the scope of the EGRPRA review and the Agencies' jurisdictions. To the extent the Agencies receive comments raising significant issues regarding these related rules, however, we intend to identify the issues in the Report to Congress and will also notify the related agencies of the substance of the relevant comments.

The combination of considering the relationship of regulatory and statutory change on regulatory burden with the section 2222 requirement

for grouping regulations by type provides the possibility for particularly effective burden reduction. It may be possible to identify statutes and regulations that share similar goals or complementary methods such that the regulatory requirements could be combined and overlapping requirements could be

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eliminated. For example, it may be possible to combine certain types of applications to eliminate duplication.

The EGRPRA review will complement the review to reduce burden and to increase uniformity of regulations among the Agencies, pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, Sept. 23, 1994, 12 U.S.C. 4803) (CDRI). The Agencies' section 2222 review will continue to try to eliminate inconsistencies among their regulations, although complete uniformity is not possible in light of differences in the types of regulated entities and the statutes that apply to them.

The EGRPRA review can also significantly contribute to the Agencies' ongoing efforts to reduce regulatory burden. For example, since 1979, a formally adopted Federal Reserve policy has required the Board to review each of its regulations at least once every five years with a view toward eliminating, simplifying, or otherwise easing the burden of each regulation.\3\ The FDIC has a similar requirement, described in its policy ``Development and Review of FDIC Regulations and Policies.''\4\ See also: FDIC Chairman Powell's initiative ``Reducing Regulatory Burden'' at <http://www.fdic.gov>. Under OCC policy in effect since the OCC undertook a comprehensive review of all of its regulations to reduce regulatory burden in the mid-1990s, the agency's regulation-writing process has sought to eliminate ``regulatory requirements that are not necessary to ensure the safety and soundness of national banks, to support consumers' access to financial services, or to accomplish other aspects of the OCC's regulatory mission.''\5\ See also, ``Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Independent Community Bankers of America, Orlando, Florida, March 4, 2003'' at <http://www.occ.treas.gov/ftp/release/2003-17a.pdf>.

Since the early 1990s OTS has worked to reduce regulatory burden through various regulatory review projects as well as Thrift Financial Report changes and revisions to Applications forms. OTS strives to produce risk-focused, efficient, and proactive regulations. OTS also, whenever possible, tailors its regulations to risks posed by particular institutions and writes its regulations and guidance in plain language.

\3\ Board Statement of Policy Regarding Expanded Rulemaking Procedures, 44 FR 3957, Jan. 19, 1979.

\4\ FDIC Law, Regulations and Related Acts, pp. 5057-5058.

\5\ OCC Bulletin 97-8 (January 7, 1997). Moreover, the OCC recognizes that a ``one-size-fits-all'' approach to regulation can be ineffective and burdensome, and tailors its regulations accordingly, taking into account factors such as the size of an institution. Id.

Further, the Agencies address the issue of regulatory burden every

time they propose and adopt a rule. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and internal agency policies, the Agencies examine each rulemaking to minimize the burdens it might impose on the industry and consider various alternatives.\6\

\6\ The OCC and OTS also review regulations pursuant to Executive Order 12866 and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

The Agencies also will use both the EGRPRA review and the individual reviews to identify and reduce burdens on small institutions. More than half of insured depository institutions are small--having \$150 million in assets or less--as defined by the Small Business Administration. We are particularly concerned about burden on small institutions. When a new regulation is created or an old regulation is changed, small institutions must devote a large percentage of their staffs' time to review the regulation to determine if and how it will affect them. Compliance with a regulation also can take large amounts of time that cannot be devoted to serving customers or business planning. In a large institution, ensuring regulatory compliance can take many more hours; however, those hours make up a much smaller percentage of the institution's resources. In situations where a regulation is aimed at an activity engaged in primarily by large institutions, the compliance burden on small institutions can outweigh its benefit.

Section 610 of the Regulatory Flexibility Act imposes a continuing requirement on agencies to review regulations that may have a significant economic impact on a substantial number of small entities, within 10 years after a final rulemaking is published. Although not all of the Agencies' rules must be reviewed pursuant to section 610, the Agencies are undertaking to review rules to the extent possible under the section 610 review criteria because of the importance of burden reduction to the many small institutions we regulate.

III. The Agencies' Proposed Plan

The Agencies must categorize their regulations by type. Section 2222 gives us authority to determine categories, and suggests two possible categories: ``consumer regulations'' and ``safety and soundness.'' The Agencies have regulations on more than 100 subjects covering a wide variety of topics from capital maintenance to the privacy of consumer financial information. Some of these regulations have been issued jointly and are as uniform as possible. Others were issued separately by the Agencies but implement common statutes or policies. These rules are listed as interagency rules to facilitate comparisons. Some regulations are issued by a single agency but are applicable to all types of insured institutions, such as the Board's Equal Credit Opportunity regulation or the FDIC's Deposit Insurance regulation. Other regulations are issued by a single agency and have more limited applicability. These rules are listed under the name of the issuing agency.

The Agencies propose to seek public comment on 12 categories of their regulations that impose burden on insured institutions between now and 2006.\7\ The categories, in alphabetical order, are:

Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. We believe that these categories are logical groupings that are not so broad that the number of regulations presented in any one category would overwhelm potential commenters. The categories also reflect recognized areas of industry interest and specialization, or are particularly critical to the health of the banking system. We recognize that our regulations could be categorized in other ways and welcome recommendations about the categories and the regulations placed within them.

7\\ Consistent with section 2222's focus on reducing burden on insured institutions, the Agencies' EGRPRA review will not involve their internal organizational or operational regulations to the extent that those regulations impose no, or minimal, burden on insured institutions.

Although joint publication is not required by section 2222, the Agencies believe that joint publication of the regulation categories for public comment will be the most effective method for achieving EGRPRA's burden reduction goals. Joint publication and review also will help maintain the uniformity of regulations among the Agencies where possible. We are publishing three categories of rules for burden reduction comment today and plan to publish the remaining nine categories in roughly semiannual intervals, with 90-day comment periods for categories under review, throughout

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the review period. We welcome recommendations on grouping the remaining categories and the order in which to publish them.

After the conclusion of the comment period for each EGRPRA review notice published in the Federal Register, the Agencies will review the comments we have received and decide whether further action is appropriate with respect to the categories of regulations included in that notice. That decision will be made by the Agencies jointly in the case of rules that we have issued jointly. Any rulemaking to amend or revise those rules would similarly be undertaken jointly and the public will be provided with an opportunity to comment on any proposed amendment. This interagency rulemaking process will not, however, include rules issued by only one agency. Comments that address specific provisions of such a regulation will be carefully reviewed and incorporated in the detailed review of the relevant regulation conducted by the agency issuing the rule. Each agency will separately determine whether amendments to its own rules are appropriate in light of comments submitted during the EGRPRA review and, if so, will separately initiate rulemakings to modify its rules. Consistent with the spirit of CDRI, however, where individual agency rules implement common statutory or supervisory policies, the Agencies will work jointly to achieve uniformity.

The Agencies have prepared three charts to assist public understanding of the organization of our section 2222 review. Chart A presents the three categories of regulations about which we are

requesting burden reduction recommendations starting today. Chart B identifies regulations affecting United States (U.S.) branches, agencies, and representative offices of foreign banks, while Chart C presents the remaining nine categories on which we will seek comment. The categories in each of the charts are shown in numbered and shaded horizontal bands. In each, the left column divides the categories into more specific subject matter areas. The remaining columns are headed by the different types of financial institutions (e.g., national banks, etc. * * *).

Generally, by reading down a column, a particular type of institution may identify the citation of the rule that applies to it. When one agency's regulation applies to institutions for which it is not the primary regulator, the citation for the subject is repeated across the columns.\8\ Interagency regulations are listed first, followed by regulations issued by the OCC, Board, FDIC, and OTS.

\8\ The charts have been provided as a convenience for the reader and should not be treated as a comprehensive listing of all rules applicable to a particular institution.

Foreign banks. Foreign banks operate in the U.S. both directly, through branches and agencies, and indirectly, through bank and nonbank subsidiaries. The U.S. operations of foreign banks as a whole do not fit neatly into the categories of Charts A and C. Consequently, Chart B supplements the International Operations category of Chart A by identifying the major regulations that apply only to U.S. branches, agencies, or representative offices of foreign banks. We have also footnoted the ``Holding Company'' column of Chart A to include foreign banks. (If a foreign bank operates a branch, agency or subsidiary commercial lending company in the U.S., it is subject to the Bank Holding Company Act as if it were a bank holding company.) \9\

\9\ There are a number of regulations that apply to branch or agency operations because of the type of activity in which the office engages rather than because it is a branch or agency. These regulations govern such areas as consumer protection, customer privacy, and securities regulation. Foreign banks may wish to comment on these regulations at such time as they are published for comment.

IV. Request for Burden Reduction Recommendations About the First Three Categories of Regulations: ``Applications and Reporting,' ' ``Powers and Activities,' ' and ``International Operations''

The Agencies are asking the public to identify and comment upon areas of regulations within three categories--``Applications and Reporting,' ' ``Powers and Activities,' ' and ``International Operations''--that impose outdated, unnecessary, or unduly burdensome regulatory requirements on insured depository institutions. It is not necessary for the public to provide burden reduction recommendations about categories of rules other than these three categories at this time since we will publish the remaining categories before the end of the first review cycle in 2006. Comments that cite particular

provisions or language, and provide reasons why such provisions should be changed, would be most helpful to the Agencies' review efforts. Suggested alternative provisions or language, where appropriate, would also be helpful. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change.

Specific issues for commenters to consider. While all comments related to any aspect of section 2222 are welcome, the Agencies specifically invite comment on the following issues:

[sbull] Need for statutory change. Do the statutes impose unnecessary requirements? Are any of the statutory requirements underlying these categories imposing redundant, conflicting or otherwise unduly burdensome regulatory requirements?

[sbull] Need and purpose of the regulations. Do the regulations in these categories fulfill current needs? Have industry or other circumstances changed since a regulation was written such that the regulation is no longer necessary? Have there been shifts within the industry or consumer actions that suggest a re-focus of the underlying regulations? Do any of the regulations in these categories impose burdens not required by their authorizing statutes?

[sbull] Overarching approaches / flexibility of the regulatory standards. Generally, is there a different approach to regulating that the Agencies could use that would achieve statutory goals while imposing less burden? Do any of the regulations in these categories or the statutes underlying them impose unnecessarily inflexible requirements?

[sbull] Effect of the regulations on competition. Do any of the regulations in these categories or the statutes underlying them create competitive disadvantages for one part of the financial services industry compared to another?

[sbull] Reporting, recordkeeping and disclosure requirements. Do any of the regulations in these categories or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? Which, if any, of these requirements could be fulfilled electronically to reduce their burden?

[sbull] Consistency and redundancy. Do any of the regulations in these categories impose inconsistent or redundant regulatory requirements that are not warranted by the circumstances?

[sbull] Clarity. Are the regulations in these categories and the underlying statutes drafted in clear and easily understood language? Are there specific regulations or underlying statutes that need clarification?

[sbull] Burden on small insured institutions. The Agencies have a particular interest in minimizing burden on small insured institutions (those with assets of \$150 million or less). The Agencies solicit comment on whether any regulations within these categories should be continued without change, or

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amended or rescinded in order to minimize any significant economic impact the regulations may have on a substantial number of small insured institutions.

BILLING CODE 4810-33, 6210-01, 6714-01, 6720-01-P

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BILLING CODE 4810-33, 6210-01, 6714-01, 6720-01-C

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Dated: June 3, 2003.
John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 9, 2003.

Jennifer J. Johnson,
Secretary of the Board.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated in Washington, DC, this 10 day of June, 2003.

Robert E. Feldman,
Executive Secretary.

Dated: May 29, 2003.

James E. Gilleran,
Director, Office of Thrift Supervision.

[FR Doc. 03-15088 Filed 6-13-03; 8:45 am]

Note from OTS: See www.EGRPRA.gov website to access charts