FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 333, 337, 341, 347, and 359

RIN 3064–AC02

Filing Procedures and Delegations of Authority; Unsafe and Unsound Banking Practices; Registration of Transfer Agents; International Banking; Management Official Interlocks; and Golden Parachutes and Indemnification Payments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing application, notice and request procedures and delegations of authority by streamlining, modernizing, and clarifying current policies and practices. The final rule provides qualifying well-capitalized and well-managed insured depository institutions and their holding companies expedited processing procedures for several major types of filings, including deposit insurance, branch, and merger applications. The final rule also centralizes substantially all filing procedures found throughout the FDIC's regulations within this rule for ease of reference. It reorganizes the requirements of each major filing type into a separate regulatory subpart that will contain all information necessary to submit a filing to the agency, as well as any relevant internal agency delegations of authority. In addition the rule incorporates statutory changes to its application procedures made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Finally, technical changes are being made to related regulations to conform to these changes.

This action is being taken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) which requires the federal banking agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary regulatory burden, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The final rule seeks to reduce burden on insured depository institutions by imposing regulatory requirements only where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the FDIC. The final rule also strives to more closely align the FDIC's application processing regulations with those of the other banking agencies.

DATES: These revisions are effective October 1, 1998. It is not considered practicable to permit early compliance with these revisions.

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SUPPLEMENTARY INFORMATION:

I. Background

Part 303 of the FDIC's regulations (12 CFR part 303) generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, notices, or requests (collectively ''filings'') required to be filed by statute or regulation. Additional information concerning processing is contained in related FDIC statements of policy. Part 303 also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel, the Executive Secretary, and, in some cases, their designees to act on certain filings and enforcement matters.

The final rule makes comprehensive changes to part 303 as part of the FDIC's systematic review of its regulations and policy statements undertaken in accordance with section 303(a) of the CDRIA (12 U.S.C. 4803(a)). Section 303(a) of CDRIA requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision (federal banking agencies) to streamline and modify their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints of credit availability. The statute also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from their regulations and written policies and to work together to make uniform regulations that implement common statutory or supervisory policies.

II. Discussion

The final rule accomplishes the goals of section 303(a) of the CDRIA in several important ways.

- New expedited processing procedures have been introduced for certain well-capitalized and well-managed banks. Expedited procedures will reduce processing time for applications submitted by qualifying institutions and will add more certainty to the timing of regulatory action. They will also allow the FDIC to focus its resources on applications that do not fall within the new expedited review procedure and therefore are more likely to present safety and soundness risks or raise CRA or compliance concerns.
- Some applications are processed as notices. For example, applications to establish a branch or relocate a main office or a branch processed under expedited procedures generally will be deemed approved 21 days after receipt of a substantially complete application.
- Regulations and guidelines issued by the federal banking agencies implementing common statutes have been made more uniform. This is particularly true of filings regarding merger transactions, changes in bank control, and change in directors or senior executive officers.
- Filing contents have been clarified and streamlined wherever practical.
- The procedural requirements for virtually all applications and notices have been centralized in part 303.
- Delegations of authority from the FDIC's Board of Directors to the Directors of DOS and DCA, the General Counsel, and the Executive Secretary to act on certain filings and enforcement matters have been updated.
- Duplicative and outdated material has been removed from existing part 303. An example is the elimination of the requirement for an application to establish or relocate a remote service facility because a remote service facility is not a branch pursuant to section 2204 of the Economic Growth and Regulatory

Paperwork Reduction Act of 1996 (12 U.S.C. 36).

Concurrently with the adoption of this final rule, the FDIC is also publishing elsewhere in today's **Federal Register** three revised statements of policy relating to filing procedures. These statements of policy pertain to Applications for Deposit Insurance, Bank Merger Transactions, and Liability of Commonly Controlled Institutions. Additionally, notices of rescission of the statements of policy on Applications to Establish a Domestic Branch (includes Remote Service Facilities) and Applications to Relocate Main Office or Branch (includes Remote Service Facilities) are published elsewhere in today's **Federal Register**.

III. General Discussion of Comments

The FDIC published in the **Federal Register** a notice soliciting comment on proposed part 303, 62 FR 52810, October 9, 1997. In response to that request, the FDIC received fifteen comment letters. Eight comment letters were received from community groups, five from bank trade associations, one from a law firm, and one from a bank holding company. Fourteen comment letters were received regarding five notices to amend, revise or rescind related statements of policy. These notices were published elsewhere in the **Federal Register** of October 9, 1997. In addition, one of the comment letters on part 303 contained comments on four of the related statements of policy. Final action on the five related statements of policy is published elsewhere in today's **Federal Register**.

The FDIC carefully considered each of the comment letters and made a number of changes to the final regulation in response to such comments and suggestions. Virtually all the comments received on the proposed regulation directly or indirectly addressed the concept of expedited processing for well-managed and well-capitalized depository institutions. While numerous commenters expressed strong support for expedited processing, others expressed a concern that expediting the application process would have an adverse effect on the enforcement of the Community Reinvestment Act of 1977 (12 U.S.C. 1811 *et seq.*) (CRA).

The agency wishes to stress that it is neither the intent nor effect of expedited processing to weaken review of an applicant's performance under the CRA. In response to concerns expressed, the FDIC has increased the period of time during which the public may comment on an application for federal deposit insurance from 15 days to 30 days. In addition, the FDIC is committed to placing a listing of all applications for deposit facilities subject to public comment on the agency's home page on the World Wide Web. The issues raised regarding expedited processing are addressed in more detail in the discussion of comments related to subpart A.

Several commenters suggested that timelines be established for filings not eligible for expedited processing. On May 6, 1996, the FDIC issued a Financial Institutions Letter (FIL–26–96) to all FDIC-insured institutions listing target time frames for each type of filing. The FDIC intends to monitor processing of applications that do not qualify for expedited processing in accordance with these internal guidelines. These guidelines, however, generally do not apply to filings that raise novel legal or policy issues, are the subject of a CRA protest, or involve a historic site. It is the intent of the FDIC to act on all filings as promptly as resources and prudence permit.

The following subpart by subpart discussion identifies and discusses comments and changes to the proposal that are being adopted. A table summarizing the sections of chapter 12 that are changed by the final rule is included at the end of this preamble.

IV. Final Rule

A. Subpart A—Rules of General Applicability

Subpart A of the proposal clarified and simplified the rules generally applicable to the processing of filings required by regulation or statute by reorganizing the general rules of procedure into one subpart. Proposed subpart A explained the availability of expedited processing by defining which depository institutions would be eligible for such processing, setting forth the process itself, and the criteria under which the FDIC might remove a filing from expedited processing. Proposed subpart A also contained public notice requirements, provisions for public access to filings, hearing procedures, and appeals and nullification procedures. Additionally, subpart A set forth general principles governing delegations of authority from the Board of Directors to certain FDIC officials and defined certain terms used throughout the proposed rule.

Definitions. Proposed § 303.2 alphabetized the current definitions and added several new definitions utilized elsewhere in the proposal. With the exception of the comments discussed below regarding the definition of ''eligible depository institution,'' no comments were received on any of the definitions in proposed § 303.2.

The proposal defined ''eligible depository institution'' to establish criteria that institutions must meet to qualify for expedited processing, as set forth in § 303.11. Proposed § 303.2(r) defined the term ''eligible depository institution'' as a depository institution that meets the following five criteria: (1) received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;[1] (2) received a satisfactory or better CRA rating from its primary federal regulator at its most recent examination; (3) received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination; (4) is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and (5) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority. In the proposal the FDIC specifically sought comment on whether the above eligibility standards are appropriate.

The FDIC received numerous comment letters on the definition of ''eligible depository institution.'' The commenters were divided in their views as to the appropriateness of the eligibility criteria.

Commenters who supported the proposed definition and the concept of expedited processing confirmed the FDIC's belief that the criteria for eligibility are appropriate to ensure that only well-capitalized and well-managed institutions that do not present any supervisory, compliance or CRA concerns receive expedited processing.

A number of commenters expressed concern that by using CRA ratings as one of the criteria for an eligible depository institution, the FDIC was establishing a ''safe harbor'' against public challenge to an applicant's CRA performance. The commenters were further concerned that the FDIC's expedited processing of applications meeting the definitional criteria would have an adverse impact on the CRA and its enforcement. Two commenters opposing the use of CRA ratings as eligibility criteria for expedited processing cited concerns that CRA

[1] An FDIC-assigned composite UFIRS rating may be based on the FDIC's own examination or based on the review of examination reports prepared by state banking authorities or the other federal banking agencies.

ratings are not a suitable criteria because the CRA evaluation procedures are still being developed and are not yet uniformly rigorous.

It is neither the purpose nor the effect of the eligible depository institution concept to adversely affect enforcement of the CRA. In fact, § 303.11(c)(2) explicitly enables the FDIC to remove a filing from expedited processing if, among other things, the FDIC receives a CRA protest that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern. Thus, as discussed in greater detail below, § 303.11(c)(2) provides that the FDIC will fully and carefully consider all CRA protests and CRA or compliance concerns that are determined to be significant.

The FDIC has taken a number of steps to promote consistent application of the CRA, both internally and on an interagency basis. Full implementation of the new CRA regulation was delayed for two years in order to collect uniform lending data upon which to base the FDIC's examination of large banks and thrifts. To familiarize examiners with the new standards and to promote their consistent application, the federal banking agencies conduct regular joint examiner training sessions. In addition, the agencies have jointly developed written guidance for examiners, financial institutions and the public. Further, the agencies are currently initiating an interagency review of a sample of each agency's CRA performance evaluations for large institutions and the agencies will also examine a limited number of large institutions using interagency teams of examiners.

Two other commenters expressed concern that the CRA rating is an inappropriate criterion for determining the eligibility of a depository institution for expedited processing for any filing that is not an application for a deposit facility as defined by the CRA. The FDIC reserves expedited processing for well-capitalized and well-managed banks. An institution's performance under the CRA reflects on the quality of its management. While an institution must have a satisfactory or better CRA rating to be eligible for expedited processing, regardless of the type of application being made, the FDIC will not consider CRA performance in deciding upon the merits of an application if such application is not for a deposit facility. Proposed § 303.5 sets forth those filings for which an institution's CRA record will be taken into account in deciding upon the merits of the application (deposit insurance, merger transactions, and establishment or relocation of a branch or main office, including the relocation of an insured branch of a foreign bank).

The FDIC recently published a final rule which revises and consolidates its international banking regulations (12 CFR part 347) and a proposed rule for comment that would revise its regulations governing the activities and investments of insured state banks and savings associations (12 CFR part 362). 63 FR 17056, April 8, 1998; 62 FR 47969, September 12, 1997. These rulemakings contain expedited procedures and definitions of an ''eligible'' type of institution which generally parallel proposed § 303.2(r). One comment received on proposed part 347 noted that although a bank must have a satisfactory or better CRA rating in order to meet that part's definition of eligibility, ''special purpose'' banks which are exempt from CRA are not assigned CRA ratings. Under the FDIC's CRA regulations at 12 CFR part 345, special purpose banks are not subject to examination under the FDIC's CRA regulations (12 CFR 345.11(c)(3)). The FDIC does not intend to apply the CRA element of the definition of an eligible depository institution to a special purpose bank which is not subject to examination under the FDIC's CRA regulations. Language to this effect has been added to the definition of ''eligible depository institution'' in § 303.2 of the final rule.

In the final rule the FDIC includes the term ''organizer'' in the proposed definition of ''insider,'' in § 303.2(u) to make clear that the FDIC considers organizers to be insiders, similar to incorporators. This change is consistent with other provisions of part 303.

The FDIC adopts proposed § 303.2 with the revisions to § 303.2 (r) and (u) indicated above.

General filing procedures. Proposed § 303.3 set forth general procedures for submitting filings under part 303, including where forms may be obtained and to whom they should be sent. Procedures are also designated for filing when no form is prescribed. Specific filing requirements are set forth in the appropriate subparts of the rule.

No comments were received on this section. The FDIC adopts this section as proposed with a minor stylistic change to make the meaning of the section more clear.

Computation of time. Proposed § 303.4 clarified that the FDIC uses a calendar day rule and begins computing the relevant period on the day after an event occurs (for example, the day after receipt of a filing or newspaper publication).

No comments were received on this section. The FDIC adopts this section as proposed.

Effect of CRA performance on filings. Proposed § 303.5 stated that CRA performance will be considered in connection with applications to establish a domestic branch or relocate a domestic branch or main office, merger applications, and deposit insurance applications, and clarified that CRA applies to applications to relocate an insured branch of a foreign bank. Although this information is currently contained in 12 CFR Part 345 (Community Reinvestment Act), the FDIC believes that an explicit statement concerning the filings covered by CRA better serves the public and the banking industry than providing a cross-reference.

The only specific comment received on proposed § 303.5 found that the information contained in proposal was useful information worth highlighting in subpart A. The FDIC adopts this section as proposed.

Investigations and examinations. Proposed § 303.6 made clear that certain FDIC officials have general delegated authority to examine or investigate and evaluate facts related to any filing under chapter 12. This provides needed flexibility to evaluate factual and legal issues that arise during the course of a filing.

No comments were received on this section. The FDIC adopts this section as proposed.

Public notice requirements. Proposed § 303.7 set forth the general requirements for providing notice of a filing to the public. The proposal required an applicant to provide prior notice of, and the opportunity to comment on, a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger transaction or other business combination, initiate a change of control transaction, or request deposit insurance. Where applicable, specific publication requirements appear in the appropriate paragraphs of part 303.

No comments were received on proposed paragraphs (a), (b), (d) or (e). The FDIC adopts these paragraphs as proposed with minor stylistic changes to make the meaning of the paragraphs clearer. In particular, § 303.7(b) has been refined in the final rule to make clear that where the notice of filing has been published prior to submission of the filing to the FDIC, the applicant should include confirmation of such publication with the filing. This will

further ensure that possible delays due to defective notices are avoided.

Proposed § 303.7(c) provided applicants with the choice of giving public notice by using a sample notice or drafting a notice that incorporates certain specified information and is tailored to the needs of the institution. This choice was designed to reduce burden on the banking industry by providing more flexibility in the required form of notice while, at the same time, requiring all applicants to provide the public with the same basic information.

Two comments were received on this paragraph, both of which were generally favorable. Both commenters supported the flexibility that the FDIC proposed to offer to banks to meet their notification requirements. One of the commenters urged the FDIC to monitor the notices being used to ensure that all parties operate on the same basis and so there is no confusion about the content of the notice. The FDIC seeks to ensure that applicants comply consistently with public notice requirements by requiring each applicant to submit a copy of the public notice for content verification.

The FDIC has made minor modifications to § 303.7(c). The language of the final rule clarifies that applications to relocate a main office are included within the notice requirement. The language has been further modified to make clear that the public notice must state that photocopies of nonconfidential portions of an application will be provided by the appropriate regional office upon request. This requirement is included in current § 303.6(f)(4).

The FDIC adopts proposed § 303.7(c) with the revisions discussed above.

The final rule includes a provision at § 303.7(f) that was not included in the proposal. Section 303.7(f) provides that where public notice is required, the FDIC may determine on a case by case basis that unusual circumstances surrounding a particular filing warrant modification of publication requirements. This new provision was added in response to a comment on subpart D, pertaining to merger transactions. The comment suggested that the FDIC require notices regarding merger transactions to be published in languages other than English in communities with significant non-English speaking populations.

The FDIC appreciates the concern reflected in this comment. Rather than limit applicability to situations involving merger applications and non-English publication, however, the FDIC has instead added a more broadly-focused provision. Under the new § 307.7(f) the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements. It is intended that this provision will be applied sparingly and with the purpose of making publication more meaningful, not as a means of altering the publication requirements to suit the convenience of the parties or as a means of curing defective publications.

Public Access to Filings. Proposed § 303.8 set forth the procedures by which the FDIC makes the non-confidential portions of filings that are subject to a public notice requirement available to the public. Under the proposed rule, the FDIC makes such portions available for inspection upon request, not more than one business day after the regional office receives such request.

A number of the commenters made specific suggestions as to how the FDIC might make applications and filings more accessible to the public. These suggestions included making a list of pending applications available on the FDIC's World Wide Web page; providing copies of filings within three days of receiving a request for filings; and mailing notices of all pending applications to all individuals and groups who request to be included on a mailing list.

The FDIC has adopted various of the commenters' suggestions for expediting the public's receipt of information related to the filing of applications. The FDIC currently has a World Wide Web site with significant information of interest to the public. The FDIC will include at its World Wide Web site a page that will provide the public with prompt notice of all applications filed for deposit facilities that are subject to public comment. This page will be available when the final rule becomes effective and may be found at www.fdic.gov. In addition, the FDIC is committed to mailing the public portions of an application file to a requester within three business days of the appropriate regional office's receipt of the request to view the file. In some instances this may result in a filing becoming public prior to the publication of notice required by § 303.7.

The FDIC also will continue existing practices designed to provide information to the public on applications that are subject to the CRA. The FDIC will continue to provide updated lists of pending applications on a regular basis to all individuals or groups who have submitted a request to the appropriate regional director (DOS) to be included on this mailing list. In addition, it will continue to be the policy of the FDIC to provide the non-confidential portions of application files for public inspection at the appropriate regional office. The final rule adds language to clarify this latter policy. The FDIC believes that these practices will facilitate the public's ability to provide meaningful comments.

In addition, the final rule adds a reference to part 309 of the FDIC rules and regulations. This regulation sets forth the FDIC's procedures for processing requests for information pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Part 309 of the FDIC rules and regulations was recently revised to reflect changes to the FOIA as a result of the Electronic Freedom of Information Act Amendments of 1996 (63 FR 29, January 2, 1998).

The FDIC believes that these changes to its procedures and continued commitment to existing practices will greatly facilitate the public's access to filings made to the FDIC and the public's ability to consider and comment upon such filings.

Public comments. Currently, interested parties may comment on a pending filing until the date of final disposition. Proposed § 303.9(a) provided that comments would be accepted only during a defined comment period in order to add certainty to the filing process for both the public and the applicant. The FDIC believes that closing the comment period on a date certain eliminates the risk of final action being delayed due to a late comment or of final action being taken while a comment is being transmitted to the FDIC.

Currently, the only basis for extension of the comment period is for ''good cause.'' In order to provide the public with adequate time to submit meaningful comments, proposed § 303.9(b)(2) granted the appropriate regional director (DOS) three bases upon which to extend or reopen the public comment period: (1) if the applicant failed to file all required information on a timely basis to permit review by the public or made a request for confidential treatment not granted by the FDIC that delayed the public availability of that information; (2) if any person requesting an extension of time satisfactorily demonstrated to the FDIC that additional time was necessary to develop factual information that might materially affect the application; or (3) for good cause.

Further, proposed § 303.9(b)(4) clarified that the FDIC will provide copies of all comments to the applicant

and that the applicant will be given an opportunity to respond.

Several of the commenters fully supported the proposed defined comment period because it will reduce the current level of uncertainty that applicants face in making applications to the FDIC. Two of these commenters suggested that the defined comment period in the proposal would create a desirable shift of focus from enforcing CRA through the applications process to enforcing CRA through the examination process. One of these commenters believed that the ''good cause'' basis for an extension of the comment period is unnecessary because the other conditions for an extension are sufficiently comprehensive. Another commenter recommended that the FDIC take all possible regulatory action necessary to ensure that public notice is made so as to ensure that public commenters cannot seek delay based upon allegations of inadequate notice.

Other commenters were strongly opposed to the proposed defined periods of time for comment. These commenters stated that the current flexibility in comment periods has been important in allowing the public to comment on applications covered by CRA. These commenters were concerned that the streamlined process will not provide enough time and opportunity to discover the filing of an application, conduct the necessary analysis and research and to write and submit any comments to the FDIC. They also question whether the FDIC's current decision making process has been delayed because of open public comment periods. Some of these commenters focused on the role that the applications process plays in enforcing CRA and were concerned that the proposal would weaken an enforcement tool that has been important to community groups.

The commenters were also divided on their beliefs as to whether the actual periods of time permitted for public comment in the specific subparts were adequate. The commenters who supported the proposed revision generally believed that the comment periods provided for in the various subparts were sufficient. The commenters who opposed proposed § 303.9 generally believed that the specific time periods were too short.

The FDIC believes that proposed § 303.9 strikes an appropriate balance between providing more certainty and expediency in the applications process and giving the public an opportunity to comment on an institution's CRA performance. The public comment period prompted by an application is not intended to be the exclusive opportunity for the public to inform the FDIC of concerns. Comments may be submitted to the FDIC at any time if an individual or a group has a concern about an institution's CRA program. It is not necessary to wait for an application to be filed. All CRA comments will be considered by DCA. By closing the comment period, the FDIC will eliminate delaying final action because of late comments. In addition, the DOS regional director or deputy director may extend or reopen the comment period as discussed above. The FDIC believes that this flexibility will enable it to consider all relevant information as part of the decision making process and to complete that process in a timely manner.

As discussed previously, the FDIC has adopted certain suggestions of commenters to make filings and applications more accessible to the public in a more expeditious manner. Listing applications on the FDIC's World Wide Web site, providing access to public files within one day of receipt of a request, and mailing copies of public files within three days of receiving a request are all designed to make it easier for the public to provide timely comments. The FDIC believes these measures will help offset any adverse effect of defined comment periods.

The FDIC adopts this section as proposed with a minor stylistic change to make the intent clear.

Hearings and other meetings. Proposed § 303.10 simplified the current rules concerning hearing procedures contained in § 303.6 (h), (i), and (j) and updated those provisions to reflect current FDIC practices. Proposed § 303.10 (c) and (d) provided that the appropriate regional director (DOS) may grant or deny a request for a hearing and that the regional director's denial of such a request is a final agency determination that is not appealable to the FDIC Board of Directors.

One commenter endorsed the proposal to allow community groups to request public hearings on pending applications because they afford opportunities for public housing residents, persons with limited literacy skills, and other citizens unlikely to submit written comments to offer their views. This and another commenter suggested that FDIC adopt a mandatory hearing procedure like that of the Office of Thrift Supervision (OTS).

A third commenter appreciated the publication of procedures in proposed § 303.10 as a source of clarity for community groups and other commenters. This commenter recognized that informal meeting procedures might prove helpful in providing additional avenues for commenters to pursue and hoped that the informal meetings would not preclude the use of hearings. This commenter sought assurance that hearings will serve the purpose of providing additional opportunity for commenters to develop the record and insure that such venue is readily accessible. This commenter opposed the preclusion of appeals of decisions denying hearing requests, believing that the Board of Directors is better suited to weigh competing issues, consider overall public interest, and ensure that the standards for judging hearing requests are consistently and fairly applied.

The FDIC believes that proposed § 303.10 represents an equitable and balanced approach because it continues to provide a basis for an individual to request a hearing, but provides more clarity with respect to the circumstances under which the FDIC will grant such a request. Delegation of authority to the regional director (DOS) places the authority to make decisions closer to the specific situation. The regional director is the most senior-level regional official and will have direct knowledge of the record of the institution or institutions and communities involved. The FDIC believes the regional director (DOS) is thus well suited to decide whether additional submissions would benefit the decision making process. The OTS hearing procedure emphasizes informal meetings as prerequisites to formal hearings. If the issues are not resolved at such meetings OTS will conduct formal meetings. The FDIC's procedure also provides for informal meetings. The FDIC generally will grant a request for a hearing only if the FDIC determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

Proposed § 303.10 has been revised to specifically include hearings and other proceedings in connection with nullification, revocation, amendment, withdrawal, and suspension of decisions on filings discussed below and in § 303.11(g). Additionally, the final rule makes clear that Legal Division consultation is required prior to taking action on a hearing request pursuant to § 303.10(c) or denying a hearing request pursuant to § 303.10(d). In addition, § 303.10(e)(2) has been modified slightly to clarify that the presiding officer in a hearing under this section shall be the regional director (DOS or DCA) or his or her designee or such other person as may be named by the FDIC Board of Directors or the

Director (DOS or DCA). This restates the FDIC's current practice as set forth in current part 303.

The FDIC adopts § 303.10 as proposed with the revisions discussed above and other minor stylistic changes to make the intent clear.

Decisions on filings. Proposed § 303.11 contained general provisions governing the process of deciding upon filings made under part 303, including the general procedures related to the decision making process; the authority of the FDIC Board of Directors to modify any of the procedures contained in part 303; and new provisions concerning multiple transactions, abandonment of filings, and nullification of decisions.

No comments were received on proposed § 303.11 (a), (b), (d), (e), (g). The FDIC adopts these paragraphs as proposed.

Proposed § 303.11(c) set forth the general provisions pertaining to expedited processing. Under the proposal, expedited processing is automatically given to institutions meeting the definition of an ''eligible depository institution'' (with a few exceptions where other conditions apply) unless the appropriate regional director or deputy regional director (DOS) removes the filing from expedited processing. Therefore, an applicant need not request expedited processing or even identify itself as an eligible institution. A filing may be removed from expedited processing pursuant to proposed § 303.11(c)(2) if: (1) for filings subject to public notice, an adverse comment is received that warrants additional investigation or review; (2) for filings subject to evaluation of CRA performance, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern; (3) for any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or (4) for any filing, the appropriate regional director (DOS) determines that other good cause exists for removal. Under the proposal, if a filing is removed from expedited processing, the applicant will be promptly informed in writing of the reason. With the exception of filings made under subpart J (International Banking), proposed § 303.11(c)(1) provided that for filings where the appropriate regional director has not been delegated approval authority, the filing will generally be removed from expedited processing.

As discussed above, the general concept of expedited processing generated numerous comments both in support of the proposal and opposed to it. The final rule is designed to balance the concerns of removing undue delays from the application process with the need to assess legitimate CRA concerns fairly.

One commenter recommended that the mandatory removal from expedited processing of any application that is subject to a substantial CRA protest or otherwise meets the standards of § 303.11(c)(2). This commenter also believed that the FDIC's clarification of ''significant CRA protest'' in § 303.11(c)(3) of the proposed rule established a dual standard for distinguishing between areas in which the institution seeks to expand and areas where it currently has a presence but is not expanding. This commenter believed that if an institution's CRA performance is less than satisfactory in any geographic area, that fact alone should be grounds for its application to be removed from expedited processing, not whether the application is for expansion in that area or some other area.

It is the policy and practice of the FDIC to investigate all CRA protests to the extent considered necessary. As a practical matter this will require the majority of protested applications to be removed from expedited processing. It may be possible to resolve some protests during the expedited processing period. This is especially true of applications for deposit insurance which have an expedited processing period of sixty days. The FDIC provided guidance on what will constitute a ''significant CRA concern'' under § 303.11(c)(2) by way of example. In that paragraph the FDIC recognized that an applicant's overall CRA rating could be satisfactory, but the applicant could also have a less than satisfactory rating or performance in the particular geographic area to be affected by the filing. In such a circumstance the FDIC might require additional time to fully and fairly evaluate the filing and, if necessary, would remove the filing from expedited processing. The FDIC believes that the proposal provided the flexibility to fully evaluate local CRA concerns without undermining the intent of expedited processing.

Two commenters recommended the proposed rule be revised to include a requirement for an abbreviated CRA examination in the case of a CRA protest.

The FDIC believes that the proposed regulation and FDIC practice provides the FDIC with the flexibility to conduct a targeted CRA examination if such is necessary or appropriate under the circumstances. DCA's standard review of an applicant's record will include a review of current and previous CRA examination reports, the applicant's correspondence file, any complaints filed against the applicant, and any other pertinent information available. In addition, § 303.6 allows the Board of Directors, the Director, Deputy Director, associate directors, appropriate regional directors and deputy regional directors (DOS and DCA) to examine or investigate and evaluate facts related to any filings under this chapter to the extent necessary to reach an informed decision.

The same two commenters that suggested an abbreviated CRA examination also requested that the FDIC provide a detailed written statement of the basis for acting on protested applications.

The FDIC included in the proposed rule several opportunities for the applicant and the public to obtain written information regarding disposition of a filing. Proposed § 303.11(a) provided that the FDIC will notify both the applicant and any person who makes a written request of the final disposition of a filing. When the FDIC denies a filing, proposed § 303.11(a) provides that the FDIC will immediately notify the applicant in writing of the reasons for the denial. This written notification is placed in the public file and remains available at the appropriate regional office for 180 days after the final decision. For any filing covered by the hearing procedures of § 303.10, § 303.10(k) requires the FDIC to notify the applicant and all participants of the final disposition of a filing and provide a statement of the reasons for the final disposition. By adopting these provisions in the final rule, the FDIC believes it has appropriately balanced the interests of those seeking information on filing disposition with those who seek a streamlined process. Additionally, it has been the FDIC's recent practice and will continue to be the agency's practice to prepare an Order and Statement in conjunction with the approval or denial of any application subject to an unresolved CRA protest. Orders and Statements are available to the public as part of the public file of an application and are available in the FDIC's public reading room.

The FDIC adopts § 303.11(c) as proposed with minor technical changes to § 303.11(c)(1) and (3) to clarify the intended meaning of those paragraphs.

Appeals and requests for reconsideration. Proposed § 303.11(f) contained the FDIC's procedures governing petitions for reconsideration of a denied filing. The proposal clarified

that these procedures cover only requests for reconsideration of filings that do not otherwise have appeal procedures provided by other regulation or written guidance, and that decisions to deny a hearing request are nonappealable. No comments were received on proposed § 303.11(f).

The proposal modified the FDIC's appeals process. Under the proposal, a regional director or deputy regional director (DOS or DCA) could approve, but not deny, a petition for reconsideration. However, the Director or Deputy Director (DOS or DCA) could approve or deny a petition. If the petition were granted, the filing would be reconsidered by the Board of Directors if the filing was originally denied by the Board of Directors or denied by the Director, Deputy Director, or an associate director (DOS or DCA). The Director or Deputy Director (DOS or DCA) could reconsider the filing if the filing was originally denied by a regional director or deputy regional director. All decisions on requests for reconsideration and all reconsideration of denied filings require consultation with or the concurrence of the Legal Division. Proposed § 303.11(f) also clarified that a decision on a petition for reconsideration by the Director or Deputy Director (DOS or DCA) is a final agency decision and is not appealable to the Board of Directors.

The final rule changes the proposal regarding the FDIC officials who will act upon requests for reconsideration that are granted. Section 303.11(f)(5)(i) of the proposed rule provided that where reconsideration was granted for a filing within the scope of § 303.11(f) that was originally denied by the Director, Deputy Director or associate director (DOS or DCA), the appeal of the denial would be decided by the Board of Directors. Section 303.11(f)(5)(ii) of the final rule provides that such appeals will be decided by the FDIC's Supervisory Appeals Review Committee (SARC). The SARC is an existing committee established by the Board of Directors with delegated authority to consider appeals of material supervisory determinations such as examination ratings, material disputed asset classifications, determinations regarding violations of laws and regulations, as set forth in the **Federal Register** on March 25, 1995, 60 FR 15923. These existing functions of the SARC continue unchanged by the revision to § 303.11(f).

The FDIC believes that the SARC is an appropriate body to reconsider the original denial of a filing made by the Director, Deputy Director or associate director (DOS or DCA). The SARC includes the FDIC's most senior managers with expertise in the areas necessary to a comprehensive understanding of the issues presented by the reconsideration of denied filings. The SARC is comprised of the following FDIC officials: Vice Chairperson of the Board of Directors, the General Counsel, the Director of DOS, the Director of DCA, the Director of the Division of Insurance, and the Ombudsman.

The proposed rule did not contain time frames within which the FDIC should act on requests for reconsideration. Although no comments were received that specifically raised this issue, the final rule includes such time frames to assist applicants. Newly added § 303.11(f)(6) provides that the appropriate regional director (DOS or DCA) will notify an applicant of the FDIC's decision to grant or deny a request for reconsideration within 15 days of receipt of the request for reconsideration. If the FDIC grants a request for reconsideration, it will notify the applicant of its final decision within 60 days of the receipt of the request for reconsideration.

The FDIC adopts § 303.11(f) with revisions discussed above and certain minor stylistic changes to the language to make the intent clear.

Nullification, withdrawal, revocation, amendment, and suspensions of decisions on filings. The FDIC received no comments on proposed § 303.11(g). The final rule has been modified to clarify the FDIC's authority and procedures regarding nullification of decisions on filings and related actions. These changes are a logical extension from the proposed rule. The final rule clarifies the scope of the FDIC's nullification authority to include the authority to withdraw, revoke, amend, and suspend decisions on filings (collectively ''nullification'').

As proposed, § 303.11(g) would have authorized the FDIC to nullify a decision on a filing whenever: (a) the FDIC became aware of any material misrepresentation or omission by an applicant after the FDIC rendered a decision on a filing, (b) an applicant failed to inform the FDIC of a material change in circumstances which arose after the filing had been submitted to the FDIC and before the FDIC's decision on it, or (c) a decision on a filing was contrary to law, regulation, or FDIC policy, or was granted due to clerical or administrative error, or to a material mistake of law or fact.

The final rule refines the substantive criteria necessary for the FDIC to take one of these actions and states in more detail the procedures to be followed. The substantive grounds have been refined by eliminating matters contrary to ''FDIC policy'' and ''material mistakes of law or fact'' from the final rule. The FDIC has determined that a nullification should continue to extend to decisions on filings that are contrary to law or regulation and that the latter is inclusive of ''material mistakes of law and fact.'' The FDIC has also clarified one of the grounds for action contained in § 303.11(g). The proposed rule would have given the FDIC authority to issue a nullification on a filing if the applicant failed to inform the FDIC of a material change in circumstance which arose after the filing was submitted to the FDIC and before the FDIC's decision on it. Under the final rule, the FDIC may issue a nullification on a filing if at anytime the FDIC becomes aware of any material misrepresentation or omission relating to the filing, or of material change in circumstance that occurred prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing, or if the decision on the filing is contrary to law or regulation or was granted due to clerical or administrative error. The grounds for nullification are contained in revised § 303.11(g)(1).

The FDIC has added procedures for use in nullification actions in § 303.11(g)(2) and (3) to insure that the rights of the applicant are protected in that the applicant will receive notice of the FDIC's intent to nullify a decision on a filing and will have an opportunity to respond to the notice. The final rule also details the manner in which the FDIC would provide written notification of the proposed action and the reason therefor to the applicant. Final § 303.11(g)(2) also provides that the FDIC may in certain cases issue temporary orders without issuing a prior notice of intent to an applicant. In such cases, the applicant is still provided an opportunity to respond after issuance of the order.

Final § 303.11(g)(3) has been redesignated ''Response to notice of intent or temporary order.'' This section provides that an applicant may file a written response to a notice of intent within 15 days of service of the notice. A written response should include: (a) an explanation as to why the proposed action is not warranted and (b) any other relevant information, mitigating circumstances, documentation, or other evidence. As a general rule, it is expected that these matters will be resolved on written submissions. An applicant may request a hearing with oral arguments and testimony under § 303.10, although such hearings will not usually be granted unless resolution on the basis of written submissions is inadequate. Final § 303.11(g)(3) also

provides that an applicant's failure to file a written response within the 15-day period constitutes a waiver of the opportunity to respond and consent to the nullification, whether or not a temporary order had been issued.

Final § 303.11(g) did not discuss whether authority was to be delegated in connection with the exercise of the authority to nullify decisions on filings. In final § 303.11(g)(5), the FDIC Board of Directors retains the authority to issue a notice of intent to nullify if the decision on the filing was originally made by the Board. For decisions on filings under this § 303.11(g) that were not originally acted on by the Board, authority is delegated to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue notices of intent and temporary and final orders, after consultation with the Legal Division. The appropriate Director may also designate regional directors and deputy regional directors to issue notices of intent and final orders. Delegated authority is to be exercised by the official who acted on the original filing or by an official or equivalent or higher authority.

General delegations of authority. Proposed § 303.12 consolidated the general principles governing delegations of authority from the Board of Directors to FDIC officials. Specific delegations of authority are contained in appropriate subparts.

No comments were received on this section. Changes were made to proposed § 303.12(a), (c), (e) to limit the application of § 303.12 to part 303 rather than to the entire chapter as proposed. Section 303.12(e) of the proposal has been further modified slightly in the final rule to make clear that actions taken by FDIC officials may be relied upon by the public as actions authorized by the FDIC. The FDIC adopts the remainder of the section as proposed.

Delegations of authority to DOS and DCA officials. Proposed § 303.13 contained delegations of authority to DOS and DCA officials to enable them to carry out the FDIC's applications function in the following areas: CRA protests, adequacy of filings, and the National Historic Preservation Act of 1966, (16 U.S.C. 470 *et seq.*) (NHPA).

Where a CRA protest is filed and remains unresolved, proposed § 303.13(a) delegated authority to the regional director or deputy regional director (DCA) to concur that approval of any filing subject to CRA is consistent with the purposes of CRA. Previously, receipt of any CRA protest caused a filing to be forwarded to DCA in Washington for review. For purposes of determining when to commence processing of a filing, proposed § 303.13(b) delegated authority to DOS officials to determine whether a filing is substantially complete. This provision also clarified that the standard to initiate the processing period is the receipt of a substantially complete filing.

Several commenters opposed the delegation of authority contained in proposed § 303.13(a) to make decisions and to act on CRA protested applications. These commenters objected to the removal of such authority from the presidentially appointed and accountable Board of Directors who they believed are in a better position to weigh the issues involved. These commenters were concerned that the CRA might not be applied consistently by various FDIC offices and that the increasing consolidation of the banking industry accompanied by interstate expansion would result in decisions being made by regional directors without complete understanding of a particular institution and its CRA record.

The FDIC is committed to careful and conscientious fulfillment of its CRA obligations. The FDIC believes there are adequate safeguards and checks in place to ensure that it is deliberate and fair in its actions involving consideration of CRA performance in the application process and to ensure consistency among regional offices. Internal procedures require regional offices to notify DCA in Washington of the receipt of a protest within specific time frames. In addition, as discussed below in the appropriate paragraphs, the FDIC has revised the delegation of authority where a CRA protest is unresolved. Proposed §§ 303.26, 303.46 and 303.184 provided that where a CRA protest was unresolved at the regional level, the Director or Deputy Director (DOS) could approve the protested filing. The final rule makes clear that the Director or Deputy Director (DOS) may approve such a filing only with the concurrence of the Director or Deputy Director (DCA). This clarification will ensure that those FDIC officials with relevant expertise will act together to approve any application under this part that is subject to an unresolved CRA protest. Moreover, under § 303.12(b)(1), the Board of Directors has not delegated the authority to act upon filings involving significant policy concerns, unique legal issues or other areas meriting special attention. Any filings involving these concerns would have to be decided by the FDIC Board of Directors.

Proposed § 303.13(c) contained a delegation of authority permitting DOS officials to enter into certain memoranda of agreement to facilitate the FDIC's ability to comply with the National Historic Preservation Act. No comments were received on this paragraph.

The final rule adds § 303.13(d) to delegate the authority necessary to modify publication requirements as set forth in § 303.7(f).

The FDIC adopts § 303.13 as proposed with the addition of § 303.13(d).

B. Subpart B—Deposit Insurance

Subpart B of the proposal reorganized and clarified the filing and processing procedures for an applicant to follow in applying for deposit insurance for a proposed or existing noninsured depository institution, for an interim depository institution (when required), and for continuation of deposit insurance for a state bank upon withdrawing from membership in the Federal Reserve System. Proposed subpart B updated the regulation to reflect current statutory requirements and current FDIC policy for processing such applications. Finally, subpart B of the proposal set forth the delegations of authority and criteria under which DOS may approve such applications. The final rule should be read in conjunction with the FDIC's revised statement of policy on Applications for Deposit Insurance found elsewhere in today's **Federal Register**.

Four commenters submitted comments in response to subpart B of the proposed rule. The FDIC has carefully considered these comments. The comments are summarized below in the following discussion of substantive changes to the regulatory text.

Filing procedures. Proposed § 303.21 set forth general procedures for filing applications for deposit insurance. No comments were received on this section. The FDIC adopts this section as proposed with minor changes to § 303.21(b) to make clear that deposit insurance applications for interim institutions are subject to the provisions of subpart B and § 303.62(b)(2), and to refine the intended definition of ''interim institution.'' This change is described more fully below and at § 303.24.

Processing. Proposed § 303.22(a) provided for the expedited processing of applications for deposit insurance for proposed depository institutions which will be subsidiaries of an ''eligible depository institution'' or an ''eligible holding company.'' Proposed § 303.22(b) provided for standard processing for those applications not

processed pursuant to expedited processing. Under expedited processing, applications would be processed within 60 days of receipt of a substantially complete application or 5 days after the expiration of the comment period, whichever is later. Heretofore, the time period for processing deposit insurance applications has generally been within 120 days. The proposal provided that final action may be withheld until the FDIC has assurance that permission to reorganize the proposed depository institution will be granted by the chartering authority. An eligible depository institution is defined in § 303.2(r) of the proposal. An eligible holding company is defined in § 303.22(a) of the proposal as a bank or thrift holding company which has consolidated assets of $150 million or more; has an assigned composite rating of 2 or better; and has at least 75 percent of its consolidated depository institution assets in eligible depository institutions. The proposal further provided that if the FDIC did not act within the expedited processing period, such inaction would not constitute an automatic or default approval.

Three commenters questioned the definition of an ''eligible holding company.'' One commenter suggested that only the composite rating be considered. Another commenter suggested that the size criteria be lowered to $100 million. The FDIC intends to achieve the expedited processing time frame for acting on applications for deposit insurance by eligible holding companies by performing a more limited investigation of the application than for those subject to standard processing. In order to provide such treatment, the FDIC must be confident that the sponsoring organization has sufficient financial and management resources to justify streamlined processing. The composite rating and size criteria as proposed are meant to be indicators of such strength. Therefore, the final rule does not change this aspect of the proposal. In addition, it should be noted that some applications that appear to meet the expedited criteria as a matter of first impression may be removed from expedited processing if sufficient management and capital resources are not present to give the FDIC sufficient comfort in utilizing expedited procedures. Likewise, the FDIC has the option of processing an application within the expedited time frame, even if the sponsor does not technically meet the eligibility definition. The FDIC intends to process all applications as expeditiously as prudence and its resources permit.

One commenter observed that it would be possible for an eligible holding company to receive expedited treatment even if some of its subsidiary institutions have less than satisfactory ratings. This is correct; however, if the condition of any of the subsidiary banks raises a safety or soundness, compliance or CRA concern, the regional director has the option of removing the application from expedited processing in accordance with the provisions of § 303.11(c)(2).

One commenter pointed out that a company which does not already control an insured depository institution cannot receive expedited treatment. The FDIC does not believe it appropriate to grant expedited treatment to applicants which do not have an established record of successfully managing an insured depository institution.

One commenter suggested an expedited processing time of 120 days, which has been the FDIC's internal time line for all deposit insurance applications. The FDIC believes it is practical to process an application from an eligible depository institution or eligible holding company in 60 days. However, applications for deposit insurance are not treated as notices, so they are not deemed to be approved by the passage of time. As set forth in § 303.11(c)(2) the FDIC can remove an application from expedited processing for a variety of reasons, including good cause. Removal of an application from expedited processing enables the FDIC to take additional time to consider a particular application that might present unique issues.

The FDIC adopts this section as proposed with a technical change to conform to the longer comment period described below and at § 303.23.

Public notice and comment period. Proposed § 303.23(a) provided that notice shall be published as close as practicable to the filing date but not more than five days before the filing date. This provided assurance that the public portion of the application file will be available for inspection during the comment period.

Under the proposal § 303.23(a) would have required interested parties to file comments with the appropriate regional director (DOS) on or before the 15th day following the date of publication. Two of the commenters believed that the proposed 15-day comment period was too short. In response to this concern, the proposed comment period under § 303.23(a) has been increased to 30 days in the final rule. Interested parties are required to file comments with the regional director on or before the 30th day following the date of publication. Also, the appropriate regional director (DOS) may extend or reopen the comment period for good cause.

The FDIC adopts this section with the longer public comment period discussed above.

Application for deposit insurance for an interim depository institution. Proposed § 303.24 defined an interim depository institution as an institution formed or organized solely to facilitate a merger transaction that would be reviewed by one of the four federal banking agencies and that would not open for business. The proposal described the requirements for a filing for deposit insurance for an interim depository institution and indicated the intent of the FDIC to take final action on such an application within 21 days after receipt of a substantially complete application unless the applicant was advised to the contrary.

No comments were received on this section.

Sections 303.21(b) and 303.24 have been revised in the final rule to cross-reference appropriate provisions of subpart D (Merger Transactions) of this part, § 303.60 *et. seq.* An interim institution is defined in § 303.21(b) of the final rule as a state or federally chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction. A separate application for deposit insurance for an interim institution is not required in connection with merger transactions that require FDIC approval under subpart D. However, subject to the provisions of § 303.62(b)(2), a separate deposit insurance application is required for a state chartered interim institution if the related merger transaction is subject to approval by a federal banking agency other than the FDIC. Federally chartered interim depository institutions are deemed to be insured upon the issuance of a charter by the appropriate federal banking agency and an application for deposit insurance with the FDIC is not required. The FDIC believes that the changes to these two sections will ensure consistency among subparts B and D.

The filing required by § 303.24(b) of the final rule consists of a brief letter application and a copy of the related merger transaction. It is anticipated that the FDIC will consult with the federal banking agency reviewing the merger application and that final action on the deposit insurance application will be taken within 21 days after receipt of a substantially complete application. If

additional review by the FDIC is warranted, the applicant will be so advised in writing.

Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System. Proposed § 303.25 set forth the application procedure for the continuation of a state bank's deposit insurance upon its withdrawal from membership in the Federal Reserve System. No comments were received on this section. The FDIC adopts this section as proposed with minor technical revisions to clarify that the correspondence referred to in § 303.25(a)(1), (2) is with the appropriate Federal Reserve Bank.

Delegation of authority. Proposed § 303.26 sets forth the delegations of authority relevant to applications for deposit insurance. The specific criteria that must be met before delegated authority can be exercised, such as initial capitalization, reasonableness of legal fees and other expenses, projected profitability, investment in fixed assets and financial arrangements involving insiders, including stock financing arrangements, were updated to reflect current policy, and are discussed in the revised statement of policy on Applications for Deposit Insurance published elsewhere in today's **Federal Register**. The revised statement of policy is cross-referenced in the final rule to avoid duplication.

Proposed § 303.26(a)(1) delegated authority to the Director and the Deputy Director (DOS), and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve applications for deposit insurance for proposed depository institutions subject to specified criteria. The criteria set forth in paragraph (v) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest, as defined in § 303.2(l), had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with purposes of the CRA, and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a protested application remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the institution or institutions and communities involved. Section 303.26(a)(1) has been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring them to obtain DCA concurrence before approving such applications. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together to approve any application under this section that is subject to an unresolved CRA protest.

The FDIC adopts this section with the revisions discussed above.

Proposed § 303.27 set forth authority retained by the Board of Directors. No comments were received on this section. The FDIC adopts this section as proposed.

C. Subpart C—Establishment and Relocation of Domestic Branches and Offices

The proposal significantly revised the portion of part 303 that implements section 18(d) of the FDI Act (12 U.S.C. 1828(d)) which requires insured state nonmember banks to obtain the prior written consent of the FDIC in order to establish a domestic branch, relocate the main office, or relocate a branch. The major changes in the proposal provided for expedited processing for eligible depository institutions and new definitions for ''messenger service,'' ''mobile,'' ''temporary,'' and ''seasonal'' branches. The proposal excluded remote service units including automated teller machines and automated loan machines from the definition of a branch. Requirements related to interstate branching were also addressed in the proposal. Because of the comprehensive treatment of branches, the proposal also recommended rescinding the Statements of Policy regarding Applications to Relocate a Main Office or Branch and Applications to Establish a Domestic Branch. Both statements were considered obsolete and unnecessary considering the revisions to subpart C and are rescinded elsewhere in today's **Federal Register**.

The FDIC received three comments specifically on this subpart and numerous comments addressing expedited processing, the public comment period and the delegations of authority regarding CRA protested applications. The FDIC carefully considered all the comments, and the final rule reflects changes made in response to those comments as well as technical changes to the proposal.

Definitions. Proposed § 303.41(a) clarified that remote service units, including automated loan machines, are not branches. These exclusions are a result of statutory changes contained in section 2204 of EGRPRA (12 U.S.C. 36). Two commenters supported this change in the definition.

With regard to the definition of ''branch relocation,'' two commenters suggested that the FDIC explicitly make reference to the Policy Statement Concerning Branch Closing Notices and Policies (2 FDIC Law, Regulations and Related Acts 5391 (August 10,1993)) within the definition of ''branch relocation'' in order to ensure that the new definition is read as incorporating all of the guidance in the policy statement. The FDIC agrees that it would be useful to make reference to the policy statement and has provided the reference in the definition of a branch relocation.

Filing procedures. The proposed regulation at § 303.42(b)(2) provided filing procedures for messenger services and mobile branches. Specifically, the FDIC proposed that the geographic location for a mobile branch be designated as to which community or communities are to be served. The FDIC sought comment on whether such a designation is appropriate but received no specific response. The FDIC is, however, making a clarification in the final regulation to require that filings specify the community or communities in which the vehicle will operate and the manner in which it will be used.

One commenter recommended that applications for mobile branches be subject to abbreviated FDIC review and public notice procedures because of their unique characteristics and the substantial public convenience offered by these facilities. The FDIC has carefully considered the comment but believes that with the adoption of expedited processing for eligible institutions that a special provision for a more limited review is unnecessary.

In addition, proposed § 303.42(b) has been modified to include references to two FDIC statements of policy, one of which gives guidance on the National Environmental Policy Act of 1969 (42 U.S.C 4321 *et seq.*) (NEPA) (2 FDIC Law, Regulations and Related Acts 5185, March 31, 1980), and the other provides guidance on the NHPA (2 FDIC Law, Regulations and Related Acts 5175 (March 31, 1980). The language in § 303.42(b)(5) has been modified to simply require a statement as to whether or not the particular site for a branch or branch relocation is included, or is eligible for inclusion, in the National Register of Historic Places, including

documentation of consultation with the State Historic Preservation Officer, as appropriate. The proposed regulation required a statement as to whether or not the particular site is included in or is eligible for inclusion in the National Register as well as a statement that clearance has been or will be obtained from the State Historic Preservation Officer. This change has been made in anticipation of a programmatic agreement with the Advisory Council on Historic Preservation and subsequent change in the FDIC's Statement of Policy on NHPA to reflect exclusions of certain categories of properties from the NHPA.

With regard to the establishment of certain interstate de novo branches, the proposal at § 303.42(b)(8) required the applicant to provide a statement that the applicant has requested that the host state provide to the appropriate regional director (DOS) written confirmation that the applicant has complied with the state's filing requirements and that the applicant has also submitted to the host state bank supervisor a copy of the filing with the FDIC to establish and operate a de novo branch. This requirement has been deleted in the final regulation and the FDIC will make direct requests to the state supervisor in those limited cases where such confirmation is required. As a result of this deletion, the remainder of the section has been renumbered.

Processing. The proposal at § 303.43(a), provided expedited processing for applications for the establishment and relocation of domestic branches and offices for eligible depository institutions. The expedited processing procedures were contained in § 303.11(c), and provided that an application submitted by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and receive expedited processing unless the FDIC removes the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Section 303.43(a) provided that the FDIC may remove an application from expedited processing at any time before the approval date and will promptly notify the applicant in writing of the reason for such action. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following: (1) the 21st day after receipt of a substantially complete application by the FDIC, (2) the 5th day after expiration of the comment period described in § 303.44, or (3) in the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives from the host state confirmation that the applicant has both complied with the filing requirements of the host state and submitted a copy to the host state bank supervisor of the application filed with the FDIC. One commenter objected to the expedited processing provisions, arguing that they treat such filings as notices and would subvert the spirit of the CRA. The FDIC believes such concerns are unwarranted since the FDIC intends to carefully review all applications for CRA and other safety and soundness and compliance concerns regardless of the expedited processing time frames. The FDIC has also provided for provisions for removal from expedited processing in certain circumstances as enumerated in § 303.11(c)(2).

Public notice requirements. The public notice requirements of the proposal required that to relocate a main office the applicant publish notice in the community in which the main office is currently located and in the community to which the main office proposes to relocate, and that such notice be published at least once each week on the same day for two consecutive weeks. The proposal provided that for the relocation of branches, a notice shall be published once in a newspaper in the community in which the branch is located. One commenter objected to this provision and recommended that two newspaper publications be required to conform with the requirement for main office relocation. The FDIC believes that since a branch relocation can only occur in the same immediate neighborhood, that only one publication in that community is necessary. Furthermore, a single publication is consistent with the requirements of the other federal banking agencies.

In order to eliminate the uncertainty regarding the close of the comment period, proposed § 303.44 provided that comments must be received by the appropriate Regional Director (DOS) within 15 days after the date of the last newspaper publication and proposed § 303.9 provided for extension or reopening of the comment period in certain situations. The FDIC received numerous comments on the length of the comment period. Several comments supported the comment period, however, a number of commenters objected to the 15-day comment period. Several commenters suggested that a public comment period of 30 days after the last publication while one commenter suggested the FDIC adopt a processing time frame of 45 days as provided in part 5 of the Office of the Comptroller of the Currency's regulations. One commenter suggested that the comment period should not commence until the FDIC has received a complete application. One commenter thought that the application and notice provisions were generally reasonable, but suggested that the application review deadline be changed to 15 days after receipt of a substantially complete application or five days after the public comment period expires, whichever is later. The commenter argued that branch applications and relocations are relatively simple activities and should, therefore, be processed quickly. On balance, the FDIC believes a 15-day comment period provides adequate time for the public to comment on the establishment or relocation of a branch. The regulation provides for two publications and a 21-day comment period for a main office relocation. The FDIC also commits to place all applications subject to the CRA on its World Wide Web site within three days of receipt in order to provide prompt notification of all filings. The FDIC has also given its regional directors wide discretion to extend the comment periods in order to provide the public with an adequate amount of time to submit a meaningful analysis. With regard to the processing or review deadline being changed to 15 days after receipt of a substantially complete application, the FDIC believes the 21 day processing period is responsive to the industry and that it is not feasible to commit to a shorter time frame. For these reasons, the FDIC is adopting the timeframes as proposed.

Special provisions. Section 303.45 of the proposed regulation added several new provisions regarding procedures for opening temporary branches in emergency or disaster situations, re-designating a main office, and providing for the expiration of approved applications.

The proposed regulation at § 303.45(a) clarified procedures for establishing temporary branches in emergency or disaster situations. The proposal provided that in the case of an emergency or disaster at a main office or branch which requires that an office be immediately relocated to a temporary location, the applicant notify the appropriate regional director (DOS) within 3 days of such temporary location. In such limited cases, the FDIC will accept initial notification by whatever means appropriate. The FDIC is making this limited exception to allow for the public's need to have uninterrupted access to banking services. However, the final regulation

does require that, within 10 days of a such a temporary relocation, the bank submit a written application to the appropriate regional director (DOS). The FDIC received one comment specifically supporting the inclusion of such temporary facilities since it will make it easier for institutions to relocate a branch or main office in the event of an emergency.

Proposed § 303.45(b) regarding relocation of a main office and simultaneous redesignation of an existing office as the main office has been modified to make clear that in such circumstances only a single application is required.

Proposed § 303.45(c) provided that approval of an application expires if a branch has not commenced business or if a relocation has not been completed within 18 months of approval. One commenter supported the expiration of the approval but suggested an extension should be possible where extenuating circumstances warrant. The FDIC has provided for such extension of time in subpart M of the final regulation.

Delegation of Authority. Proposed § 303.46 delegated authority to the Director and Deputy Director, and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve applications listed in this subpart subject to specific criteria. The criteria set forth in paragraph (c)(5) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest as defined in § 303.2(l) had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with the purposes of the CRA and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a protested application remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the institution or institutions and communities involved. Section 303.46(c)(5) has been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring them to obtain DCA concurrence before approving such an application. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together to approve any application under this subpart that is subject to an unresolved CRA protest.

Modification has been made to § 303.46(c)(7) to reflect the deletion of proposed § 303.42(b)(8) which had required applicants to request and provide a statement from the host state which provided certain confirmations. As noted above, the FDIC will make such inquiries.

After consideration of the comments, the FDIC adopts subpart C with the above-noted modifications.

D. Subpart D—Merger Transactions

Proposed subpart D consolidated and reorganized the various provisions of part 303 governing transactions subject to FDIC approval under section 18(c) of the FDI Act (12 U.S.C. 1828(c)) (Bank Merger Act). The primary changes reflected in the proposal were the addition of an expedited processing procedure, the addition of various definitions applicable to merger transactions, and the addition of references to other statutory or regulatory provisions often applicable to merger transactions.

The FDIC received three comments specifically addressing proposed subpart D and numerous comments addressing expedited processing and the delegations of authority regarding CRA protested applications. The FDIC has carefully considered these comments. The comments are summarized below in the following discussion of the regulatory text.

First, however, the FDIC notes that the title of this subpart has been changed from ''Mergers'' to ''Merger Transactions.'' The use of the term ''merger transaction'' is meant to be inclusive of all types of transactions (including mergers, consolidations, and transfers of deposit liabilities) covered by the Bank Merger Act. When the term ''merger'' is used in the regulation, it is used to reference only a true merger.

Scope. Proposed § 303.60 set forth the scope of the subpart. One commenter suggested that a cross reference to the FDIC's Statement of Policy on Bank Merger Transactions be added to the proposal. Section 303.60 of the final rule includes such a reference to the Statement of Policy which is also published in today's issue of the **Federal Register**. The FDIC adopts this section with the suggested reference.

Definitions. Proposed § 303.61 added definitions regarding merger transactions. No comments were received regarding the definitions. The FDIC adopts this section as proposed, with minor, nonsubstantive editorial changes.

Transactions requiring prior approval. Proposed § 303.62 detailed the types of transactions requiring the prior written approval of the FDIC under subpart D. No comments were received regarding the transactions covered. The FDIC adopts this section as proposed with minor editorial changes.

Filing procedures. Proposed § 303.63 provided guidance regarding the filing procedures for applications required under the subpart. No comments were received on the filing procedures. The FDIC adopts this section as proposed, with minor, nonsubstantive editorial changes.

Processing. Proposed § 303.64 included the addition of an expedited processing procedure. This procedure would be available when all parties to a merger transaction are eligible depository institutions (as defined in § 303.2(r)), and the resulting institution would be well-capitalized immediately after the merger transaction.

One commenter suggested that the expedited processing period of 45 days be reduced to 30 days for smaller, less complex transactions where the total assets of the resultant institution would be less than $500 million. Another commenter recommended that the expedited processing period be increased to 60 days. The final rule retains the 45 day processing time line. The FDIC believes that this provides sufficient time to act on applications that do not raise unique issues or are not subject to CRA protests. Protested applications or applications which raise unique issues generally would be removed from expedited processing. While it might be possible to resolve all relevant safety and soundness issues arising in the context of smaller merger transactions in less than 45 days, the statutory requirement of a 30 day publication period and the requirement to consult with the Attorney General and other bank regulatory agencies regarding the competitive factors does not make it feasible to establish a shorter time frame for action.

One commenter generally supported the expedited processing proposal but suggested that the eligibility criteria be expanded to include otherwise eligible proposals where an ineligible target institution has core deposits equal to 10 percent or less of the acquiror's core deposits. In response to this comment, a provision has been added in the final

rule that permits expedited processing for transactions involving an eligible acquiror and an ineligible seller if the amount of total assets to be transferred to the acquiror is no more than 10 percent of the acquiror's total assets. The FDIC believes that, absent other issues, such a transaction would be less likely than larger acquisitions to raise safety and soundness concerns.

The FDIC adopts this section with the changes noted above, along with limited minor changes.

Public notice requirements. Section 303.65 of the proposal set forth the requirements for providing public notice of merger transactions, the required content of such notices, and a predictable period of 35 days during which the public may submit comments on proposed non-emergency merger transactions. In addition, the proposal permitted the initial public notice of a proposed transaction to be published up to 5 days before the merger application is filed with the FDIC. Under the existing regulations, the notice could not be published until the application had been filed with the FDIC.

One commenter opposed the proposal to permit merger applicants to publish notice of a proposed transaction before a completed application has been filed with the FDIC. Another commenter generally supported the proposal but objected to the 35 day comment period. One commenter also suggested a shorter comment period for smaller and less complex transactions, such as those resulting in an institution with less than $500 million in combined assets. In contrast, another commenter urged a longer comment period than that proposed. This commenter suggested that the public comment period should extend through the fifth day prior to FDIC action on the application (specifically, 5 days before the end of the 60-day minimum processing period urged by the commenter).

The final rule continues to provide for a fixed comment period. The FDIC believes this will provide prospective commenters the assurance that they will have a definite number of days for submitting comments after publication of the last notice of a proposed transaction. The final regulation revises the length of the public comment period to a 30-day public comment period rather than the 35-day period proposed. Upon reflection, the FDIC does not believe it is necessary to provide for a longer comment period than required by the Bank Merger Act. The final rule moves the last publication date for public notice of the transaction from the 30th day after initial publication to the 25th day. This ensures that prospective commenters will typically have 5 days after the last publication to express their views on a proposed merger transaction. The FDIC notes that the final rule provides flexibility for the FDIC to extend or reopen a comment period for reasons specified in subpart A of the final rule.

Regarding the suggestion that the comment period be extended to 5 days before the end of the processing period, the FDIC notes that the expedited processing period in § 303.64(a) is a maximum period, not a minimum. Thus, simple transactions requiring only the most cursory review, for example, might be approved sooner than 45 days after the date of the application. Because the processing time required for any given application cannot be predicted in advance, the closing date for comments on the application cannot both be predictable and end a certain number of days before the FDIC makes a decision on the application.

Proposed § 303.65(a) provided generally that an applicant for a merger transaction must publish notice of the proposed transaction on at least three occasions at approximately two-week intervals. No comments were received on this provision. The final rule revises this requirement to provide that such notice must be published on at least three occasions at approximately equal intervals. The FDIC makes this change to conform with changing the date of the last publication to the 25th day after the initial publication, as discussed above.

Proposed § 303.65(b)(1) set forth an exception to the publication requirements where the FDIC determines that an emergency requires expeditious action. This exception tracks a statutory exception. Under this provision of the proposal, notice shall be published twice, with the second of the two notices to be published on the 10th day after the first publication. The final rule requires the second notice to be published on the 7th day after the first publication. Based upon the statutory 10-day processing period, this change allows the public 3 days to comment after the second publication.

One commenter suggested that the FDIC require notices regarding merger transactions to be published in languages other than English in communities with significant non-English speaking populations. Rather than limit applicability to situations involving merger applications and non-English publication, however, the FDIC has instead added a more broadly-focused provision in subpart A. Specifically, under the new § 303.7(f) the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements. It is intended that this provision will be applied sparingly and with the purpose of making publication more meaningful, not as a means of altering the publication requirements to suit the convenience of the parties or as a means of curing defective publications.

The FDIC adopts § 303.65 with the modifications discussed above and minor, non-substantive, editorial changes.

Delegations of authority. Proposed § 303.66 set forth the delegations of authority to designated FDIC officials to approve under the Bank Merger Act any application filed under this subpart for approval of a merger transaction for which the specified criteria are satisfied. The specific criteria that must be met before delegated authority can be exercised, such as capital requirements, competitive effects and geographic markets were updated to reflect current FDIC policy.

Proposed § 303.66(b) delegated authority to the Director and Deputy Director, and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve merger applications, subject to specific criteria. The criteria set forth in § 303.66(b)(5) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest as defined in § 303.2(l) had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with the purposes of the CRA, and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a CRA protest remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the institution or institutions and communities involved. Sections 303.66(c) and (d) have been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring

them to obtain DCA concurrence before approving such an application. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together in deciding whether to approve a merger application that is subject to an unresolved CRA protest.

Regarding competitive effects which are considered under proposed §§ 303.66(f) and (g), one commenter urged that the regulation provide guidance as to the composition of relevant geographic markets to be used in analyzing competitive effects. The Statement of Policy on Bank Merger Transactions (published elsewhere in today's **Federal Register**), to which a cross reference has been added in new § 303.60, includes a discussion on relevant geographic markets. Relevant geographic markets are best defined on a case-by-case basis, considering such factors as the location of the offices of the particular merging parties. Beyond the factors referred to in the Statement of Policy, the FDIC does not believe that any more specific factors can be identified that could be applied for all merger transactions, successfully, accurately, and without undue burden. This same commenter expressed concern that the benefits of expedited processing might be undermined if the FDIC waited for the Attorney General's competitive-factors reports before acting on a merger application. In response, we note that the Bank Merger Act allows the Attorney General 30 calendar days to provide a competitive factors report. The report is commonly provided within or near this period unless competition issues are raised that the Department of Justice believes merit more extensive examination. If there are such issues, it is likely that the application would be removed from expedited processing.

One commenter further suggested that language be added to the final rule that would preclude FDIC consideration of any factor unless that factor is specifically referred to in the regulation. The FDIC believes such a provision would be ill advised and not in the public interest. General categories of considerations specified in the Bank Merger Act and other relevant statutes are identified in the Statement of Policy on Bank Merger Transactions (published elsewhere in today's **Federal Register**). The necessity of expressly enumerating each and every factor to be considered within these categories would result in a regulation of unwieldy length.

Proposed § 303.66(f) provided that if the Attorney General does not provide a competitive factors report and certain delegation criterion are satisfied, the appropriate regional director (DOS) may request a written opinion from the FDIC's General Counsel or designee as to whether the proposed merger might have a significantly adverse effect on competition. Since the request for a written opinion was permissive, the language has been deleted from the final rule. The FDIC notes that nothing would prohibit a regional director from requesting such an opinion.

The FDIC adopts this section with the revisions discussed above.

Authority retained by the FDIC Board of Directors. Proposed § 303.27 set forth authority retained by the Board of Directors. No comments were received on this section. The FDIC adopts this section as proposed.

E. Subpart E—Change in Bank Control

The proposal substantially reorganized, clarified, and simplified the FDIC's regulation implementing the Change in Bank Control Act of 1978. The changes, developed in consultation with the other federal banking agencies, harmonize the scope and procedural requirements of the FDIC's regulation with those of the other federal banking agencies and reduce unnecessary burden. In addition, a common form which may be used to satisfy the notice requirements of the Change in Control Act has been adopted by the four federal banking agencies and is available from any FDIC regional office.

The proposal defined the previously undefined term ''acting in concert'' to clarify the scope of the regulation. It also incorporated the current FDIC position that the acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank is presumed to be an acquisition of the underlying shares. Further, the proposal lengthened the period of time for notifying the FDIC from 30 to 90 days for shares acquired in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or a bona fide gift. In the case of shares acquired in satisfaction of a debt previously contracted, the proposal added language that reflects FDIC practice of requiring the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities to file a notice before the loan is acquired.

The proposal also reduced regulatory burden on persons whose ownership percentage increases as the result of a redemption of voting shares by the issuing bank or the action of a third party not within the acquiring person's control. In these situations, the proposal permits the person affected by the bank or third party action to file a notice within 90 calendar days after receiving notice of the transaction. Currently, these persons must file notice under the Change in Bank Control Act prior to the action that increases the person's percentage ownership, and, because these persons cannot control the third party action that causes the increased percentage ownership, they are often put in violation of the Change in Bank Control Act and the FDIC's Rules and Regulations.

The proposal provided more flexible timing for newspaper announcements of filings under the Change in Bank Control Act by permitting notificants to publish the announcement as close as practicable to filing the notice of change in control. The proposal removed the requirement that the notificant have confirmation that the FDIC has accepted the notice before publishing the announcement.

The proposal deleted the provision governing notices filed in contemplation of a public tender offer which permits an acquiror to delay publication of the newspaper announcement. None of the other federal banking agencies has such a provision.

The FDIC received two comments regarding the proposal. One commenter supported the proposed changes to the regulation and the other did not object to the changes proposed. The FDIC adopts this section as proposed.

F. Subpart F—Change of Director or Senior Executive Officer

The proposed rule implemented the amendments to section 32 of the FDI Act and set forth the circumstances under which an insured state nonmember bank must give the FDIC prior notice of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. The proposed rule also strived to harmonize the procedural requirements of the FDIC's regulation with those of the other federal banking agencies and to reduce any unnecessary regulatory burden. In addition, a common application form providing the notice requirements of section 32 has been adopted by the federal banking agencies and is available from any FDIC regional office.

Section 2208 of EGRPRA (12 U.S.C. 1843) amended section 32 by eliminating the prior notice requirement for institutions and holding companies that are chartered for less than two years or that have undergone a change in control within the preceding two years. However, institutions and holding companies that are not in compliance with minimum capital requirements or

are otherwise in ''troubled condition'' remain subject to the prior notice requirement. In addition, EGRPRA provided that prior notice will be required if the agency determines, in connection with its review of a capital restoration plan required under section 38 of the FDI Act (governing prompt corrective action) or otherwise, that such prior notice is appropriate. Also, the EGRPRA amendments provided the agencies with more latitude to determine the prior notice period and allowed the agencies up to 90 days to issue a notice of disapproval. Although the EGRPRA amendments provided the agencies with authority to increase the prior notice period to 90 days, the proposed subpart F retained the 30-day prior notice currently required but allowed the agency to extend the time to act on a notice by up to an additional 60 days. The FDIC specifically sought public comment on the 30-day time frame.

Two comments were received on the proposal. One commenter generally supported the changes in the proposal. Another commenter suggested that any extension of the 30 day processing period be limited to an additional 30 days rather than 60 days.

The final rule retains the FDIC's ability to extend the 30 day notice for up to an additional 60 days. The FDIC expects to act on the vast majority of these cases within 30 days. It is anticipated that this additional 60-day period would be used infrequently. In all such cases, the notificant will be advised in writing prior to expiration of the 30-day prior notice period of the reason the FDIC could not take action and of the projected additional time needed.

The final rule adopts subpart F as proposed, with minor technical changes.

G. Subpart G—Activities and Investments of Insured State Banks

The part 303 proposal reserved subpart G for filing procedures related to activities and equity investments of insured state banks which are currently contained in part 362 (12 CFR 362). Part 362 implements section 24 of the FDI Act (12 U.S.C. 1831a), which was created by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236), and governs the circumstances in which insured state banks may engage in activities which are not permissible for national banks.

The FDIC has an outstanding notice of proposed rulemaking to make comprehensive revisions to part 362. 62 FR 47969, September 12, 1997. In connection with these revisions, the FDIC proposes to eliminate certain application procedures which are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. At the time the FDIC issued its part 303 proposal, the FDIC could not determine whether its 362 proposal or its part 303 proposal would be finalized first. In order to deal with this problem, the application procedures which implement the proposed revisions to part 362 concerning state bank activities were issued in subpart E of the part 362 proposal. The part 303 proposal advised members of the public taking an interest in the FDIC's application procedures for the activities of insured state banks under part 362 to review the part 362 proposal for the specifics of such application procedures. Both proposals also advised the public that it is the FDIC's intent to place the part 362 application procedures relating to state bank activities in subpart G of part 303 at such time as both rules are final.

One commenter responding to the part 303 proposal addressed certain substantive aspects of the part 362 proposal. The FDIC will take this comment into consideration when the FDIC finalizes part 362.

The final rule for part 303 will continue to reserve subpart G. When the FDIC issues the final rule for part 362, the final version of the application procedures proposed in subpart E of the part 362 proposal will be issued as final rule amendments to subpart G of part 303. In the interim, insured state banks operating under the current version of part 362 will continue to look to the current version of part 362 itself for application procedures until the revisions to part 362 become effective.

H. Subpart H—Filings by Savings Associations

Subpart H of the proposal was reserved for filing procedures related to activities of insured savings associations and subsidiaries of insured savings associations that were, at the time of the proposal, contained in § 303.13 of part 303 (12 CFR 303.13). Section 303.13 implemented sections 28 and 18(m) of the FDI Act (12 U.S.C. 1831e and 12 U.S.C. 1828(m)) which were both enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 103 Stat. 484). Provisions of § 303.13 generally governed the circumstances in which a state savings association could engage in activities which are not permissible for a federal savings association, and also required all insured savings associations to notify the FDIC prior to establishing or acquiring a subsidiary or engaging in any new activities through a subsidiary.

As part of the FDIC's currently outstanding notice of proposed rulemaking to revise part 362, the FDIC proposed to address the substantive issues covered by § 303.13 as subparts C and D of the revised part 362. 62 FR 47969, September 12, 1997. The part 362 proposal harmonizes, to the extent possible given the differences in the underlying statutes, the treatment of activities of insured state banks and the activities of insured state savings associations. In addition, the proposal retains the statutory notice procedure for all savings associations establishing or acquiring subsidiaries or engaging in any new activities through a subsidiary. In connection with these revisions, the FDIC proposed to eliminate certain one-time application procedures that are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. As noted above, at the time that the FDIC issued its part 303 and part 362 proposals the FDIC could not determine whether its part 362 proposal or its part 303 proposal would be finalized first. To compensate for this timing issue, the application and notice procedures that implement the proposed revisions to part 362 concerning savings associations were issued in subpart F of the 362 proposal. The preamble to proposed part 303 advised readers to review the part 362 proposal for the specifics of such application and notice procedures. Both proposals also advised the public that it is the FDIC's intent to ultimately place the part 362 application and notice procedures relating to savings associations in subpart H of part 303 at such time as both rules are final.

Since part 303 is now being finalized and part 362 will be finalized at a later date, former § 303.13 is being redesignated, without substantive change, as subpart H of part 303. Savings associations that were operating under former § 303.13 will now look to subpart H. At such time as part 362 is finalized, however, these interim procedures will be replaced with the application procedures adopted with part 362.

No comments were received regarding the reservation of subpart H. Comments were received, however, on the proposed part 362, and those comments are being considered in the course of the part 362 rulemaking.

The procedures being adopted at this time preserve without substantive change the former § 303.13, and redesignates it as subpart H, § 303.140 through § 303.148. The subpart makes

several technical and format changes and deletes obsolete references. First, it adds a *Scope* section describing the contents of subpart H. Second, the final rule inserts subheadings in the text in order to conform the format with the rest of the final part 303. Third, the final rule removes obsolete references to filing deadlines that expired years ago. Fourth, it makes certain technical changes throughout to conform the terminology used in subpart H with that used in part 303. For example, ''appropriate regional director (DOS)'' has been substituted for ''(DOS) regional director for the region in which the state savings association's principal office is located.''

The FDIC adopts this section with the above-referenced modifications.

I. Subpart I—Mutual-to-Stock Conversions

Proposed Subpart I contained the procedures for filing and processing the prior notice required of state-chartered mutual savings banks that propose to convert to stock form. The proposed regulatory text was almost identical to that contained in § 303.15; however a delegation of authority was added to allow the Director and Deputy Director (DOS) to issue a notice of intent not to object to a proposed conversion transaction that is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and or raise any unique legal or policy issues. The proposal provided that the substantive regulation regarding mutual-to-stock conversions remain in § 333.4 of this chapter (12 CFR Part 333).

The FDIC received three comments on proposed subpart I, which are summarized below in the following discussion of substantive changes to the regulatory text.

Filing procedures. As proposed, § 303.161 only stated that a notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. Copies of all agreements entered into as part of the conversion process were also required. An insured mutual savings bank chartered by a state that does not require the filing of a conversion application was merely required to notify the FDIC of the proposed conversion and provide any materials requested by the FDIC. No further guidance was given to institutions on what the notice should contain. One commenter believed that FDIC's request of ''any'' materials from a state-chartered mutual savings bank not required to file a state application is overly broad and does not provide sufficient guidance. The commenter recommended that the FDIC specify the types of materials the FDIC may request in that situation. The FDIC believes the suggestion is well founded and, upon reflection, believes that it is appropriate to specify the required content of a notice whether or not a filing is being made with the chartering authority. As a result, § 303.161 has been expanded to give more guidance with regard to the content of the filing.

New § 303.161(c), ''Content of notice,'' provides a comprehensive listing of the materials to be included in a complete notice. The required contents include the plan of conversion, certified board resolutions relating to the plan, a business plan, a description of employee benefit plans, a proxy statement and offering circular, a copy of the charter and bylaws, etc. The listing in no way expands on the materials currently required and imposes no new requirements. It is believed that this comprehensive listing of contents will better enable applicants to file a substantially complete notice and make it less likely that FDIC will find it necessary to request additional information prior to acceptance of an application for processing. The informational requirements in § 333.4 of this chapter relating to appraisal reports and business plans are incorporated into the listing.

To further clarify requirements, reference is made to the possibility that related applications for deposit insurance and mergers transactions may be required, depending upon how the transaction is structured. Other editorial changes were made to clarify intent, but in no way alter the substance of the requirements.

The FDIC adopts this section with the increased guidance as discussed above.

Waiver from compliance. The proposed regulation did not contain procedures for requesting a waiver from compliance with the substantive requirements regarding conversions contained in § 333.4 of this part since such provisions were contained in § 333.4 of this chapter. The FDIC has decided to move these provisions relating to the procedural requirements for requesting a waiver from compliance of the requirements of § 333.4 of this chapter and subpart I of this part to the revised § 303.162 so that all notice and waiver provisions for mutual to stock conversions are contained in one subpart. No substantive changes were made to the waiver procedures in the transfer from § 333.4 to § 303.162.

Processing. Proposed § 303.163 lists the factors to be considered by the FDIC in evaluating the notice filed by an institution seeking to convert from mutual to stock form.

With regard to processing procedures, two commenters believed that the proposed 60-day notice processing period, as well as the 60-day extension, should be shortened. One commenter suggested that the notice period begin immediately upon filing of the notice.

The FDIC believes the existing 60-day notice period is appropriate. For notices that involve significant legal or policy issues, a shorter processing period is not practical. Likewise, the 60-day extension period is viewed as appropriate; however, the FDIC anticipates that any extension of the notice period will be only as long as necessary to accomplish a complete review. The FDIC believes that conversion transactions not involving significant legal or policy issues generally can be reviewed by DOS within the initial 60-day period. Regarding commencement of the 60-day notice period, the FDIC believes it is only practical to begin the period when substantially all of the material required to make a decision is readily available for review. The final rule is modified to clarify that a notice will be accepted when it is deemed ''substantially complete.''

One commenter suggested that the FDIC staff issue only one set of written comments that would include comments from all FDIC staff members reviewing the notice rather than forwarding comments from the various reviewers as separate communications. The FDIC believes that combining all the comments from the various offices within the FDIC would neither expedite processing nor facilitate prompt resolution of issues, but instead would slow the entire review process. Since a notice may raise a number of different types of regulatory issues, FDIC staff with varying areas of expertise are routinely called upon to evaluate certain aspects of a notice. The current system allows the notificant to receive comments on an on-going basis and thus begin to cure any defects in the notice without undue delay.

The FDIC has replaced the term ''notice of intent not to object'' with the term ''letter of non-objection'' to better describe the final nature of the action.

The FDIC adopts this section with the changes noted above and other editorial changes to clarify intent.

Delegation of authority. Section § 303.164 of the proposed rule provided for delegation of authority to the Director (DOS) and the Deputy Director

to issue non-objection letters when the proposed conversion is determined not to pose a risk to the converting institution's safety and soundness, violate any law or regulation, present a breach of fiduciary duty, or raise any unique legal or policy issues. Two commenters viewed the proposed delegation of authority as favorable and agreed that the proposed delegation of authority would reduce notice processing times. One of these commenters, however, recommended that the FDIC provide guidelines in a statement of policy or financial institution letter specifying what constitutes a ''routine transaction'' eligible for non-objection under delegated authority. At this time, the FDIC believes providing specific statements of policy or financial institution letters on what constitutes a ''routine transaction'' is not necessary; however, the Board may in the future consider the issuance of a statement of policy addressing issues relating to the mutual-to-stock conversion process.

A third commenter objected to any delegation of authority to issue a letter of non-objection. The Board has acted on numerous conversion notices over the last four years and has provided staff with considerable guidance regarding the kinds of transaction that are not objectionable. Cases which raise unique legal or policy issues or otherwise do not meet the criteria outlined in the regulation will continue to be reviewed by the Board.

After careful consideration of the comments, the FDIC is adopting the delegation of authority as proposed.

J. Subpart J—International Banking

Subpart J centralizes application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks.

Proposed Interim Application Procedures

The part 303 proposal contained four interim application procedures.[2] At the time the FDIC issued the part 303 proposal, the FDIC had an outstanding notice of proposed rulemaking to revise the substantive rules underlying the interim procedures. 62 FR 37748, July 15, 1997 (part 347 proposal). The FDIC could not at that time determine whether the part 303 proposal would be finalized before the part 347 proposal, and the interim procedures would have been necessary in that event. Subpart D of the part 347 proposal contained the permanent versions of the four application procedures, designed to work with the substantive revisions made to the FDIC's international banking operations under the part 347 proposal. However, on April 8, 1998 the FDIC published the final rule for part 347, thus eliminating the need for the interim procedures. 63 FR 17056, April 8, 1998. The FDIC received no public comments on the interim procedures.

Transfer of Application Procedures from Part 347

The final rule for part 303 transfers the four application procedures contained in subpart D of part 347 to subpart J of part 303. Section 347.402 of this chapter, on establishing, moving or closing a foreign branch of a state nonmember bank under § 347.103 of this chapter, has been transferred to § 303.182. Section 347.403 of this chapter, on investment by insured state nonmember banks in foreign organizations under § 347.108 of this chapter, has been transferred to § 303.183. Section 347.404 of this chapter, on exemptions from the insurance requirement for a state branch of a foreign bank under § 347.306 of this chapter, has been transferred to § 303.186. Section 347.405, on approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches under § 347.213 of this chapter, has been transferred to § 303.187. The FDIC has made certain technical changes to the language of the procedures to integrate them with the rest of part 303, but these changes in language have not changed the substance of the procedures.

In § 303.183, setting out application procedures for investment by insured state nonmember banks in foreign organizations under § 347.108 of this chapter, the FDIC has added one requirement. If an insured state nonmember bank owns 50 percent or more of the voting equity interests of a foreign organization or otherwise controls the organization, and the insured state nonmember bank divests itself of such ownership, the insured state nonmember bank is required to notify the FDIC by letter within 30 days. This requirement has been added to parallel the requirement for notice upon closure of a foreign branch under § 303.182(d).

In connection with the part 347 rulemaking, the FDIC received public comments on the four application procedures contained in subpart D of part 347. The preamble to the final rule for part 347 contains a discussion of the FDIC's consideration of the comments and a description of the application processes. 63 FR 17056 April 8, 1998.

Noninterim Application Procedures

Proposed part 303 also contained two application procedures which are not of an interim nature: the procedure for moving an insured branch of a foreign bank, and the procedure for merger transactions involving an insured branch of a foreign bank. The definition of an ''eligible insured branch'' at § 303.181(c)(2) has been modified to make it consistent with § 303.2(r)(2), clarifying that the CRA rating requirement does not apply to institutions which are not subject to CRA examinations.

Moving an Insured Branch of a Foreign Bank

Proposed § 303.184 addressed applications by any insured branch of a foreign bank which wishes to move from one location to another under section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)). The FDIC proposed that § 303.184 parallel proposed subpart C, since the FDIC's consent to these applications is legally subject to the same statutory considerations as applications to establish or relocate a domestic branch or to relocate the main office of an insured state nonmember bank. This included expedited processing for an eligible insured branch, and a definition of ''eligible insured branch'' which paralleled the general § 303.2(r) definition of ''eligible depository institution,'' with appropriate changes to take into account the different supervisory rating system and capital requirements applicable to insured branches.

The FDIC received no comments on proposed § 303.184.

The FDIC has made two changes to § 303.184 in the final rule. The language in § 303.184(a)(2)(iv) has been modified to simply require a statement as to whether or not a particular site for a branch is included in or eligible for inclusion in the National Register of Historic Places, including documentation of consultation with the State Historic Preservation Officer as appropriate. Proposed § 303.184(d) delegated authority to the Director and Deputy Director, and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve applications to move an insured branch of a foreign bank, subject to specific criteria. The criteria set forth

[2] These were procedures for: (1) establishing, moving, or closing a foreign branch of a state nonmember bank, § 303.182; (2) investment by state nonmember banks in foreign organizations, § 303.183; (3) exemptions from the insurance requirement for a state branch of a foreign bank, § 303.186; and (4) approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches, § 303.187.

in paragraph 303.184(d)(1)(v) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest as defined in § 303.2(l) had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with the purposes of the CRA, and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a protested application remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the communities involved. Section 303.184(d) has been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring them to obtain DCA concurrence before approving such an applications. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together to approve any application under this section that is subject to an unresolved CRA protest.

Merger Transactions Involving an Insured Branch of a Foreign Bank

An insured branch of a foreign bank meets the definition of an insured depository institution under section 3 of the FDI Act (12 U.S.C. 1813) and is therefore subject to the Bank Merger Act. The FDIC proposed § 303.185, in order to give insured branches conducting merger transactions which are subject to FDIC approval the benefit of the same streamlined application processing proposed for domestic institutions in subpart D of part 303. Proposed § 303.185 clarified that an eligible insured branch as defined in subpart J generally is eligible for the expedited processing available to an eligible depository institution in subpart D. Similarly, § 303.185 clarifies that a transaction in which an insured branch is merged with other branches, agencies, or subsidiaries located in the United States of the same foreign bank parent is eligible for disposition under the enhanced delegations applicable to corporate reorganizations.[3]

Proposed § 303.185 also incorporated a point explained in Advisory Opinion FDIC–96–12 (May 13, 1996) concerning the treatment of an insured branch under section 44 of the FDI Act (12 U.S.C. 1831u) as added by section 102 of the Interstate Act. Section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of a branch of an insured bank without the acquisition of the entire bank, but approval is possible only if the state in which the branch is located expressly permits out-of-state banks to acquire a branch of the bank without acquiring an entire bank. In contrast, section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of an entire bank if the state in which the bank is located has not adopted legislation to opt out of interstate merger transactions. Proposed § 303.185 treated interstate merger transactions involving an insured branch under the latter approach. Express state authority permitting out-of-state banks to acquire a branch of the bank without acquiring the entire bank is required only if a foreign bank has more than one insured branch in the affected state and proposes to sell fewer than all of them to the same acquiror. If such state authority does not exist, the FDIC requires the foreign bank to sell all of its insured branches in that state to the same affiliated or unaffiliated acquiror.

The FDIC received no comments on proposed § 303.185.

In the final rule, the FDIC has made no changes to the above-described portions of § 303.185 governing merger transactions involving insured branches of foreign banks. However, the FDIC has added another subsection to the final version of § 303.185. Section 303.185(b) of the final rule addresses certain transactions in which a U.S. insured depository institution acquires deposits from a foreign organization at a location in a foreign country, as described below. The Bank Merger Act (12 U.S.C. 1828(c)) requires these transactions to be reviewed and approved by the FDIC prior to consummation. Although these transactions are likely to be rare, the FDIC has added section 303.185(b) to the final rule, highlighting the existence of the statutory approval requirement in the interest of providing helpful guidance to the industry. These transactions are subject to Bank Merger Act approval in accordance with the procedures contained in subpart D of part 303.

With one exception discussed in the following paragraphs, nothing in the statutory language or legislative history of the Bank Merger Act indicates that Congress intended the statute to apply to a U.S. insured depository institution's acquisitions in foreign countries. The competitive factors to be analyzed under the Act are by their terms concerned solely with effects in the U.S. While the financial and management factors could be germane, most foreign acquisitions are already subject to approval by federal bank regulators, since section 25 of the Federal Reserve Act (12 U.S.C. 601) or section 18(l) of the FDI Act requires banking agency approval before an insured bank may acquire stock (or other evidences of ownership) of foreign banks or organizations. While certain acquisitions structured as mergers or purchase and assumption transactions do not involve stock acquisition subject to approval under these statutes, the insured bank frequently will establish a foreign branch office in the foreign country as part of the transaction, requiring federal banking agency approval under section 25 of the Federal Reserve Act or section 18(d)(2) of the FDI Act.

Section 18(c)(1)(B) of the Bank Merger Act requires FDIC approval whenever an insured depository institution assumes liability to pay any deposits or similar liabilities of any noninsured bank or institution. Section 18(c)(1)(B), in referring to an assumption of liability to pay deposits, expressly includes a parenthetical reference to liabilities which are ordinarily excluded from the statutory definition of a ''deposit'' in section 3(l) of the FDI Act under the proviso in section 3(l)(5) (12 U.S.C. 1813(l)(5)). This reference was added to the Bank Merger Act in 1978, by the Financial Institutions Regulatory and Interest Rate Control Act, Pub. L. 95–630 (FIRIRCA). The legislative history of FIRIRCA states that the reference was added to make it clear that the FDIC's approval is necessary in connection with an insured bank's assumption of the deposit liabilities of a foreign noninsured bank. S. Rep. No. 95–323, 95th Cong., 1st Sess. (1977) at 29; H.R. Rep. No. 95–1383, 95th Cong., 1st Sess. (1977) at 45.

Section 3(l) defines the term ''deposit'' for purposes of the FDI Act. At the time of the FIRIRCA amendment,

[3] If the foreign bank parent itself is not primarily engaged in business in the United States, and is involved in some merger transaction or other combination outside the United States which does not result in any corresponding merger transaction in the United States with respect to an insured branch, section 18(c)(11) of the FDI Act (12 U.S.C. 1828(c)) provides that no approval is required, since no party to the transaction is primarily engaged in business in the United States.

the section 3(l)(5) proviso stated that the definition of a deposit, or an insured deposit, did not include any obligation of a bank which was payable only at a bank office located in a foreign country. *See* 12 U.S.C.A. 1813(l)(5) (West 1980). Under the language of the proviso, there was the potential for the liabilities of the FDIC's insurance fund to be increased when a U.S. insured bank acquired deposit liabilities from a foreign bank in a foreign country, such as by assuming the deposits of a branch of a foreign bank in another country in connection with acquiring the branch in that country. After the deposits had been assumed by the U.S. insured bank, the depositors might be heard to argue their deposits were payable at the insured bank's home office in the U.S., since it would be unlikely that their deposit agreements with the foreign bank, which had no U.S. offices, had contained provisions prohibiting payment in the U.S. Absent the parenthetical added to section 18(c)(1)(B) by FIRIRCA, these assumption transactions were arguably not subject to review by the FDIC, since the liabilities being assumed, in the hands of the foreign bank, did not meet the deposit definition. The FDIC took the position that section 18(c)(1)(B) would apply, since the deposits might be within the section 3(l) definition upon consummation of the assumption, and Congress, in an abundance of caution, added the parenthetical to clarify the issue. By extension, a merger or consolidation resulting in a U.S. insured bank's acquisition of deposit liabilities also required approval under section 18(c)(1)(A).[4] From approximately 1978 to 1994, the FDIC gave Bank Merger Act approval to several insured bank acquisitions abroad.

Subsequent additions to section 3(l)(5) have reduced the potential for a foreign acquisition to directly increase the liability of the deposit insurance funds. In 1994, section 326 of CDRIA amended section 3(l)(5), eliminating the proviso and adding a new statutory test. Any obligation which is carried on the books of an institution's office in a foreign country is excluded from the definition of deposit unless, among other things, the contract evidencing the obligation provides by express terms, and not by implication, that the deposit is payable at an office in the U.S. *See* 12 U.S.C. 1813(l)(5)(A) (West Supp. 1998). The addition of this express contractual element means that depositors holding foreign bank deposits abroad, whose deposits are assumed by a U.S. insured depository institution abroad, cannot argue that the assumption, standing alone, qualifies their claims for treatment as ''deposits'' under the FDI Act. The U.S. insured depository institution would have to enter into a new contract with the depositor containing such a term. If a particular transaction involved a U.S. institution's assumption of foreign bank deposit contracts which contained such a term prior to the assumption, the deposits might satisfy the section 3(l) definition. But, given industry practices, this scenario is not likely to arise, and even if it did, the issue would be clearly apparent to the U.S. institution.

Although CDRIA eliminated the section 3(l)(5) proviso to which the parenthetical in section 18(c)(1)(B) refers, and CDRIA's additions to the deposit definition in section 3(l)(5) have narrowed the category of acquisitions presenting the risk which the section 18(c)(1)(B) parenthetical was designed to address, the parenthetical in section 18(c)(1)(B) still requires a Bank Merger Act application for any assumption of foreign deposits from a noninsured foreign institution which directly increases the potential insured deposit liabilities of the deposit insurance funds. A merger or consolidation with a noninsured foreign institution having the same effect also requires FDIC approval under section 18(c)(1)(A), since section 18(c)(1)(A) uses the same ''noninsured bank or institution'' language found in section 18(c)(1)(B). In order to highlight this statutory requirement for the benefit of the industry, the FDIC has added § 347.185(b). This section states that the FDIC's Bank Merger Act approval is required for any merger transaction in which an insured depository institution becomes directly liable for obligations which will, after the merger transaction, be treated as deposits under section 3(l)(5)(A)(i)–(ii) of the FDI Act (12 U.S.C. 1813(l)(5)(A)(i)–(ii)), as a result of a merger or consolidation with a foreign organization or an assumption of liabilities of a foreign organization. As noted above, such merger applications are to be submitted and processed under the procedures contained in subpart D of part 303.

K. Subpart K—Prompt Corrective Action

Section 38 of the FDI Act (12 U.S.C. 1831*o*), which governs prompt corrective action, restricts or prohibits certain activities based on an institution's capital category, and requires an insured institution to submit a capital restoration plan when it becomes undercapitalized. Subpart K as proposed set forth procedures for making applications under section 38.

The FDIC did not receive any comments specifically on subpart K. The FDIC is adopting the subpart as proposed, with the exception of one nonsubstantive change.

This change is to § 303.207(b)(6), which requires critically undercapitalized institutions to obtain the FDIC's approval before paying excessive compensation or bonuses. The proposed regulatory language mistakenly cross referenced part 359 of the FDIC's rules as guidance for evaluating what compensation might be excessive, whereas it is part 364 of the FDIC's rules that governs excessive compensation. The final rule correctly cites part 364. The remainder of the paragraph has been removed, because appropriate guidance is now contained in part 364. *See* 57 FR 44866, 44883, September 29, 1992.

L. Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

Section 19 of the FDI Act (12 U.S.C. 1829) prohibits any person convicted of any crime involving dishonesty, breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for any such offense, from (i) continuing as or becoming an institution-affiliated party, (ii) owning or controlling directly or indirectly an insured depository institution, or (iii) otherwise participating in the conduct of the affairs of FDIC-insured depository institutions, without the FDIC's prior written consent.

Proposed subpart L did not substantially amend current section 19 application procedures, but brought together all information on section 19 which was previously contained in various sections of old part 303. Section 303.222 of the proposal clarified the FDIC's position that the prior consent of the FDIC is required before a person approved under section 19 to participate in the affairs of a particular institution may participate in the affairs of another insured institution.

As stated in the proposal, on July 24, 1997, the FDIC Board of Directors published for comment a proposed Statement of Policy on Section 19 which contains interpretations of the statutory language (62 FR 39840). Section L should be read in conjunction with the proposed policy statement for a more complete understanding of the FDIC's

[4] This was because the parenthetical in section 18(c)(1)(B) established that the term ''noninsured bank or institution'' in section 18(c)(1)(B) included foreign organizations, and section 18(c)(1)(A) also covers mergers or consolidations with any ''noninsured bank or institution.''

position on section 19. When the final Statement of Policy is adopted, the FDIC may find it necessary to revise subpart L accordingly.

The FDIC received no comments on the proposed subpart L and is adopting the subpart as proposed.

M. Subpart M—Other Filings

As proposed, subpart M contained the procedural requirements and delegations of authority for miscellaneous filings which did not warrant treatment as separate subparts. Under the proposal, all information relating to a particular filing is brought together in a self-contained section under a standardized format. The proposal also provided for new expedited review procedures for certain applications.

Proposed part 303 contemplated that the filing procedures for requesting an exemption from the statutory bar on management interlocks pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207) and the FDI Act (12 U.S.C. 1823(k)) would continue to be contained in part 348 of this chapter (12 CFR part 348). After further consideration, and in the interest of placing all of the application procedures in part 303 to the greatest extent possible, the FDIC has decided to move the procedural requirements and delegation of authority for filings for management official interlocks from part 348 to part 303. Such filing requirements are now found in new § 303.250 and the remainder of the subpart has been renumbered in light of this additional provision. The inclusion of these filing procedures is considered a technical change by the FDIC. No substantive changes have been made to these procedures.

The FDIC and other federal banking agencies are engaged in a rulemaking to amend their respective management official interlocks regulations to conform to recent statutory changes, modernize and clarify rules, and reduce unnecessary regulatory burden where feasible. Once this rulemaking is completed, the applications procedures and delegations of authority for management official interlocks will be revised to bring them into conformity with the amended interlocks regulations. This will be done subsequent to this part 303 rulemaking by means of a final rule without notice and comment since such changes are purely technical in nature.

Reduce or retire capital stock or capital debt instruments. Section 303.241 reorganized and clarified procedures for applications to reduce or retire capital stock, notes or debentures pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)). The FDIC received one comment specifically with regard to the expedited review procedures for these types of applications. The commenter supported the eligibility of these types of applications for expedited procedures. The FDIC is adopting this section as proposed.

Exercise of trust powers. The FDIC proposed to amend part 303 to create a new section relating to trust applications that brings together all the trust application procedures as well as the related delegations of authority into one centralized location. The FDIC received one comment regarding this section which supported the eligibility of trust applications for expedited procedures. The FDIC is adopting this section as proposed.

Brokered deposit waivers. The proposal reorganized the regulations regarding applications to accept brokered deposits by adequately capitalized insured depository institutions. In the proposal, the application procedures were placed in § 303.243 and the substantive rules regarding the acceptance of brokered deposits remained in § 337.6. The proposal retained expedited processing for brokered deposit waivers yet modified it to parallel the requirements for an ''eligible depository institution'' in § 303.2(r), with the exception of the well-capitalized criteria. The FDIC received no specific comments on this section and is adopting the section as proposed.

Golden parachutes and severance plan payments. The proposal revised the regulatory provisions regarding applications to make excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. The FDIC's regulations with respect to such payments are codified at part 359. The FDIC received no specific comment on the proposed changes and is adopting the section as proposed, with minor technical changes.

Waiver of liability for commonly controlled depository institutions. Proposed § 303.245 provided application procedures for an insured depository institution to request a waiver of liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)). These procedures were part of the FDIC's Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions, which provided guidance to the industry as to the manner in which the FDIC will administer the provisions of section 5(e) of the FDI Act. The FDIC received no specific comments on this section and is adopting the section as proposed.

The statement of policy is being revised elsewhere in today's **Federal Register** to remove these procedures for requesting a conditional waiver of the cross-guaranty liability from the statement of policy and to indicate that they may be found in § 303.245.

Insurance fund conversions. The proposal revised regulations regarding filings for insurance fund conversions at § 303.246 to reformat the filing requirements and delete references to and procedures regarding insurance fund conversions qualifying as exceptions to the insurance fund conversion moratorium imposed in section 5(d) of the FDI Act (12 U.S.C. 1815(d)(2)(A)(ii)). The FDIC received no specific comments on this section and is adopting the section as proposed.

Conversion with diminution of capital. Section 303.247 of the proposal reorganized and clarified filing procedures pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to a state nonmember bank where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholder's meeting approving such conversion. The FDIC received no specific comments on the section and is adopting the section as proposed.

Continue or resume status as an insured institution following termination under section 8 of the FDI Act. Proposed § 303.248 pertains to applications by depository institutions for permission to continue or resume their insured status after termination of insurance under section 8 of the FDI Act (12 U.S.C. 1818). This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of FDIC orders terminating deposit insurance. However, it does not cover any operating non-insured depository institutions which were previously insured by the FDIC or any non-insured, non-operating depository institutions whose charters have not been surrendered or revoked. Institutions not covered by this section are required to file *de novo* applications for FDIC insurance. The FDIC received no specific comments on this section and is adopting the section as proposed.

Truth in Lending Act—Relief from reimbursement. Proposed § 303.249 established procedures for an initial request for relief from reimbursement

pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226) (Truth in Lending). The proposal set forth new procedures specifically for Truth in Lending cases and provided that applicants may file initial requests for relief within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The proposal provided that requests for reconsideration would be handled under the FDIC's general petition for reconsideration provision located at proposed § 303.11(f). Specifically, the proposal provided that if reconsideration of an initial denial of a request for relief was granted, the merits of the request for relief would have been reconsidered by the Board of Directors if the request for relief was originally denied by the Director, Deputy Director or associate director (DCA). Additionally, if the request for relief was originally denied by a regional director or deputy regional director, the merits of the request for relief would have been reconsidered by the Director or Deputy Director (DCA).

No comments were received regarding this section.

To assist applicants, § 303.249(d) of the final rule provides that the FDIC will notify the applicant in writing of its determination on the initial request for relief within 60 days of the FDIC's receipt of such request. The FDIC adopts this section as proposed with this modification.

Modifications of conditions. The proposal reorganized and clarified the procedures for requests to modify a previously issued FDIC approval of a filing. A new criteria for exercise of delegated authority by DOS officials was added requiring Legal Division consultation to modify conditions if Legal Division consultation was required in connection with the original filing. In the final regulation, the section has been redesignated as § 303.251 as a result of an addition to the subpart and the necessity to renumber certain sections. The FDIC is adopting this section as proposed, with the section number modification.

Extensions of time. Proposed § 303.251 reorganized and clarified the procedures for requests seeking an extension of time to fulfill a condition required in an approval issued by the FDIC, or to consummate a transaction which was the subject of an approval by the FDIC.

The FDIC is making two changes to this section in the final regulation. First, the FDIC is revising the proposal to make clear that multiple extensions of time will be allowed. The FDIC does not believe it is necessary to specify the exact number of extensions rather, the final regulation provides that an extension of time may not exceed one year; however, more than one extension may be granted regarding a particular filing. Second the FDIC has changed the section designation to § 303.252 as a result of an addition to the subpart resulting in the necessity to renumber certain sections. The FDIC is adopting this section with the above-stated modifications.

N. Subpart N—Enforcement Delegations

Proposed subpart N contained several changes to the FDIC's enforcement delegations of authority, which are discussed in detail in the proposal (62 FR 52827, October 7, 1997). No comments were received on the proposed subpart, therefore the FDIC adopts the subpart as proposed, with certain minor technical revisions to conform the language delegating authority with the delegations of authority in other subparts of this part 303, and the following clarifications.

Civil money penalties. Proposed § 303.269 provided delegation of authority, with one exception, to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA) to issue final orders to pay civil money penalties, whether or not a notice of charges has been issued in a case. The one exception was to delegate to the General Counsel the authority to levy and enforce civil money penalties for the late, inaccurate, false or misleading filing of Reports of Condition and Income, Home Mortgage Disclosure Act Reports, CRA reports (*see* 12 CFR 345.42), and all other required reports. This exception has been deleted in the final regulation as the Board believes that such delegation to the General Counsel is not consistent with the other delegations and that the decision to issue such orders should be vested in the Directors and Deputy Director (DOS or DCA) with the concurrence of the General Counsel.

Acceptance of written agreements. Proposed § 303.274 continued in effect FDIC delegations of authority to accept written agreements in lieu of orders to terminate deposit insurance and to issue cease-and-desist orders under sections 8(a) and (b) of the FDI Act (12 U.S.C. 1818(a) and (b)). Proposed § 303.274(c) added a new provision giving authority to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director to enter into written agreements with insured institutions and institution-affiliated parties that contain conditions precedent to FDIC's nonobjection to a filing. A clarification has been added to the final regulation providing that an insured institution will not be disqualified from being treated as ''well-capitalized'' for prompt corrective action purposes because of having entered into a written agreement with the FDIC or its primary federal regulator in conjunction with a filing unless the written agreement expressly states to the contrary.

Modification and termination of section 8(e) prohibition orders. Proposed, § 303.275(e) authorized modification or termination of orders issued under section 8(e) of the Act (12 U.S.C. 1818(e)) if a respondent established any one of the three factors listed in § 303.275(e). The use of the word ''or'' rather than ''and'' in paragraph (2) was a clerical error and has been corrected in the final regulation.

V. Other Regulatory Changes

A. Part 333—Extension of Corporate Powers

The FDIC is making technical revisions to § 333.4 which governs the substantive requirements for conversions of insured mutual state savings banks to the stock form of ownership. Paragraph (b) of § 333.4 sets forth the procedural requirements for requesting any waiver from compliance with the requirement of § 333.4 due to conflicts with state law. Paragraph (b) is deleted from § 333.4 and moved to § 303.162 with two changes. The first change allows an institution to file a written request for waiver of compliance with § 333.4 or subpart I of 12 CFR part 303. The second change provides two circumstances for which a waiver may be sought: when compliance would be in conflict with state law or for any other good cause shown. Paragraphs (c)(4)(i) and (ii) are also deleted from § 333.4 because they are now included in § 303.161, which sets forth the filing procedures and the specific contents of the notice of intent to convert to stock form. Paragraph (c)(4)(i) required the submission of a full appraisal report on the value of the converting bank and the pricing of the stock to be sold in the conversion. This requirement is now located at § 303.161(c)(6). The requirements in § 333.4(c)(4)(i) fully describing the manner in which an appraisal must be prepared have been deleted as unnecessary because of the banking industry's knowledge of acceptable valuation practices. In addition, the Office of Thrift

Supervision's regulations governing mutual to stock conversions set forth in detail the requirements for an acceptable appraisal at 12 CFR § 563b.7(f), and may be used as guidance in this area. Paragraph (c)(4)(ii) required the submission of a business plan and is now located at § 303.161.(3).

B. Part 337—Unsafe and Unsound Banking Practices

As part of the FDIC's effort to review and streamline its regulations pursuant to Riegle Community Development and Regulatory Improvement Act of 1994 (*see* Pub. L. 103–325, 108 Stat. 2160, section 337) (CDRIA), the FDIC proposed centralizing virtually all filing procedures in part 303 of this chapter, including filing procedures for brokered deposit waivers. 62 FR 52810, October 7, 1997. Specifically, the proposal moved the procedures for an adequately capitalized insured depository institution to obtain a waiver of the restrictions on accepting or renewing brokered deposits from § 337.6 (12 CFR part 337) to § 303.243 (12 CFR part 303). At the same time, technical amendments were proposed to part 337 to reflect these changes and to reflect certain changes in the statutory definition of ''deposit broker'' as a result of the CDRIA. Under the proposal, the amended statutory language was incorporated in the FDIC's regulatory definition of ''deposit broker'' at § 337.6(a)(5)(iii). The FDIC received no comments on these changes and is, therefore, adopting part 337 as proposed.

C. Part 341—Registration of Transfer Agents

The FDIC proposed to place in a new § 341.7 certain delegations of authority to the DOS regarding the registration of transfer agents subject to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)) (Exchange Act). 62 FR 52867, October 9, 1997. In its proposed § 341.7, authority is delegated to DOS to act on disclosure matters regarding Sections 17 and 17A of the Exchange Act. However, the FDIC proposed that the Board of Directors retain its authority to act on disclosure matters when such matters involve exemptions from registration requirements pursuant to section 17A(c)(1) of the Exchange Act. No comments were received on proposed § 341.7, and the FDIC adopts this section as proposed.

D. Part 346—Foreign Banks

The FDIC proposed to relocate, from § 303.8(f) of the current rule to § 346.19, a delegation of authority for DOS to accept the pledge agreements by which insured branches of foreign banks pledge assets for the benefit of the FDIC. The FDIC received no public comments on the proposal. On April 8, 1998, the FDIC published a final rule consolidating three parts of the FDIC's rules on international operations, including part 346, into a single part 347. 63 FR 17056, April 8, 1998. Section 347.210 of the new rule contains the delegation in question, so the proposal to relocate § 303.8(f) is no longer necessary.

E. Part 347—International Banking

As discussed in connection with subpart J, the FDIC is transferring four application procedures presently contained in part 347 to subpart J of part 303. The amendments in this rulemaking delete the interim application procedures from part 347.

F. Part 348—Management Official Interlocks

The FDIC proposed to place certain delegations of authority to DOS related to management official interlocks in 12 CFR part 348, as a result of the changes to be made in 12 CFR part 303. 62 FR 52867, October 7, 1997. The FDIC received no public comment on the proposal. The FDIC has determined, however, to place the proposed delegations in subpart M of part 303, rather than part 348, as part of new filing procedures for requesting an exemption from the statutory bar on management interlocks. The delegation of authority is now contained in § 303.250(f).

G. Part 359—Golden Parachute and Indemnification Payments

Part 359 contains the rules regarding the making of excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. The proposal contemplated amending 12 CFR part 359 by moving information regarding filing instructions from § 359.6 to § 303.244 and providing appropriate cross references. In addition, the proposal provided a listing of application contents. These elements were expanded in the proposal to assist an applicant in preparing a complete filing. No comments were received on these technical amendments and the FDIC adopts this section as proposed.

VI. Regulatory Text Deleted From Part 303

As a result of the comprehensive revision of part 303, a number of provisions currently found in part 303 are not being included in the final part 303 because these matters are covered elsewhere or are no longer needed. Those items are summarized below:

Section 303.2(c)—Special procedures for remote service facilities. Notice procedures for remote service facilities, along with related delegations of authority and the definition of ''remote service facility'' have been deleted because EGRPRA excludes such facilities from the definition of a branch.

Section 303.11(c)—Request for review. This section merely stated that an aggrieved party may request the Board of Directors to review any action taken under authority delegated under the former §§ 303.7, 303.8, and 303.9. Numerous avenues now exist for appeal, such as those found under new § 303.11(f) (Appeals and requests for reconsideration) and part 308 (Uniform Rules of Practice and Procedure). Broad authority to challenge delegations of authority is unnecessary and is not in keeping with the Board's recent resolution on delegations of authority which has been codified in part in § 303.12 (General rules governing delegations of authority).

Section 303.12—OMB control number assigned pursuant to the Paperwork Reduction Act. This section is deleted in its entirety because this same material also appears in § 304.7, Display of control numbers, of this chapter.

Several delegations of authority are also being eliminated:

Section 303.8(b)—Disclosure laws and regulations. The delegations related to part 335 (Securities of nonmember insured banks) are now contained in part 335 of this chapter. The delegations to administer part 341 (Registration of Securities Transfer Agents) are moved to part 341 of this chapter.

Section 303.8(c)—Security devices and procedures and bank service arrangements. This delegation was to administer the provisions of part 326 (Minimum Security Devices and Procedures). There are no longer any application procedures related to part 326, so therefore no delegations of authority are required.

Section 303.8(d)—In emergencies. This was a delegation to staff to manage the FDIC's affairs in the event an enemy attack renders the Board of Directors unable to perform its normal management functions. The Board has determined that no such delegation is necessary and has deleted the provision.

Section 303.8(h)—Application or notices for membership or resumption of business. This delegation permitted DOS officials to provide comments to other federal regulators on applications

or notices for membership in the Federal Reserve System, or for conversion of a state bank to a national bank. This delegation is being deleted as unnecessary.

Section 303.8(i)—Depository Institutions Disaster Relief Act of 1992 (DIDRA). The provisions of DIDRA that were the subject of these delegations have expired and thus the delegations are removed.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

Collections approved as part of the Part 303 proposed rule. The proposed rule invited public comment on two collections of information contained that were submitted to the Office of Management and Budget (OMB) for review. The first collection is located in Subpart C (Establishment and Relocation of Domestic Branches and Offices) of the regulation which sets forth the application requirements and procedures for insured state nonmember banks to establish a branch, relocate a main office, and relocate a branch subject to the approval by the FDIC. The information collected is used by the FDIC to evaluate the factors required by statute and to determine whether to grant consent. No public comment was received about this collection. OMB approved this collection under control number 3064–0070 through November 30, 2000. The second collection is located in Subpart M (Other filings), Section 303.242 (Exercise of trust powers) which sets forth the application procedures relating to the FDIC's approval to exercise trust powers. Each application submitted by a bank is evaluated by the FDIC to verify the qualifications of bank management to administer a trust department to ensure that the bank's financial condition will not be jeopardized as a result of trust operations. No public comment was received about this collection. OMB approved this collection under control number 3064–0025 through November 30, 2000.

Other Collections of Information. The final part 303 also addresses other collections of information for which public comment and OMB approval were sought separate from the part 303 notice of proposed rulemaking discussed above. Nothing in the final part 303 is intended to change any of these collections. Specifically, Subpart B (Deposit Insurance) addresses a collection approved by OMB under control number 3064–0001 which expires on July 31, 2000. Subpart D (Merger Transactions) addresses a collection approved by OMB under control number 3064–0015 which expires on September 30, 1998. The merger application collection was the subject of an interagency solicitation of public comment concerning the PRA aspects of a single, interagency form for affiliated and nonaffiliated merger transactions. 63 Fed. Reg. 3182 (Jan. 21, 1998) and was submitted to OMB for review and further public comment. Subpart E (Change in Bank Control) addresses a collection approved by OMB under control number 3064–0019 which expires on January 31, 2000. Subpart F (Change of Director or Senior Executive Officer) addresses a collection approved by OMB under control number 3064–0097 which expires on January 31, 2000. Subpart G (Activities and Investments of Insured State Banks), addresses a collection approved by OMB under control number 3064–0111, and Subpart H (Filings by Savings Associations), addresses a collection approved under control number 3064–0104, both of which expire on November 30, 2000.

Subpart I (Mutual-to-Stock Conversions) addresses a collection approved by OMB under control number 3064–0117 which expires on July 31, 2000. Subpart J (International Banking) addresses two collections approved by OMB under control numbers 3064–0114 and 3064–0125, both of which expire on July 31, 2000. Subpart K (Prompt Corrective Action) addresses a collection approved by OMB under control number 3064–0115 which expires on July 31, 1999. Subpart L (Section 19 of the FDIC Act—Consent to service of persons convicted of certain criminal offenses) addresses a collection approved by OMB under control number 3064–0018 which expires on July 31, 2000. Subpart M (Other Filings) § 303.241 (Reduce or retire capital stock or capital debt instruments) addresses a collection approved by OMB under control number 3064–0079 which expires on November 30, 2000. Subpart M (Other Filings) § 303.243 (Brokered deposits) addresses a collection approved by OMB under control number 3064–0099 which expires on August 31, 1998.

Modification of collection: Title of the collection: The rule will modify an information collection previously approved by OMB titled ''Foreign Branching and Investment by Insured State Nonmember Banks'' under control number 3064–0125.

Summary of the collection: The collection consists of applications for establishing or closing a foreign branch, acquiring stock of a foreign organization and records and reports which a state nonmember bank must maintain after it has established a foreign branch or organization.

Need and use of the information: The FDIC needs the additional information required by this change, to better assess the condition, management, and risk to the fund posed by institutions involved in operating foreign organizations, and also for use in connection with authorizing other institutions to conduct such operations under section 18(l) of the FDI Act (12 U.S.C. 1828(l)).

Changes to the collection: The rule will modify the collection by adding, at § 303.183(d), a requirement that, if an insured state nonmember bank holding 50 percent or more of the voting equity interests of a foreign organization or otherwise controlling the foreign organization divests itself of such ownership or control, the insured state nonmember bank shall file a notice, in the form of a letter, including the name, location, and date of divestiture of the foreign organization, with the appropriate DOS regional director no later than 30 days after the divestiture.

Respondents: State nonmember banks.

Estimated annual burden:

Frequency of response: Occasional.

Number of responses: 2.

Average number of hours to prepare a response: 1.

Total annual burden: 2.

With respect to this modification of a collection, comment is solicited on:

(i) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collection of information contained at § 303.183(d) of the final rule and described above has been submitted to OMB for review. Comments on the collection of information should be sent to the desk

officer for the FDIC: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Copies of comments should also be sent to: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, (202) 898–3907. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. [Fax number (202) 898–3838; Internet address: COMMENTS@FDIC.GOV]. OMB will make a decision concerning the change in the information collection between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. Unless the FDIC publishes a notice to the contrary, the public may assume that the change in the collection was approved within 60 days of this publication.

Ongoing review. Public comment and OMB review of all collections contained in part 303 will occur as part of the regular cycle of review under the PRA. Nonetheless, the FDIC welcomes comment about the PRA aspects of this regulation. Comment specifically about PRA related issues should identify the Paperwork Reduction Act and any particular subpart and/or collection for which consideration is desired. Such comments should be sent to Steven F. Hanft (FDIC) at the above address.

VIII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA) (Title II, Pub. L. 104–11) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the FDIC will file the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that this final revision of part 303 does not constitute a ''major rule'' as defined by SBREFA.

IX. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) it is hereby certified that this final rule will not have a significant adverse economic impact on a substantial number of small entities. Accordingly, a final regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on the financial institutions to which this rule applies, regardless of size, by consolidating, simplifying and clarifying existing regulatory requirements. This regulation will not increase the burden on such institutions.

The FDIC prepared and published an initial regulatory flexibility analysis (IRFA) pursuant to Section 603 of the RFA as part of the proposed rulemaking. In that analysis the FDIC estimated the number of small entities to be affected by the proposal and stated its belief that any economic impact on such small entities would be beneficial because the rule serves to reduce regulatory burden. The proposal specifically sought comment on that belief. No comments received addressed the initial regulatory analysis. As discussed in the ''Supplementary Information'' section to this rule, many of the commenters supported the provisions of this rule which streamline the application process and make it less burdensome for the regulated financial institutions. The FDIC has carefully considered all comments received and adopts the final rule without amendments that would change the belief stated in the IRFA.

X. Derivation Table

Revised provision	Original provision	Comments
303.0		Added.
303.1	303.0(a)	Revised.
303.2	303.0(b)	No change.
(a)	303.0(b)(13)	No change.
(b)	303.0(b)(29)	No change.
(c)	303.0(b)(30)	Revised.
(d)	303.0(b)(25)	No change.
(e)		Added.
(f)		Added.
(g)	303.0(b)(12)	Revised.
(h)	303.0(b)(6)	No change.
(I)	303.0(b)(26)	No change.
(j)		Added.
(k)	303.0(b)(1)	No change.
(l)	303.0(b)(30)	Revised.
(m)		Added.
(n)	303.0(b)(8)	Revised.
(o)	303.0(b)(3)	No change.
(p)	303.0(b)(2)	No change.
(q)	303.0(b)(4),(5)	No change.
(r)		Added.
(s)		Added.
(t)		Added.
(u)		Added.
(v)	303.0(b)(14)	No change.
(w)		Added.
(x)		Added.
(y)		Added.
(z)	303.0(b)(24)	No change.
(aa)	303.0(b)(17)	No change.
(bb)	303.0(b)(15)	No change.
(cc)	303.0(b)(11)	No change.
(dd)	303.0(b)(7),(9)	Revised.

Revised provision	Original provision	Comments
(ee)(1)	303.0(b)(16)	No change.
(2)	303.0(b)(18)	No change.
(3)	303.0(b)(19)	No change.
(4)	303.0(b)(20)	No change.
(5)	303.0(b)(21)	No change.
(6)	303.0(b)(22)	No change.
(ff)	303.0(b)(31)	No change.
(gg)	303.0(b)(27)	Revised.
(hh)	303.0(b)(28)	Revised.
303.3	303.0(a)	Revised.
303.4	303.6(1)	Added.
303.5		Added.
303.6	303.6(b)	Revised.
303.7(a)	303.6(a),(b)	Revised.
(b)	303.6(f)(1)(iii)	Revised.
(c),(d),(e),(f)		Added.
303.8(a)	303.6(g)(1),(2)	Revised.
(b)	303.6(g)(3)	Revised.
303.9(a)	303.6(f)(3)	Revised.
303.9(b)(1)		Added.
(2)	303.6(f)(4)	Revised.
(3)	303.6(f)(5)	No change.
(4)		Added.
303.10(a)		Added.
(b),(c)	303.6(h)	Revised.
(d)		Added.
(e)	303.6(i)	Revised.
(f)	303.6(i)(2)	Revised.
(g)	303.6(j)(5)	Revised.
(h)	303.6(j)(1–4)	Revised.
(i)	303.6(j)(6)	Revised.
(j)	303.6(h)(3)	Revised.
(k)	303.6(k)	Revised.
(l)	303.6(l)	Revised.
(m)	303.6(m)	Revised.
303.11(a)	303.6(d)	Revised.
(b)		Added.
(c)		Added.
(d)		Added.
(e)		Added.
(f)	303.6(e)	Revised.
(g)		Added.
303.12(a)	303.11(a)	Revised.
(b)		Added.
(c),(d)	303.10(a)	Revised.
(e),(f)	303.11(a)(1)	Revised.
303.13	303.8(g)	No change.
303.13(a)		Added.
303.13(b)		Added.
303.13(c)	303.8(g)(1)	No change.
303.14(d)		Added.
303.20	303.1	Revised.
303.21	303.1	Revised.
303.22		Added.
303.23(a)	303.6(f)(1)	Revised.
(b)	303.6(f)(1)(ii)	No change.
303.24		Added.
303.25		Added.
303.26(a)(1)	303.7(d)(1)	Revised.
303.26(a)(2)	303.7(f)(1)(vi)	Revised.
303.26(b)	303.7(d)(2)	Revised.
(c)	303.7(d)(3)	Revised.
(d)	303.7(b)(4)	Revised.
303.27	303.10(b)(2)	Revised.
303.40(a)	303.2	Revised.
(b),(c),(d)		Added.
303.41(a)	303.2(a)(footnote 2)	Revised.
(b)	303.2(a)	No change.
(c),(d),(e)		Added.
303.42(a),(b),(c),(d)	303.2(a)	Revised.
303.43(a),(b)		Added.
303.44(a)	303.6(f)(1)	Revised.
(b)	303.69(f)(3),(4)	Revised.
(c)	303.6(f)(2)	Revised.

Revised provision	Original provision	Comments
303.45(a),(b),(c)		Added.
303.46(a),(b),(c)	303.7(a)	Revised.
303.60		Added.
303.61(a)	303.3(a),(b)	Revised.
(b)	303.7(f)(1)(v)	Revised.
(c)	303.7(f)(1)(v)	Revised.
(d)	303.3(d)	Revised.
(e)		Added.
303.62(a)	303.3	Revised.
(b)		Added.
303.63(a)	303.3(a),(e)	Revised.
(b)	303.3(a)	Revised.
(c)		Added.
(d)	303.3(d)	Revised.
303.64		Added.
303.65	303.6(f)(1),(3)	Revised.
303.66(a)(1)	303.7(b),(f)	Revised.
(2),(3)		Added.
(b)	303.7(b)	Revised.
(c)	303.7(b)(2),(5)	Revised.
(d)	303.7(f)(1)(v),(vi)	Revised.
(e)	303.10(b)(1)(i),(iii),(iv)	Revised.
(f)	303.7(b)(3)	Revised.
(g)	303.8(e)	Revised.
303.67	303.10(b)(1)	Revised.
303.80		Added.
303.81(a)	303.4(a)	Revised.
(b)		Added.
(c)	303.4(a) (footnote 3)	No change.
(d)	303.4(a) (footnote 4)	No change.
303.82(a)		Added.
(b)	303.4(a)	Revised.
(c)		Added.
(d), (e)	303.4(a)	Revised.
303.83(a)(1) thru (b)(1)	303.4(c)	Revised.
(b)(2), (3)		Added.
303.84(a)	303.4(b)(1)	Revised.
(b)	303.4(b)(5)	No change.
303.85		Added.
303.86(a)(1), (2)	303.4(b)(2)(i)	Revised.
(a)(3)		Added.
(a)(4), (5)	303.4(b)(3)(ii)	Revised.
(a)(6)	303.4(b)(6)	Revised.
303.87	303.7(c)	Revised.
303.100		Added.
303.101(a)		Added.
(b)	303.14(a)(3)	Revised.
(c)	303.14(a)(4)	Revised.
303.102(a), (b)	303.14(b)	Revised.
(c), (d)	303.14(c)(2)	Revised.
303.103(a)	303.14(c)(1)	Revised.
(b)	303.14(c)(4)	Revised.
(c)	303.14(d)	Revised.
303.104	303.14(e)	Revised.
303.140		Added
303.141	303.13(a)	No change.
303.142	303.13(b)	No change.
303.143	303.13(c)	No change.
303.144	303.13(d)	No change.
303.145	303.13(e)	No change.
303.146	303.13(f)	No change.
303.147	303.13(g)	No change.
303.148	303.13(h)	No change.
303.160		Added.
303.161(a), (b)	303.15(a)	Revised.
303.161(c)	303.15(b)	Revised.
303.161(d)	303.15(c)	No change.
303.161(e)	303.15(d)	No change.
303.161(f)		Added.
303.162		Added.
303.163(a)	303.15(c)(1)	No change.
303.163(b)	303.15(c)(2)	No change.
303.163(c)	303.15(e)	No change.
303.163(d)	303.15(e)	No change.

Revised provision	Original provision	Comments
303.163(e)	303.15(f)	No change.
303.163(f)	303.15(g)	No change.
303.164		Added.
303.180		Added.
303.181		Added.
303.182(a)		Added.
303.182(b)	303.2(a)	Revised.
303.182(c)		Added.
303.182(d)	347.3(a)	Revised.
303.182(e)	303.7(a)	Revised.
303.183(a), (b), (c), (d)	303.5(d)	Revised.
303.183(e)	303.7(f)(2)(ii)	Revised.
303.184	303.2, 303.6, 303.7	Revised.
303.185		Added.
303.186	346.6(b)	Revised.
303.187	346.101	Revised.
303.200		Added.
303.201	303.5(e)	No change.
303.202	303.5(e)	No change.
303.203	303.5(e)(1)	No change.
303.204	303.5(e)(2)	No change.
303.205	303.5(e)(3)	No change.
303.206	303.5(e)(4)	No change.
303.207	303.5(e)(5)	Revised.
303.208	303.7(f)(1)(ix)	No change.
303.220		Added.
303.221		Added.
303.222		Added.
303.223		Added.
303.224(a),(b),(c),(d)	303.7(e)	Revised.
(e)	303.10(b)(3)	No change.
303.240		Added.
303.241(a)		Added.
(b),(c),(d)	303.5(b)	Revised.
(e),(f),(g)		Added.
(h)	303.7(f)(1)(iii)	No change.
303.242(a)		Added.
(b),(c),(d)	303.5(b)	Revised.
(e),(f)		Added.
(g),(h)	303.7(a)(2)	No change.
303.243(a),(b),(c)	337.6(d),(e)	No change.
(d),(e),(f)		Added.
(g)	337.6(c),(e)	No change.
(h)	337.6(e), 303.7(f)(1)(viii)	Revised.
303.244(a),(b),(c),(d),(e)	359	Revised.
(f)	303.7(g)	No change.
303.245		Added.
303.246(a),(b),(c),(d)	303.5(a)	Revised.
(e)		Added.
(f)	303.7(f)(4)	Revised.
303.247	303.3(c)	Revised.
303.248	303.5(c)	Revised.
303.249		Added.
303.250		Added.
303.250(a),(b),(c),(d),(e)		Added.
(h)	303.7(f)(1)(vii), 303.7(f)(2)(i)	Revised.
303.251(a),(b),(c),(d),(e)		Added.
(f)	303.7(f)(14)(iv)	Revised.
303.252(a),(b),(c),(d),(e)		Added.
(f)	303.8(a)	No change.
303.260		Added.
303.261	303.9(a)	Revised.
303.262		Added.
303.263	303.9(b)	Revised.
303.264	303.9(c)	Revised.
303.265	303.9(d)	Revised.
303.266	303.9(e)	Revised.
303.267	303.9(f)	Revised.
303.268		Added.
303.269	303.9(g)	Revised.
303.270		Added.
303.271	303.9(h)	Revised.
303.272	303.9(i)	Revised.
303.273	303.9(k)	Revised.

Revised provision	Original provision	Comments
303.274	303.9(l)	Revised.
303.275	303.9(m)	Revised.
303.276	303.9(n)	Revised.
303.277	303.9(o)	Revised.
03.278	303.10(c)	Revised.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 333

Banks, banking, Corporate powers.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 341

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 347

Authority delegations (Governmental agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Foreign investments, Insured branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 359

Bank deposit insurance, Banks, banking, Golden parachute payments, Indemnity payments.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

1. Part 303 is revised to read as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1831e, 1831p–1, 1835a, 3104, 3105, 3108; 3207; 15 U.S.C. 1601–1607.

§ 303.0 Scope.

(a) This part describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices (filings) required to be filed by statute or regulation. Additional details concerning processing are explained in related FDIC statements of policy. This part also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel of the Legal Division, the Executive Secretary, and, in some cases, their designees to act on certain filings and enforcement matters.

(b) Additional application procedures may be found in the following FDIC regulations:

(1) 12 CFR part 327—Assessments (Request for review of assessment risk classification);

(2) 12 CFR part 328—Advertisement of Membership (Application for temporary waiver of advertising requirements);

(3) 12 CFR part 345—Community Reinvestment (CRA strategic plans and requests for designation as a wholesale or limited purpose institution);

Subpart A—Rules of General Applicability

§ 303.1 Scope.

This subpart A prescribes the general procedures for submitting filings to the FDIC which are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing, including public notice and comment. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)). Certain terms used throughout this part are also defined in this subpart. Finally, this subpart sets forth general principles governing delegations of authority by the FDIC's Board of Directors.

§ 303.2 Definitions.

For purposes of this part:

(a) *Act* or *FDI Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Adjusted part 325 total assets* means adjusted 12 CFR part 325 total assets as calculated and reflected in the FDIC's Report of Examination.

(c) *Adverse comment* means any objection, protest, or other adverse written statement submitted by an interested party relative to a filing. The term adverse comment shall not include any comment concerning the Community Reinvestment Act (CRA), fair lending, consumer protection, or civil rights that the appropriate regional director or deputy regional director (DCA) determines to be frivolous (for example, raising issues between the commenter and the applicant that have been resolved). The term adverse comment also shall not include any other comment that the appropriate regional director or deputy regional director (DOS) determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

(d) *Amended order to pay* means an order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(e) *Applicant* means a person or entity that submits a filing to the FDIC.

(f) *Application* means a submission requesting FDIC approval to engage in various corporate activities and transactions.

(g) *Appropriate FDIC region, appropriate FDIC regional office, appropriate regional director, appropriate deputy regional director, appropriate regional counsel* mean, respectively, the FDIC region, and the FDIC regional office, regional director, deputy regional director, and regional counsel, which the FDIC designates as follows:

(1) When an institution or proposed institution that is the subject of a filing or administrative action is not and will not be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located; or

(2) When an institution or proposed institution that is the subject of a filing or administrative action is or will be part of a group of related institutions, the appropriate region for the institution and any individual associated with the

institution is the FDIC region in which the group's major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis.

(h) *Associate director* means any associate director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(i) *Book capital* means total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(j) *Comment* means any written statement of fact or opinion submitted by an interested party relative to a filing.

(k) *Corporation* or *FDIC* means the Federal Deposit Insurance Corporation.

(l) *CRA protest* means any adverse comment from the public related to a pending filing which raises a negative issue relative to the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*), whether or not it is labeled a protest and whether or not a hearing is requested.

(m) *Deputy Director* means the Deputy Director of the Division of Supervision (DOS) or the Deputy Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(n) *Deputy regional director* means any deputy regional director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the same FDIC region of DOS or DCA.

(o) *DCA* means the Division of Compliance and Consumer Affairs or, in the event the Division of Compliance and Consumer Affairs is reorganized, such successor division.

(p) *DOS* means the Division of Supervision or, in the event the Division of Supervision is reorganized, such successor division.

(q) *Director* means the Director of the Division of Supervision (DOS) or the Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(r) *Eligible depository institution* means a depository institution that meets the following criteria:

(1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(s) *Filing* means an application, notice or request submitted to the FDIC under this part.

(t) *General Counsel* means the head of the Legal Division of the FDIC or any official within the Legal Division exercising equivalent authority for purposes of this part.

(u) *Insider* means a person who is or is proposed to be a director, officer, organizer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(v) *Institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(w) *NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(x) *NHPA* means the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*).

(y) *Notice* means a submission notifying the FDIC that a depository institution intends to engage in or has commenced certain corporate activities or transactions.

(z) *Notice of assessment of civil money penalties* means a notice of assessment of civil money penalties, findings of fact and conclusions of law, and order to pay issued pursuant to sections 7(a)(1), 7(j)(15), 8(i) or 18(h) of the Act (12 U.S.C. 1817(a)(1), 1817(j)(15), 1818(i), or 1828(h)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), or any other provision of law providing for the assessment of civil money penalties by the FDIC.

(aa) *Notice of charges* means a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(bb) *Notice to primary regulator* means the notice described in section 8(a)(2)(A) of the Act concerning termination of deposit insurance (12 U.S.C. 1818(a)(2)(A)).

(cc) *Regional counsel* means a regional counsel of the Legal Division or, in the event the title becomes obsolete, any official of equivalent authority within the Legal Division. The authority delegated to a regional counsel may be exercised, when confirmed in writing by the regional counsel, by a deputy regional counsel, or any official of equivalent or higher authority in the Supervision and Legislation Branch of the Legal Division.

(dd) *Regional director* means any regional director in the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA), or in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(ee) *Section 8 orders:*

(1) *Section 8(a) order* means an order terminating the insured status of a depository institution under section 8(a) of the Act (12 U.S.C. 1818(a)).

(2) *Section 8(b) order, cease-and-desist order* means a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(3) *Section 8(c) order, temporary cease-and-desist order* means a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(4) *Section 8(e) order* means a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(5) *Section 8(e)(3) order, temporary order of suspension* means a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(6) *Section 8(g) order* means an order of suspension or order of prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(ff) *Standard conditions* means the conditions that any FDIC official acting under delegated authority may impose as a routine matter when approving a

filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(1) That the applicant has obtained all necessary and final approvals from the appropriate federal or state authority or other appropriate authority;

(2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the specified time period;

(3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(4) In the case of a merger transaction (as defined in § 303.61(a)), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger transaction.

(gg) *Tier 1 capital* shall have the same meaning as provided in § 325.2(t) of this chapter.

(hh) *Total assets* shall have the same meaning as provided in § 325.2(v) of this chapter.

§ 303.3 General filing procedures.

Unless stated otherwise, filings should be submitted to the appropriate regional director (DOS). Forms and instructions for submitting filings may be obtained from any FDIC regional office (DOS). If no form is prescribed, the filing should be in writing; be signed by the applicant or a duly authorized agent; and contain a concise statement of the action requested. For specific filing and content requirements, consult the appropriate subparts of this part. The FDIC may require the applicant to submit additional information.

§ 303.4 Computation of time.

For purposes of this part, the FDIC begins computing the relevant period on the day after an event occurs (*e.g.*, the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

§ 303.5 Effect of Community Reinvestment Act performance on filings.

Among other factors, the FDIC takes into account the record of performance under the Community Reinvestment Act (CRA) of each applicant in considering a filing for approval of:

(a) The establishment of a domestic branch;

(b) The relocation of the bank's main office or a domestic branch;

(c) The relocation of an insured branch of a foreign bank;

(d) A transaction subject to the Bank Merger Act; and

(e) Deposit insurance.

§ 303.6 Investigations and examinations.

The Board of Directors, Directors of (DOS) or (DCA), the associate directors, or the appropriate regional director or appropriate deputy regional director (DOS) or (DCA) acting under delegated authority may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.

§ 303.7 Public notice requirements.

(a) *General.* The public must be provided with prior notice of a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger transaction, initiate a change of control transaction, or request deposit insurance. The public has the right to comment on, or to protest, these types of proposed transactions during the relevant comment period. In order to fully apprise the public of this right, an applicant shall publish a public notice of its filing in a newspaper of general circulation. For specific publication requirements, consult subparts B (Deposit Insurance), C (Branches and Relocations), D (Merger Transactions), E (Change in Bank Control), and J (International Banking) of this part.

(b) *Confirmation of publication.* The applicant shall mail or otherwise deliver a copy of the newspaper notice to the appropriate regional director (DOS) as part of its filing, or, if a copy is not available at the time of filing, promptly after publication.

(c) *Content of notice.* (1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) Name and address of the applicant(s). In the case of an application for deposit insurance for a de novo bank, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch;

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director (DOS);

(v) The address of the appropriate FDIC regional office (DOS) where comments may be sent (the same location that where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart of this part; and

(vii) That the nonconfidential portions of the application are on file in the regional office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

(2) The requirements of paragraphs (c)(1)(iv) through (vii) of this section may be satisfied through use of the following notice:

> Any person wishing to comment on this application may file his or her comments in writing with the regional director (DOS) of the Federal Deposit Insurance Corporation at its regional office [insert address of regional office] not later than [insert closing date of the public comment period specified in the appropriate subpart of part 303]. The non-confidential portions of the application are on file in the regional office and are available for public inspection during regular business hours. Photocopies of the nonconfidential portion of the application file will be made available upon request.

(d) *Multiple transactions.* The FDIC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When publishing a single public notice for multiple transactions, the applicant shall explain in the public notice how the transactions are related. The closing date of the comment period shall be the closing date of the longest public comment period that applies to any of the related transactions.

(e) *Joint public notices.* For a transaction subject to public notice requirements by the FDIC and another

federal or state banking authority, the FDIC will accept publication of a single joint notice containing all the information required by both the FDIC and the other federal agency or state banking authority, provided that the notice states that comments must be submitted to the FDIC and, if applicable, the other federal or state banking authority.

(f) Where public notice is required, the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements.

§ 303.8 Public access to filing.

(a) *General.* For filings subject to a public notice requirement, any person may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180 days following final disposition of a filing. Following the 180-day period, non-confidential portions of an application file will be made available in accordance with paragraph (c) of this section. The public file generally consists of portions of the filing, supporting data, supplementary information, and comments submitted by interested persons (if any) to the extent that the documents have not been afforded confidential treatment. To view or request photocopies of the public file, an oral or written request should be submitted to the appropriate regional director (DOS). The public file will be produced for review not more than one business day after receipt by the regional office of the request (either written or oral) to see the file. The FDIC may impose a fee for photocopying in accordance with § 309.5(c) of this chapter at the rates the FDIC publishes annually in the **Federal Register**.

(b) *Confidential treatment.* (1) The applicant may request that specific information be treated as confidential. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy;

(ii) Commercial or financial information, the disclosure of which could result in substantial competitive harm to the submitter; and

(iii) Information, the disclosure of which could seriously affect the financial condition of any depository institution.

(2) If an applicant requests confidential treatment for information that the FDIC does not consider to be confidential, the FDIC may include that information in the public file after notifying the applicant. On its own initiative, the FDIC may determine that certain information should be treated as confidential and withhold that information from the public file.

(c) *FOIA requests.* A written request for information withheld from the public file, or copies of the public file following closure of the file 180 days after final disposition, should be submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) and part 309 of this chapter to the FDIC, Office of the Executive Secretary, 550 17th Street, N.W., Washington, D.C. 20429.

§ 303.9 Comments.

(a) *Submission of comments.* For filings subject to a public notice requirement, any person may submit comments to the appropriate FDIC regional director (DOS) during the comment period.

(b) *Comment period*—(1) *General.* Consult appropriate subparts of this part for the comment period applicable to a particular filing.

(2) *Extension.* The appropriate regional director or deputy regional director (DOS) may extend or reopen the comment period if:

(i) The applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that the FDIC determines may materially affect the application; or

(iii) The appropriate regional director or deputy regional director (DOS) determines that other good cause exists.

(3) *Solicitation of comments.* Whenever appropriate, the appropriate regional director (DOS) may solicit comments from any person or institution which might have an interest in or be affected by the pending filing.

(4) *Applicant response.* The FDIC will provide copies of all comments received to the applicant and may give the applicant an opportunity to respond.

§ 303.10 Hearings and other meetings.

(a) *Matters covered.* This section covers hearings and other proceedings in connection with filings and determinations for or by:

(1) Deposit insurance by a proposed new depository institution or operating non-insured institution;

(2) An insured state nonmember bank to establish a domestic branch or to relocate a main office or domestic branch;

(3) Relocation of an insured branch of a foreign bank;

(4)(i) Merger transaction which requires the FDIC's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));

(ii) Except as otherwise expressly provided, the provisions of this section shall not be applicable to any proposed merger transaction which the FDIC Board of Directors determines must be acted upon immediately to prevent the probable failure of one of the institutions involved, or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(c)(6));

(5) Nullification of a decision on a filing; and

(6) Any other purpose or matter which the FDIC Board of Directors in its sole discretion deems appropriate.

(b) *Hearing requests.* (1) Any person may submit a written request for a hearing on a filing:

(i) To the appropriate regional director (DOS) before the end of the comment period; or

(ii) To the appropriate regional director (DOS or DCA), pursuant to a notice to nullify a decision on a filing issued pursuant to § 303.11(g)(2)(i) or (ii).

(2) The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the FDIC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(c) *Action on a hearing request.* The appropriate regional director (DOS or DCA), after consultation with the Legal Division, may grant or deny a request for a hearing and may limit the issues that he or she deems relevant or material. The FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

(d) *Denial of a hearing request.* If the appropriate regional director (DOS or DCA), after consultation with the Legal Division, denies a hearing request, he or she shall notify the person requesting the hearing of the reason for the denial. A decision to deny a hearing request shall be a final agency determination and is not appealable.

(e) *FDIC procedures prior to the hearing*—(1) *Notice of hearing.* The FDIC shall issue a notice of hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The notice of hearing shall state the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The FDIC shall

send a copy of the notice of hearing to the applicant, to the person requesting the hearing, and to anyone else requesting a copy.

(2) *Presiding officer.* The presiding officer shall be the Regional Director (DOS or DCA) or his or her designee or such other person as may be named by the Board or the Director (DOS or DCA). The presiding officer is responsible for conducting the hearing and determining all procedural questions not governed by this section.

(f) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate regional director (DOS or DCA) of his or her intent to participate in the hearing no later than 10 days from the date that the FDIC issues the Notice of Hearing. At least 5 days before the hearing, each participant shall submit to the appropriate regional director (DOS or DCA), as well as to the applicant and any other person as required by the FDIC, the names of witnesses, a statement describing the proposed testimony of each witness, and one copy of each exhibit the participant intends to present.

(g) *Transcripts.* The FDIC shall arrange for a hearing transcript. The person requesting the hearing and the applicant each shall bear the cost of one copy of the transcript for his or her use unless such cost is waived by the presiding officer and incurred by the FDIC.

(h) *Conduct of the hearing.*—(1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening and closing statements and present and examine witnesses, material, and data.

(2) *Information submitted.* Any person presenting material shall furnish one copy to the FDIC, one copy to the applicant, and one copy to each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the FDIC's Rules of Practice and Procedure (12 CFR part 308) do not govern hearings under this section.

(i) *Closing the hearing record.* At the applicant's or any participant's request, or at the FDIC's discretion, the FDIC may keep the hearing record open for up to 10 days following the FDIC's receipt of the transcript. The FDIC shall resume processing the filing after the record closes.

(j) *Disposition and notice thereof.* The presiding officer shall make a recommendation to the FDIC within 20 days following the date the hearing and record on the proceeding are closed. The FDIC shall notify the applicant and all participants of the final disposition of a filing and shall provide a statement of the reasons for the final disposition.

(k) *Computation of time.* In computing periods of time under this section, the provisions of § 308.12 of the FDIC's Rules of Practice and Procedure (12 CFR 308.12) shall apply.

(l) *Informal proceedings.* The FDIC may arrange for an informal proceeding with an applicant and other interested parties in connection with a filing, either upon receipt of a written request for such a meeting made during the comment period, or upon the FDIC's own initiative. No later than 10 days prior to an informal proceeding, the appropriate regional director (DOS or DCA) shall notify the applicant and each person who requested a hearing or oral presentation of the date, time, and place of the proceeding. The proceeding may assume any form, including a meeting with FDIC representatives at which participants will be asked to present their views orally. The appropriate regional director (DOS or DCA) may hold separate meetings with each of the participants.

(m) *Authority retained by FDIC Board of Directors to modify procedures.* The FDIC Board of Directors may delegate authority by resolution on a case-by-case basis to the presiding officer to adopt different procedures in individual matters and on such terms and conditions as the Board of Directors determines in its discretion. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

§ 303.11 Decisions.

(a) *General procedures.* The FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial.

(b) *Authority retained by FDIC Board of Directors to modify procedures.* In acting on any filing under this part, the FDIC Board of Directors may by resolution adopt procedures which differ from those contained in this part when it deems it necessary or in the public interest to do so. The resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

(c) *Expedited processing.* (1) A filing submitted by an eligible depository institution as defined in § 303.2(r) will receive expedited processing as specified in the appropriate subparts of this part unless the appropriate regional director or deputy regional director (DOS) determines to remove the filing from expedited processing for any of the reasons set forth in paragraph (c)(2) of this section. Except for filings made pursuant to subpart J of this part (International Banking), expedited processing will not be available for any filing that the appropriate regional director (DOS) does not have delegated authority to approve.

(2) *Removal of filing from expedited processing.* The appropriate regional director or deputy regional director (DOS) may remove a filing from expedited processing at any time prior to final disposition if:

(i) For filings subject to public notice under § 303.7, an adverse comment is received that warrants additional investigation or review;

(ii) For filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern;

(iii) For any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or

(iv) For any filing, the appropriate regional director (DOS) determines that other good cause exists for removal.

(3) For purposes of this section, a significant CRA concern includes, but is not limited to, a determination by the appropriate regional director (DCA) that, although a depository institution may have an institution-wide rating of satisfactory or better, a depository institution's CRA rating is less than satisfactory in a state or multi-state metropolitan statistical area, or a depository institution's CRA performance is less than satisfactory in a metropolitan statistical area as defined in 12 CFR 345.12 (MSA) or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(4) If the FDIC determines that it is necessary to remove a filing from expedited processing pursuant to paragraph (c)(2) of this section, the FDIC promptly will provide the applicant with a written explanation.

(d) *Multiple transactions.* If the FDIC is considering related transactions, some or all of which have been granted expedited processing, then the longest processing time for any of the related transactions shall govern for purposes of approval.

(e) *Abandonment of filing.* A filing must contain all information set forth in the applicable subpart of this part. To the extent necessary to evaluate a filing, the FDIC may require an applicant to provide additional information. If information requested by the FDIC is not provided within the time period specified by the agency, the FDIC may deem the filing abandoned and shall provide written notification to the applicant and any interested parties that submitted comments to the FDIC that the file has been closed.

(f) *Appeals and requests for reconsideration.*—(1) *General.* Appeal procedures for a denial of a change in bank control (subpart E of this part), change in senior executive officer or board of directors (subpart F of this part) or denial of an application pursuant to section 19 of the FDI Act (subpart L of this part) are contained in 12 CFR part 308, subparts D, L, and M, respectively. For all other filings covered by this chapter for which appeal procedures are not provided by regulation or other written guidance, the procedures specified in paragraphs (f) (2) through (5) of this section shall apply. A decision to deny a request for a hearing is a final agency determination and is not appealable.

(2) *Filing procedures.* Within 15 days of receipt of notice from the FDIC that its filing has been denied, any applicant may file a request for reconsideration with the appropriate regional director (DOS), if the filing initially was submitted to DOS, or the appropriate regional director (DCA), if the filing initially was submitted to DCA.

(3) *Content of filing.* A request for reconsideration must contain the following information:

(i) A resolution of the board of directors of the applicant authorizing filing of the request if the applicant is a corporation, or a letter signed by the individual(s) filing the request if the applicant is not a corporation;

(ii) Relevant, substantive information that for good cause was not previously set forth in the filing; and

(iii) Specific reasons why the FDIC should reconsider its prior decision.

(4) *Delegation of authority for requests for reconsideration.* (i) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director and the appropriate regional director and deputy regional director, to grant a request for reconsideration, after consultation with the Legal Division.

(ii) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate and, where confirmed in writing, to an associate director, to deny a request for reconsideration, after consultation with the Legal Division. Such a denial is a final agency decision and is not appealable.

(5) *Reconsideration of the filing.* If a request for reconsideration is granted pursuant to this paragraph (f), the filing will be reconsidered as follows:

(i) The Board of Directors will reconsider any such filing if the filing was originally denied by the Board of Directors.

(ii) Authority is delegated to the FDIC's Supervisory Appeals Review Committee to reconsider any such filing if the filing was originally denied by the Director or Deputy Director or an associate director (DOS) or (DCA), and to make the final agency decision on such filing, after consultation with the Legal Division.

(iii) Authority is delegated to the Director or Deputy Director (DOS) or (DCA), as appropriate, to reconsider any such filing that was originally denied by a regional director or deputy regional director, and to make the final agency decision on such filing, after consultation with the Legal Division.

(iv) Notwithstanding paragraphs (f)(5)(ii) and (iii) of this section, no reconsideration of a filing that originally required Legal Division concurrence may be acted upon without Legal Division concurrence.

(6) *Processing.* The appropriate regional director (DOS or DCA) will notify the applicant whether reconsideration will be granted or denied within 15 days of receipt of a request for reconsideration. If a request for reconsideration is granted pursuant to this paragraph (f), the FDIC will notify the applicant of the final agency decision on such filing within 60 days of its receipt of the request for reconsideration.

(g) *Nullification, withdrawal, revocation, amendment, and suspension of decisions on filings.*—(1) *Grounds for action.* (i) Except as otherwise provided by law or regulation, the FDIC may nullify, withdraw, revoke, amend or suspend a decision on a filing if it becomes aware at anytime:

(A) Of any material misrepresentation or omission related to the filing or of any material change in circumstance that occurred prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; or

(B) That the decision on the filing is contrary to law or regulation or was granted due to clerical or administrative error.

(ii) Any person responsible for a material misrepresentation or omission in a filing or supporting materials may be subject to an enforcement action and other penalties, including criminal penalties provided in Title 18 of the United States Code.

(2) *Notice of intent and temporary order.* (i) Except as provided in paragraph (g)(2)(ii) of this section, before taking action under this paragraph (g), the FDIC shall issue and serve on an applicant written notice of its intent to take such action. A notice of intent to act on a filing shall include:

(A) The reasons for the proposed action; and

(B) The date by which the applicant may file a written response with the FDIC.

(ii) The FDIC may issue a temporary order on a decision on a filing without providing an applicant a prior notice of intent if the FDIC determines that:

(A) It is necessary to reevaluate the impact of a change in circumstance prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; or

(B) The activity authorized by the filing may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution.

(iii) A temporary order shall provide the applicant with an opportunity to make a written response in accordance with paragraph (g)(3) of this section.

(3) *Response to notice of intent or temporary order.* An applicant may file a written response to a notice of intent or a temporary order within 15 days from the date of service of the notice or temporary order. The written response should include:

(i) An explanation of why the proposed action or temporary order is not warranted; and

(ii) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the applicant's position. An applicant may also request a hearing under § 303.10. Failure by an applicant to file a written response with the FDIC to a notice of intent or a temporary order within the specified time period, shall constitute a waiver of the opportunity to respond and shall constitute consent to a final order under this paragraph (g).

(4) *Effective date.* All orders issued pursuant to this section shall become effective immediately upon issuance unless otherwise stated therein.

(5) *Retained and delegated authority.* The FDIC Board of Directors retains authority to issue notices of intent and temporary and final orders under this paragraph (g), as to any decision on a filing originally acted on by the Board. For decisions on filings under this paragraph (g) that were not originally acted on by the Board, authority is delegated to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director or the appropriate regional director or deputy regional director, to issue notices of intent and final orders, after consultation with the Legal Division. Authority is delegated to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue temporary orders under this paragraph (g), after consultation with the Legal Division. This delegated authority may be exercised only by the official who acted on the original filing or an official of equivalent or higher authority.

§ 303.12 General rules governing delegations of authority.

(a) *Scope.* This section contains general rules governing the FDIC Board of Director's delegations of authority under this part. These principles are procedural in nature only and are not substantive standards. All delegations of authority, confirmations, limitations, revisions, and rescissions under this part must be in writing and maintained with the Office of the Executive Secretary.

(b) *Authority not delegated.* Except as otherwise expressly provided, the FDIC Board of Directors does not delegate its authority.

(1) The FDIC Board of Directors retains and does not delegate the authority to act on agreements with foreign regulatory or supervisory authorities, matters that would establish or change existing Corporation policy, matters that might attract unusual attention or publicity, or involve an issue of first impression notwithstanding any existing delegation of authority.

(2) The FDIC Board of Directors retains the authority to act on any filing or enforcement matter upon which any member of the Board of Directors wishes to act, even if the authority to act on such filing or enforcement matter has been delegated.

(c) *Exercise of delegated authority not mandated.* Any FDIC official with delegated authority under this part may elect not to exercise that authority.

(d) *Action by FDIC officials.* In matters where the FDIC Board of Directors has neither specifically delegated nor retained authority, FDIC officials may take action with respect to matters which generally involve conditions or circumstances requiring prompt action to protect the interests of the FDIC and to achieve flexibility in and expedite its operations and the exercise of FDIC functions under this part.

(e) *Construction.* The delegations of authority contained in this part are to be broadly construed in favor of the existence of authority in FDIC officials who act under delegated authority. Any exercise of authority under this part by an FDIC official is conclusive evidence of that official's authority.

(f) *Written confirmations, limitations, revisions or rescissions.* Where the FDIC Board of Directors has delegated authority to the Director (DOS), Director (DCA) or the General Counsel, or their respective designees, each shall have the right to confirm, limit, revise, or rescind any delegation of authority issued or approved by them, respectively, to any subordinate official(s).

§ 303.13 Delegations of authority to officials in the Division of Supervision and the Division of Compliance and Consumer Affairs.

(a) *CRA protests.* Where a CRA protest is filed and remains unresolved, authority is delegated to the Director and Deputy Director (DCA) and, where confirmed in writing by the Director, to an associate director or the appropriate regional director or deputy regional director to concur that approval of any filing subject to CRA is consistent with the purposes of CRA.

(b) *Adequacy of filings.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to determine whether a filing is substantially complete for purposes of commencing processing.

(c) *National Historic Preservation Act.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act of 1966 (16 U.S.C. 470).

(d) *Modification of publication requirements.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to modify the publication requirements for a particular filing where the unusual circumstances surrounding the filing warrant such modification.

Subpart B—Deposit Insurance

§ 303.20 Scope.

This subpart sets forth the procedures for applying for deposit insurance for a proposed depository institution or an operating noninsured depository institution under section 5 of the FDI Act (12 U.S.C. 1815). It also sets forth the procedures for requesting continuation of deposit insurance for a state-chartered bank withdrawing from membership in the Federal Reserve System and for interim institutions chartered to facilitate a merger transaction. Related delegations of authority are also set forth.

§ 303.21 Filing procedures.

(a) Applications for deposit insurance shall be filed with the appropriate regional director (DOS). The relevant application forms and instructions for applying for deposit insurance for an existing or proposed depository institution may be obtained from any FDIC regional office (DOS).

(b) An application for deposit insurance for an interim depository institution shall be filed and processed in accordance with the procedures set forth in § 303.24, subject to the provisions of § 303.62(b)(2) regarding deposit insurance for interim institutions. An interim institution is defined as a state- or federally-chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction.

(c) A request for continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System shall be in letter form and shall provide the information prescribed in § 303.25.

§ 303.22 Processing.

(a) *Expedited processing for proposed institutions.* (1) An application for deposit insurance for a proposed institution which will be a subsidiary of an eligible depository institution as defined in § 303.2(r) or an eligible holding company will be acknowledged

in writing by the FDIC and will receive expedited processing unless the applicant is notified in writing to the contrary and provided with the basis for that decision. An eligible holding company is defined as a bank or thrift holding company that has consolidated assets of $150 million or more, has an assigned composite rating of 2 or better, and has at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application within 60 days of receipt of a substantially complete application or 5 days after the expiration of the comment period described in § 303.23, whichever is later. Final action may be withheld until the FDIC has assurance that permission to organize the proposed institution will be granted by the chartering authority. Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(b) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.23 Public notice requirements.

(a) *De novo institutions and operating noninsured institutions.* The applicant shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located. Notice shall be published as close as practicable to, but no sooner than five days before, the date the application is mailed or delivered to the appropriate regional director (DOS). Comments by interested parties must be received by the appropriate regional director (DOS) within 30 days following the date of publication, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(b) *Exceptions to public notice requirements.* No publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a depository institution in default, or to an interim depository institution formed solely to facilitate a merger transaction, or for a request for continuation of federal deposit insurance by a state-chartered bank withdrawing from membership in the Federal Reserve System.

§ 303.24 Application for deposit insurance for an interim institution.

(a) *Application required.* Subject to § 303.62(b)(2), a deposit insurance application is required for a state-chartered interim institution if the related merger transaction is subject to approval by a federal banking agency other than the FDIC. A separate application for deposit insurance for an interim institution is not required in connection with any merger requiring FDIC approval pursuant to subpart D of this part.

(b) *Content of separate application.* A letter application for deposit insurance for an interim institution, accompanied by a copy of the related merger application, shall be filed with the appropriate regional director (DOS). The letter application shall briefly describe the transaction and contain a statement that deposit insurance is being requested for an interim institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction which will be reviewed by a federal banking agency other than the FDIC.

(c) *Processing.* An application for deposit insurance for an interim depository institution will be acknowledged in writing by the FDIC. Final action will be taken within 21 days after receipt of a substantially complete application, unless the applicant is notified in writing that additional review is warranted. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.

(a) *Content of application.* To continue its insured status upon withdrawal from membership in the Federal Reserve System, a state-chartered bank shall submit a letter application to the appropriate regional director (DOS). A complete application shall consist of the following information:

(1) A copy of the letter, and any attachments thereto, sent to the appropriate Federal Reserve Bank setting forth the bank's intention to terminate its membership;

(2) A copy of the letter from the Federal Reserve Bank acknowledging the bank's notice to terminate membership;

(3) A statement regarding any anticipated changes in the bank's general business plan during the next 12-month period; and

(4)(i) A statement by the bank's management that there are no outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System.

(ii) If such programs or agreements exist, a statement by the applicant that its Board of Directors is willing to enter into similar programs or agreements with the FDIC which would become effective upon withdrawal from the Federal Reserve System.

(b) *Processing.* An application for deposit insurance under this section will be acknowledged in writing by the FDIC. The appropriate regional director (DOS) shall notify the applicant, within 15 days of receipt of a substantially complete application, either that federal deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review is warranted and the applicant will be notified, in writing, of the FDIC's final decision regarding continuation of deposit insurance. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.26 Delegation of authority.

(a) *Proposed depository institutions.* (1) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance for proposed depository institutions. For the delegate to exercise this authority, the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section must be satisfied and the applicant shall have agreed in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent:

(i) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(iii) The application is in conformity with the standards and guidelines for the granting of deposit insurance established in the FDIC statement of policy ''Applications for Deposit Insurance'' (2 FDIC Law, Regulations and Related Acts (FDIC) 5349; see § 309.4(a) and (b) of this chapter for availability);

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(v) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance filed by or on behalf of proposed interim depository institutions formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a responsible agency as defined in section 18(c)(2) of the FDI Act. For the delegate to exercise this authority, the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section must be satisfied and the applicant must agree in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent.

(b) *Operating noninsured depository institutions.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions. For the delegate to exercise this authority, the following criteria must be satisfied and the applicant must have agreed in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent:

(1) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in section 3(a) of the Act (12 U.S.C. 1813(a)) in which the applicant is located;

(2) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(3) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(4) The application is in conformity with the standards and guidelines for the granting of deposit insurance to operating noninsured depository institutions established in the FDIC statement of policy ''Applications for Deposit Insurance'' (2 FDIC Law, Regulations and Related Acts (FDIC) 5349);

(5) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(6) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(c) *Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve continuation of federal deposit insurance where the applicant has agreed in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

(d) *Conditions that may be imposed under delegated authority.* Following are conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (a) and (b) of this section:

(1) The applicant will provide a specific amount of initial paid-in capital;

(2) With respect to a proposed depository institution that has applied for deposit insurance pursuant to this subpart, the Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator) will be maintained at not less than eight percent throughout the first three years of operation and that an adequate allowance for loan and lease losses will be provided;

(3) Any changes in proposed management or proposed ownership to the extent of 10 percent or more of stock, including new acquisitions of or subscriptions to 10 percent or more of stock shall be approved by the FDIC prior to the opening of the depository institution for business;

(4) The applicant will adopt an accrual accounting system for maintaining the books of the depository institution;

(5) Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct a depository institution business, and its establishment and operation as a depository institution have been fully approved by the appropriate state and/or federal supervisory authority;

(6) Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction;

(7) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision to acquire voting stock control of the proposed depository institution prior to its opening for business;

(8) Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(9) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved. An insider is one who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 or more percent of any class of the applicant's outstanding voting stock; or the associates or interests of any such person;

(10) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the appropriate regional director (DOS);

(11) The applicant will have adequate fidelity coverage;

(12) The depository institution will obtain an audit of its financial statements by an independent public

accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15 days when a change in its independent auditor occurs; and

(13) Any standard condition defined in § 303.2(ff).

§ 303.27 Authority retained by the FDIC Board of Directors.

Without limiting the Board of Director's authority, the Board of Directors retains authority to deny applications for deposit insurance and approve applications for deposit insurance where the applicant does not agree in writing to comply with any condition imposed by the FDIC, other than the standard conditions listed in §§ 303.2(ff) and 303.26(d), which may be imposed without the applicant's written consent.

Subpart C—Establishment and Relocation of Domestic Branches and Offices

§ 303.40 Scope.

(a) *General.* This subpart sets forth the application requirements, procedures and the delegations of authority for insured state nonmember banks to establish a branch, relocate a branch or main office, and retain existing branches after the interstate relocation of the main office subject to the approval by the FDIC pursuant to sections 13(f), 13(k), 18(d) and 44 of the FDI Act.

(b) *Merger transaction.* Applications for approval of the acquisition and establishment of branches in connection with a merger transaction under section 18(c) of the FDI Act (12 U.S.C. 1828(c)), are processed in accordance with subpart D (Merger Transactions) of this part.

(c) *Insured branches of foreign banks and foreign branches of domestic banks.* Applications regarding insured branches of foreign banks and foreign branches of domestic banks are processed in accordance with subpart J (International Banking) of this part.

(d) *Interstate acquisition of individual branch.* Applications requesting approval of the interstate acquisition of an individual branch or branches located in a state other than the applicant's home state without the acquisition of the whole bank are treated as interstate bank merger transactions under section 44 of the FDI Act (12 U.S.C. 1831a(u)), and are processed in accordance with subpart D (Merger Transactions) of this part.

§ 303.41 Definitions.

For purposes of this subpart:

(a) *Branch* includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

(1) A *messenger service* that is operated by a bank or its affiliate that picks up and delivers items relating to transactions in which deposits are received or checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties to provide messenger services should consult with the appropriate regional director (DOS) to determine if the messenger service constitutes a branch.

(2) A *mobile branch,* other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch may serve defined locations on a regular schedule or may serve a defined area at varying times and locations.

(3) A *temporary branch* that operates for a limited period of time not to exceed one year as a public service, such as during an emergency or disaster situation.

(4) A *seasonal branch* that operates at various periodically recurring intervals, such as during state and local fairs, college registration periods, and other similar occasions.

(b) *Branch relocation* means a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to a location outside its immediate neighborhood is considered the closing of an existing branch and the establishment of a new branch. Closing of a branch is covered in the FDIC Statement of Policy Concerning Branch Closing Notices and Policies (2 FDIC Law, Regulations, Related Acts 5391; see § 309.4 (a) and (b) of this chapter for availability).

(c) *De novo branch* means a branch of a bank which is established by the bank as a branch and does not become a branch of such bank as a result of:

(1) The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(2) The conversion, merger, or consolidation of any such institution or branch.

(d) *Home state* means the state by which the bank is chartered.

(e) *Host state* means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

§ 303.42 Filing procedures.

(a) *General.* An applicant shall submit an application to the appropriate regional director (DOS) on the date the notice required by § 303.44 is published, or within 5 days after the date of the last required publication.

(b) *Content of filing.* A complete letter application shall include the following information:

(1) A statement of intent to establish a branch, or to relocate the main office or a branch;

(2) The exact location of the proposed site including the street address. With regard to messenger services, specify the geographic area in which the services will be available. With regard to a mobile branch specify the community or communities in which the vehicle will operate and the manner in which it will be used;

(3) Details concerning any involvement in the proposal by an insider of the bank as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(4) A statement on the impact of the proposal on the human environment, including, information on compliance with local zoning laws and regulations and the effect on traffic patterns for purposes of complying with the applicable provisions of the NEPA and the FDIC Statement of Policy on NEPA (2 FDIC Law, Regulations, Related Acts 5185; see § 309.4 (a) and (b) of this chapter for availability);

(5) A statement as to whether or not the site is eligible for inclusion in the National Register of Historic Places for purposes of complying with applicable provisions of the NHPA and the FDIC Statement of Policy on NHPA (2 FDIC Law, Regulations, Related Acts 5175; see § 309.4 (a) and (b) of this chapter for availability) including documentation of consultation with the State Historic Preservation Officer, as appropriate;

(6) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA;

(7) A copy of each newspaper publication required by § 303.44, the name and address of the newspaper, and date of the publication;

(8) When an application is submitted to relocate the main office of the applicant from one state to another, a statement of the applicant's intent regarding retention of branches in the state where the main office exists prior to relocation.

(c) *Undercapitalized institutions.* Applications to establish a branch by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831*o*) also should provide the information required by § 303.204. Applications pursuant to sections 38 and 18(d) of the FDI Act (12 U.S.C. 1831*o* and 1828(d)) may be filed concurrently or as a single application.

(d) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

§ 303.43 Processing.

(a) *Expedited processing for eligible depository institutions.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(1) The 21st day after receipt by the FDIC of a substantially complete filing;

(2) The 5th day after expiration of the comment period described in § 303.44; or

(3) In the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives confirmation from the host state that the applicant has both complied with the filing requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

(b) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.44 Public notice requirements.

(a) *Newspaper publications.* For applications to establish or relocate a branch, a notice as described in § 303.7(b) shall be published once in a newspaper of general circulation. For applications to relocate a main office, notice shall be published at least once each week on the same day for two consecutive weeks. The required publication shall be made in the following communities:

(1) *To establish a branch.* In the community in which the main office is located and in the communities to be served by the branch (including messenger services and mobile branches).

(2) *To relocate a main office.* In the community in which the main office is currently located and in the community to which it is proposed the main office will relocate.

(3) *To relocate a branch.* In the community in which the branch is located.

(b) *Public comments.* Comments by interested parties must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (a) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(c) *Lobby notices.* In the case of applications to relocate a main office or a branch, a copy of the required newspaper publication shall be posted in the public lobby of the office to be relocated for at least 15 days beginning on the date of the last published notice required by paragraph (a) of this section.

§ 303.45 Special provisions.

(a) *Emergency or disaster events.* (1) In the case of an emergency or disaster at a main office or a branch which requires that an office be immediately relocated to a temporary location, applicants shall notify the appropriate regional director (DOS) within 3 days of such temporary relocation.

(2) Within 10 days of the temporary relocation resulting from an emergency or disaster, the bank shall submit a written application to the appropriate regional director (DOS), that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch.

(3) As part of the review process, the appropriate regional director (DOS) will determine on a case by case basis whether additional information is necessary and may waive public notice requirements.

(b) *Redesignation of main office and existing branch.* In cases where an applicant desires to redesignate its main office as a branch and redesignate an existing branch as the main office, a single application shall be submitted. The appropriate regional director (DOS) may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance or legal concerns. A waiver will be granted only to a redesignation within the applicant's home state.

(c) *Expiration of approval.* Approval of an application expires if within 18 months after the approval date a branch has not commenced business or a relocation has not been completed.

§ 303.46 Delegation of authority.

(a) *Approval of applications.* (1) Where the applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve the following applications:

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office (including an application to relocate a main office to another state and retain existing branches); and

(iv) Relocate a branch.

(2) For the delegate to exercise this authority, the criteria in paragraphs (c)(1) through (c)(7) of this section must be satisfied.

(3) Where the applicant does not agree in writing to comply with any condition imposed by the delegate, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve the applications listed in paragraph (a)(1) of this section.

(b) *Denial of applications.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to deny an application to establish a temporary branch.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny an application for consent to:

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office (including an application to relocate a main office to another state and retain existing branches); and

(iv) Relocate a branch.

(c) *Criteria for delegated authority.* The following criteria must be satisfied before the authority delegated in paragraph (a) of this section may be exercised:

(1) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved except that this criterion does not apply to applications to establish messenger services and temporary branches;

(2) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC ''Statement of Policy on Capital Adequacy'' (12 CFR part 325, appendix B) or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the filing, except that this criterion does not apply to applications to establish messenger services and temporary branches, or to relocate branches or main offices;

(3) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's insiders are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(4) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(5) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA;

(6) An applicant with one or more existing branches in a state other than the applicant's home state has not failed the credit needs test in a host state under section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a);

(7) Additionally, for applications submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch:

(i) Confirmation by the appropriate regional director (DOS) that the applicant has complied with that state's filing requirements and that the applicant also has submitted to the host state bank supervisor a copy of its FDIC filing to establish and operate a de novo branch;

(ii) Determination by the FDIC that the applicant is adequately capitalized as of the date of the filing and will continue to be adequately capitalized and adequately managed upon consummation of the transaction;

(iii) Confirmation that the host state has in effect a law that meets the requirements of section 18(d)(4)(A) of the FDI Act (12 U.S.C. 1828(d)(4)(A)); and

(iv) Compliance with section 44(b)(3) of the FDI Act (12 U.S.C. 1831u(b)(3)); and

(8) Additionally, for applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant's main office exists prior to an interstate relocation of the main office, confirmation that the filing meets the requirements of section 18(d)(3)(B) of the FDI Act (12 U.S.C. 1828(d)(3)(B)).

Subpart D—Merger Transactions

§ 303.60 Scope.

This subpart sets forth the application requirements, procedures, and delegations of authority for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). Additional guidance is contained in the FDIC ''Statement of Policy on Bank Merger Transactions'' (2 FDIC Law, Regulations, Related Acts (FDIC) 5145; see § 309.4 (a) and (b) of this chapter for availability).

§ 303.61 Definitions.

For purposes of this subpart:

(a) *Merger transaction* includes any transaction:

(1) In which an insured depository institution merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) In which an insured depository institution merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or in which an insured depository institution transfers assets to any noninsured bank or institution in consideration of the assumption of any portion of the deposits made in the insured depository institution.

(b) *Corporate reorganization* means a merger transaction between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger transaction would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(c) *Interim merger transaction* means a merger transaction (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or corporation that will not operate independently and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Optional conversion* (Oakar transaction) means a merger transaction in which an insured depository institution assumes deposit liabilities insured by the deposit insurance fund (either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) of which that assuming institution is not a member, and elects not to convert the insurance covering the assumed deposits. Such transactions are covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

(e) *Resulting institution* refers to the acquiring, assuming or resulting institution in a merger transaction.

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger transaction, including any corporate reorganization or interim

merger transaction, that involves an uninsured bank or institution.

(b) *Related provisions.* Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the federal interim institution.

(3) *Deposit insurance fund conversions.* Procedures for conversion transactions involving the transfer of deposits from BIF to SAIF or from SAIF to BIF are set forth in subpart M of this part at § 303.246.

(4) *Branch closings.* Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers. These requirements are addressed in the ''Interagency Policy Statement Concerning Branch Closings Notices and Policies'' (2 FDIC Law, Regulations, Related Acts (FDIC) 5391).

(5) *Undercapitalized institutions.* Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831*o*) should also provide the information required by § 303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C, 1831*o* and 1828(c)) may be filed concurrently or as a single application.

(6) *Certification of assumption of deposit liability.* An insured depository institution assuming deposit liabilities of another insured institution must provide certification of assumption of deposit liability to the FDIC in accordance with 12 CFR part 307.

§ 303.63 Filing procedures.

(a) *General.* Applications required under this subpart shall be filed with the appropriate regional director (DOS). The appropriate forms and instructions may be obtained upon request from any DOS regional office.

(b) *Merger transactions.* Applications for approval of merger transactions shall be accompanied by copies of all agreements or proposed agreements relating to the merger transaction and any other information requested by the FDIC.

(c) *Interim merger transactions.* Applications for approval of interim merger transactions and any related deposit insurance applications shall be made by filing the forms and other documents required by paragraphs (a) and (b) of this section and such other information as may be required by the FDIC for consideration of the request for deposit insurance.

(d) *Optional conversions.* If the proposed merger transaction is an optional conversion, the merger application shall include a statement that the proposed merger transaction is a transaction covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

§ 303.64 Processing.

(a) *Expedited processing for eligible depository institutions.*—(1) *General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state's bank supervisor.

(3) Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Criteria.* The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart B of part 325 of this chapter; and

(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution's total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application when the decision is rendered.

§ 303.65 Public notice requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an applicant for approval of a merger transaction must publish notice of the proposed transaction on at least three occasions at approximately equal intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice should be as close as practicable to the date on which the application is filed with the FDIC, but no more than 5 days prior to the filing date.

(2) *Last publication.* The last publication of the notice shall be on the 25th day after the first publication or, if the newspaper does not publish on the 25th day, on the newspaper's

publication date that is closest to the 25th day.

(b) *Exceptions.*—(1) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 7th day after the first publication or, if the newspaper does not publish on the 7th day, on the newspaper's publication date that is closest to the 7th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger transaction, publication is not required.

(c) *Content of notice.*—(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the appropriate regional director (DOS) within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate regional director within 10 days after the first publication.

§ 303.66 Delegation of authority.

(a) *General.*—(1) *Bank Merger Act approval.* Subject to paragraphs (a)(3) and (e) of this section, authority is delegated in paragraphs (b), (c), and (d) of this section to the designated FDIC officials to approve under the Bank Merger Act, 18(c) of the FDI Act (12 U.S.C. 1828(c)), applications filed under this subpart.

(2) *Interstate merger approval.* With respect to an interstate merger transaction covered by section 44 of the FDI Act (12 U.S.C. 1831u), in addition to the authority delegated to any official in paragraph (b), (c), or (d) of this section to approve the merger transaction under the Bank Merger Act, authority is also delegated to such official to approve the merger transaction under section 44. This delegation is subject to paragraph (a)(3) of this section and to the condition that the merger transaction is eligible for FDIC approval under section 44.

(3) *Combined approvals.* The delegations in paragraphs (a)(2), (b), (c), and (d) of this section do not apply to an interstate bank merger transaction covered both by section 44 and by the Bank Merger Act unless the merger transaction is being approved pursuant to delegated authority under both section 44 and the Bank Merger Act.

(b) *Basic delegation.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and the appropriate regional director and deputy regional director to approve applications under the Bank Merger Act. For the delegate to exercise this authority, the following criteria must be satisfied:

(1) The resulting institution would meet all applicable capital requirements upon consummation of the transaction (or, where the resulting entity is an insured branch of a foreign bank, would be in compliance with 12 CFR 347.211 upon consummation of the transaction); and

(2) The factors set forth in section 18(c)(5) of the Act (12 U.S.C. 1828(c)(5)) have been considered and favorably resolved; and

(3)(i) The merging institutions do not operate in the same relevant geographic market(s); or

(ii) In each relevant geographic market in which more than one of the merging institutions operate, the resulting institution upon consummation of the merger transaction would hold no more than 15 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market; or

(iii) In each relevant geographic market in which more than one of the merging institutions operate, the resulting institution upon consummation of the merger transaction would hold no more than 25 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market, and the Attorney General has notified the FDIC in writing that the proposed merger transaction would not have a significantly adverse effect on competition; and

(4) Compliance with the CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(5) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), associate director (DCA), the appropriate regional director (DCA), or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(6) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff), which may be imposed without the applicant's written consent.

(c) *Additional delegations.* In addition to the delegations otherwise provided for in this section, and subject to the criteria set forth in paragraphs (b)(1), (2), (4), (5), and (6) of this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve an application for a merger transaction upon the consummation of which the resulting institution would hold not more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate, and the Attorney General has notified the FDIC in writing that the merger transaction would not have a significantly adverse effect on competition.

(d) *Corporate reorganizations; interim merger transactions.* In addition to the delegations otherwise provided for in this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve:

(1) An application for a corporate reorganization or an interim merger transaction that satisfies the criteria set forth in paragraphs (b)(5) and (6) of this section; and

(2) Any related application for deposit insurance.

(e) *Limitations.* The delegations in paragraphs (b) through (d) of this section do not apply if:

(1) The Attorney General has determined that the merger transaction would have a significantly adverse effect on competition; or

(2) The FDIC has made a determination pursuant to section 18 (c)(6) of the FDI Act (12 U.S.C. 1828(c)(6)) that an emergency exists requiring expeditious action or that the transaction must be consummated immediately in order to avoid a probable failure.

(f) *Review of competitive factors reports.* In deciding whether to approve a merger transaction under the authority delegated by this section, the delegate shall review any reports provided by the Attorney General, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Director of the Office of Thrift Supervision in response to a request by the FDIC for reports on the competitive factors involved in the proposed merger transaction.

(g) *Competitive factor reports provided by the FDIC.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to furnish requested reports to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the competitive factors involved in any merger transaction subject to approval by one of those agencies, if the delegate determines that the proposed merger transaction would not have a substantially adverse effect on competition.

§ 303.67 Authority retained by the FDIC Board of Directors.

Without limiting the authority of the Board of Directors, the Board of Directors retains authority to act on applications covered by this subpart if the criteria or other conditions for delegation are not satisfied. This includes the retention of authority to deny applications for merger transactions. It further includes retention of authority to approve applications for merger transactions where:

(a) The limitations specified in § 303.66(e) preclude action under delegated authority;

(b) The applicant does not agree in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff), which may be imposed without the applicant's written consent; or

(c) The resulting institution, upon consummation of a merger transaction other than a corporate reorganization, would have more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate.

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)), and delegations of authority regarding such filings.

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of an insured state nonmember bank resulting from a redemption of voting shares.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting shares of an insured bank.

(d) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84, before acquiring control of an insured state nonmember bank, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice.*—(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank constitutes the acquisition of the power to direct the management or policies of an insured bank requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act.

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the acquisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal meeting.

§ 303.83 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of that institution continuously since March 9, 1979, or since that institution commenced business, whichever is later; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has

controlled the bank continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B) respectively of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B));

(5) A customary one-time proxy solicitation;

(6) The receipt of voting shares of an insured state nonmember bank through a pro rata stock dividend; and

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j) (9), (10), and (12)).

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after the acquisition and provides any relevant information requested by the regional director (DOS):

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the regional director (DOS):

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

(3) Nothing in paragraph (b)(1) of this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.85(c).

§ 303.84 Filing procedures.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate regional director (DOS) and shall contain all the information required by paragraph 6 of the Change in Bank Control Act, section 7 (j) of the FDI Act, (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency form which may be obtained from any FDIC regional office.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate regional director (DOS) immediately of any material changes in a notice submitted to the regional director (DOS), including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated interagency form, together with a statement of any material changes since the date of the statement or summary. The appropriate regional director (DOS) may require additional information if appropriate.

(b) *Other laws.* Nothing in this subpart shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or other laws.

§ 303.85 Processing.

(a) *Acceptance of notice.* The 60-day notice period specified in § 303.82 shall commence on the date of receipt of a substantially complete notice. The regional director (DOS) shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted for processing. The FDIC may request additional information at any time.

(b) *Time period for FDIC action; consummation of acquisition.* (1) The notificant(s) may consummate the proposed acquisition 60 days after submission to the regional director (DOS) of a substantially complete notice under paragraph (a) of this section, unless within that period the FDIC disapproves the proposed acquisition or extends the 60-day period.

(2) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.86 Public notice requirements.

(a) *Publication—(1) Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located. The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate regional director (DOS), but in no event more than 10 calendar days before or after the filing date.

(2) *Contents of newspaper announcement.* The newspaper announcement shall conform to the public notice requirements set forth in § 303.7.

(b) *Delay of publication.* The FDIC may permit delay in the publication required by this section if the FDIC determines, for good cause, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate regional director (DOS).

(c) *Shortening or waiving notice.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period

would seriously threaten the safety or soundness of the bank to be acquired.

(d) *Consideration of public comments.* In acting upon a notice filed under this subpart, the FDIC shall consider all public comments received in writing within 20 days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (c) of this section, within such shorter period.

(e) *Publication if filing is subsequent to acquisition of control.* (1) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act and these regulations, the acquiring person(s) shall, within 10 days of being so directed by the FDIC, publish an announcement of the acquisition of control in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located.

(2) The newspaper announcement shall contain the name(s) of the acquiror(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement also shall state that any person wishing to comment on the change in control may do so by submitting written comments to the appropriate regional director (DOS) of the FDIC (give address of regional office) within 20 days following the required newspaper publication.

§ 303.87 Delegation of authority.

(a) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured state nonmember bank.

(b) The authority delegated by paragraph (a) of this section shall include the power to:

(1) Act in situations where information is submitted on acquisitions arising out of events beyond the person's control, as set forth in § 303.83(b);

(2) Extend notice periods;

(3) Determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting shares of an insured state nonmember bank; and

(4) Delay or waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in §§ 303.86(a)(3) and (4).

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

Subpart F—Change of Director or Senior Executive Officer

§ 303.100 Scope.

This subpart sets forth the circumstances under which an insured state nonmember bank must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

§ 303.101 Definitions.

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or board of trustees of an insured state nonmember bank, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;

(3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and

(4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the insured state nonmember bank.

(c) *Troubled condition* means any insured state nonmember bank that:

(1) Has a composite rating, as determined in its most recent report of examination of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating; or

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; or

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the bank or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the bank, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the bank's most recent report of condition or report of examination, or other information available to the FDIC.

§ 303.102 Filing procedures and waiver of prior notice.

(a) *Insured state nonmember banks.* An insured state nonmember bank shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The bank is not in compliance with all minimum capital requirements applicable to the bank as determined on the basis of the bank's most recent report of condition or report of examination;

(2) The bank is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831*o*(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c) *Waiver of prior notice—(1) Waiver requests.* The FDIC may permit an individual, upon petition by the bank to the appropriate regional director (DOS), to serve as a senior executive officer or

director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety or soundness of the bank;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* In the case of the election of a new director not proposed by management at a meeting of the shareholders of an insured state nonmember bank, the prior 30-day notice is automatically waived and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate regional director (DOS) within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d)(1) *Content of filing.* The notice required by paragraph (a) of this section shall be filed with the appropriate regional director (DOS) and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional office. The regional director or his or her designee may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (d)(1) of this section for a notice filed under this subpart.

§ 303.103 Processing.

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate regional director (DOS). The regional director shall notify the bank submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed within 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed by, or associated with, the bank. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.104 Delegation of authority.

The following authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director or deputy regional director to:

(a) Designate an insured state nonmember bank as being in troubled condition;

(b) Grant waivers of the prior notice requirement;

(c) Extend the 30-day processing period for an additional period of up to 60 days in the event of extenuating circumstances; and

(d) Issue notices of disapproval or notices of intent not to disapprove under this subpart.

Subpart G—Activities and Investments of Insured State Banks [Reserved]

Subpart H—Filings by Savings Associations

§ 303.140 Scope.

This subpart sets forth the notice and application procedures necessary for a savings association to engage in certain activities, or to acquire or retain certain investments, in a type or to an extent, not authorized for federal savings associations, prohibits federal and state savings associations from acquiring or retaining certain corporate debt securities, sets forth the notice procedures for a savings association to establish or acquire a subsidiary or conduct any new activity through a subsidiary, sets forth the notice requirements for a federal savings association conducting grandfathered activities, and finally sets forth the delegations of authority with respect to such activities and investments.

§ 303.141 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) As used in §§ 303.142 and 303.143, the term *activity* includes acquiring or retaining any investment other than an equity investment.

(b) *Control* means the power to vote, directly or indirectly, 25 per cent or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(c) *Corporate debt securities not of investment grade* refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)).

(d) *Equity investment* means any equity security as defined in this section; any partnership interest; any equity interest in real estate as defined in this section; and any transaction which in substance falls into any of these categories, even though it may be structured as some other form of business transaction.

(e) *Equity interest in real estate* means any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. The term *equity interest in real estate* shall not include:

(1) An interest in real property that is primarily used or intended to be used for future expansion by a savings association, its subsidiaries, or its

affiliates as offices or related facilities for the conduct of its business;

(2) An interest in real property that is acquired in satisfaction of a debt previously contracted in good faith, acquired by way of deed in lieu of foreclosure, or acquired in sales under judgments, decrees, or mortgages held by a savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by applicable law; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development.

(f) *Equity security* means any stock (other than adjustable rate preferred stock and money market (auction rate) preferred stock), certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term *equity security* does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(g) *Qualified affiliate* means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and, in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(h) The term *service corporation* means any corporation the capital stock of which is available for purchase only by savings associations.

(i) A *significant risk* is understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss.

(j) *Subsidiary* means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.146, the term does not include an *insured depository institution* as that term is defined in section 3(c)(2) of the FDI Act (12 U.S.C. 1813(c)(2)).

§ 303.142 Engaging other than as agent on behalf of customers in activities not permissible for federal savings associations.

(a) *General.* After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized for federal savings associations by the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) or any other statute, regulations issued by the Office of Thrift Supervision (OTS) (12 CFR chapter V), official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS unless the state savings association obtains the approval of the FDIC.

(b) *Filing procedures*—(1) *Where to file.* Any state savings association that wishes to obtain approval to initiate or continue such an activity, as well as any state savings association that wishes to make, or already has, nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of ''HOLA'' (12 U.S.C. 1464(c)(2)(B)) must file a letter application with the appropriate regional director (DOS).

(2) *Content of filing.* The letter application shall contain the following information:

(i) A brief description of the activity and the manner in which it is (or will be) conducted;

(ii) A copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) An estimate of the present or expected dollar volume of the activity;

(iv) Resolutions by the board of directors (or the board of trustees in a mutual association) of the savings association authorizing the conduct of such activity and the filing of this submission;

(v) A current statement of the association's assets, liabilities, and capital on both a consolidated and a non–consolidated basis, respectively;

(vi) A discussion by management of its analysis regarding the impact of the proposed activity on the association's earnings, capital adequacy, and general condition;

(vii) A statement by the savings association of whether or not it is in compliance with the fully phased–in capital standards prescribed under section 5(t) of HOLA (12 U.S.C. 1464(t)), including a calculation of the relevant capital ratio; and

(viii) A statement of the authority the savings association is relying upon for the conduct of the activity in the amount set forth in the letter application.

(3) *Additional information.* The appropriate regional director (DOS) may request that the state savings association provide such other information as the director deems appropriate.

(4) *Processing.* Approval will not be granted if it is determined by the FDIC that engaging in the activity poses a significant risk to the affected deposit insurance fund. Furthermore, no savings association will be granted approval unless it is in compliance with the fully phased–in capital standards prescribed in section 5(t) of HOLA. Consequently, no application to engage in an activity after January 1, 1990 should be filed if a state association is not in compliance with the fully phased–in capital requirements.

(5) *Assets held prior to August 9, 1989.* This section shall not be read to require the divestiture by a state savings association of any asset (including a nonresidential real estate loan) it had on its books prior to August 9, 1989 despite the fact that such asset may be held in connection with the conduct of an activity for which the state savings association must obtain the FDIC's approval under this section. A notice describing the activities and those assets is nevertheless required by this section.

§ 303.143 Engaging other than as agent on behalf of customers in activities authorized for federal savings associations but to an extent not so authorized.

(a) *Filing procedures*—(1) *Where and when to file.* Any state savings association that intends to directly engage, other than as agent on behalf of its customers, in an activity expressly authorized to all federal savings associations by statute or regulation adopted by OTS, or an official OTS Regulatory or Thrift Bulletin interpreting such statutes or regulations, in an amount in excess of that permitted for federal savings associations, must file a notice, return receipt requested, with the appropriate regional director (DOS) at least 60 days prior to the initiation of the level of the activity described in the notice.

(2) *Content of filing.* The notice must contain the same information required by § 303.142(b)(2).

(3) *Additional information.* The appropriate regional director (DOS) may request such other information as the appropriate regional director (DOS) deems appropriate.

(b) *Processing.* A state savings association that files a 60–day notice may initiate the level of activity as described in its notice 60 days after the

FDIC accepts the notice as complete, or 60 days after the FDIC accepts as complete the additional information, if any, that has been requested provided that the association is in compliance with the fully phased–in capital standards prescribed in section 5(t) of HOLA and provided that the FDIC does not, prior to that date, pose an objection to the association doing so. A state savings association may initiate the level of activity described in its notice prior to the expiration of the 60–day period if so notified. The continued conduct of the activities as described in the notice is conditioned upon the association's continued compliance with the fully phased–in capital standards and the FDIC's continued non–objection to those activities. The 60–day period may be extended upon notice to the state savings association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the 60–day period is extended, the state savings association may begin the conduct of the activities only upon receipt of written notification to that effect. No state savings association will be permitted to initiate activities subject to this paragraph if it is determined that to do so would pose a significant risk to the affected deposit insurance fund.

§ 303.144 Equity investments

(a) *General.* No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized for federal savings associations by HOLA, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS.

(b) *Service corporations*—(1) *General.* Paragraph (a) of this section notwithstanding, a state savings association may acquire or retain an equity investment in a service corporation, provided that the service corporation's activities are limited solely to those expressly authorized by HOLA or any other statute, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS, for all service corporations owned by federal savings associations and provided that the investment in such service corporation does not exceed that permissible for a federal savings association pursuant to statute or regulation of OTS.

(2) *Filing procedure*—(i) *Where and when to file.* If either of the two conditions specified in paragraph (b)(1) of this section does not exist, the state association must file a letter application under paragraph (b)(2)(ii) of this section with the appropriate regional director (DOS) requesting permission to acquire or retain the equity investment in the service corporation in question.

(ii) *Content and filing of application.* The letter application required hereby shall contain the information required by § 303.142(b)(2), as it relates both to the service corporation and to its parent state savings association. In addition, the application shall contain: A listing of the officers (contemplated officers) of the service corporation, a listing of any other shareholders of the service corporation (existing or prospective) and their respective holdings, and a listing of the locations (expected locations) of all of the offices of the service corporation.

(iii) *Additional information.* The appropriate regional director (DOS) may request such other information as the appropriate regional director (DOS) deems appropriate.

(3) *Processing.* Approval of the acquisition or retention of an equity investment in a service corporation in which a federal association could not invest will not be granted if the state association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a service corporation should be filed if a state association is not in compliance with these capital requirements. In addition, approval of the retention or acquisition of such investments will not be granted if the acquisition or retention is determined to pose a significant risk to the affected deposit insurance fund. If an application to retain an investment is denied, the state association must file a divestiture plan with the appropriate regional director (DOS) requesting the FDIC's permission to accomplish divestiture in accordance with said plan.

§ 303.145 Corporate debt securities not of investment grade.

Notwithstanding anything to the contrary in this subpart, no state or federal savings association may, directly or through a subsidiary (other than a subsidiary that is a qualified affiliate), acquire or retain after August 9, 1989 any corporate debt security that is not of investment grade.

§ 303.146 Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary.

(a) *General.* No insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, without providing the appropriate regional director (DOS) prior notice of the association's intent to do so.

(b) *Filing procedure*—(1) *Where and when to file.* Notice must be sent return receipt requested and be received by the appropriate regional director (DOS) at least 30 days prior to the establishment or acquisition of the subsidiary or the commencement of the new activity.

(2) *Content of filing.* The notice shall contain the same information required to be in a letter application filed pursuant to § 303.142(b)(2) plus the following:

(i) A description of how the activities of the subsidiary will be funded;

(ii) The amount of the insured savings association's investment in the subsidiary and the form of the investment;

(iii) The percentage ownership the insured savings association will have in the subsidiary;

(iv) A listing of the other owners of the subsidiary if any; and

(v) In the case of the acquisition of an existing concern, the terms and conditions of the acquisition including an appraisal, assessment of value, or other substantiation of the purchase price and operating statements for the previous three years (if applicable). If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction of this provision.

(3) *Additional information.* In any case, the appropriate regional director (DOS) may request such additional information as the appropriate regional director (DOS) deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(c) *Exception to filing requirement.* Any Federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (a) of this section.

(d) *Notice regarding certain subsidiaries holding certain real property*—(1) *Where and when to file.* Paragraph (a) of this section notwithstanding, an insured savings association may establish or acquire one or more subsidiaries whose sole purpose is to hold interests in real property acquired by the savings association that fit the description in § 303.141(e)(2)

provided that the savings association files a written notice, return receipt requested, with the appropriate regional director (DOS) indicating that the association intends to establish or acquire one or more subsidiaries that will be engaged solely in the disposition of such property. Notice must be received by the appropriate regional director (DOS) at least 30 days prior to the establishment or acquisition of any such subsidiary.

(2) *Where and when to file, and content of filing regarding additional subsidiaries.* An association that has filed a notice pursuant to this paragraph (d) may thereafter establish or acquire additional such subsidiaries provided that each time within 14 days after doing so the association notifies the appropriate regional director (DOS) in writing. The notice shall identify the savings association, give the date of the initial notice, identify the new subsidiary, and state the value of the property at the time it was transferred to the subsidiary.

§ 303.147 Notice by federal savings associations conducting grandfathered activities.

Any federal savings association authorized by section 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the appropriate regional director (DOS) within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice shall briefly describe the activity or investment.

§ 303.148 Delegation of authority.

Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director (DOS), to act on applications and notices filed pursuant to this subpart, and to make any and all determinations called for in regard to the same.

Subpart I—Mutual-to-Stock Conversions

§ 303.160 Scope.

This subpart sets forth the notice requirements, procedures, and delegations of authority for the conversion of an insured mutual state-chartered savings bank to the stock form of ownership. The substantive requirements governing such conversions are contained in § 333.4 of this chapter.

§ 303.161 Filing procedures.

(a) *Prior notice required.* In addition to complying with the substantive requirements in § 333.4 of this chapter, an insured state-chartered mutually owned savings bank that proposes to convert from mutual to stock form shall file with the FDIC a notice of intent to convert to stock form.

(b) *General.* (1) A notice required under this subpart shall be filed in letter form with the appropriate regional director (DOS) at the same time as required conversion application materials are filed with the institution's state regulator.

(2) An insured mutual savings bank chartered by a state that does not require the filing of a conversion application shall file a notice in letter form with the appropriate regional director (DOS) as soon as practicable after adoption of its plan of conversion.

(c) *Content of notice.* The notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. At a minimum, the notice shall include, as applicable, copies of:

(1) The plan of conversion, with specific information concerning the record date used for determining eligible depositors and the subscription offering priority established in connection with any proposed stock offering;

(2) Certified board resolutions relating to the conversion;

(3) A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a three-year period following the conversion, and a justification for any proposed stock repurchases;

(4) The charter and bylaws of the converted institution;

(5) The bylaws and operating plans of any other entities formed in connection with the conversion transaction, such as a holding company or charitable foundation;

(6) A full appraisal report, prepared by an independent appraiser, of the value of the converting institution and the pricing of the stock to be sold in the conversion transaction;

(7) Detailed descriptions of any proposed management or employee stock benefit plans or employment agreements and a discussion of the rationale for the level of benefits proposed, individually and by participant group;

(8) Indemnification agreements;

(9) A preliminary proxy statement and sample proxy;

(10) Offering circular(s) and order form;

(11) All contracts or agreements relating to solicitation, underwriting, market-making, or listing of conversion stock and any agreements among members of a group regarding the purchase of unsubscribed shares;

(12) A tax opinion concerning the federal income tax consequences of the proposed conversion;

(13) Consents from experts to use their opinions as part of the notice; and

(14) An estimate of conversion-related expenses.

(d) *Additional information.* The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion. The institution proposing to convert from mutual to stock form shall promptly provide such information to the FDIC.

(e) *Acceptance of notice.* The 60-day notice period specified in § 303.163 shall commence on the date of receipt of a substantially complete notice. The appropriate regional director (DOS) shall notify the institution proposing to convert in writing of the date the notice is accepted.

(f) *Related applications.* Related applications that require FDIC action may include:

(1) Applications for deposit insurance, as required by subpart B of this part; and

(2) Applications for consent to merge, as required by subpart D of this part.

§ 303.162 Waiver from compliance.

(a) *General.* An institution proposing to convert from mutual to stock form may file with the appropriate regional director (DOS) a letter requesting waiver of compliance with this subpart or § 333.4 of this chapter:

(1) When compliance with any provision of this section or § 333.4 of this chapter would be inconsistent or in conflict with applicable state law; or

(2) For any other good cause shown.

(b) *Content of filing.* In making a request for waiver under paragraph (a) of this section, the institution shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the institution, entail a breach of fiduciary duty on part of the institution's management or otherwise be detrimental or inequitable to the institution, its depositors, any other insured depository institution(s),

the federal deposit insurance funds, or to the public interest.

§ 303.163 Processing.

(a) *General considerations.* The FDIC shall review the notice and other materials submitted by the institution proposing to convert from mutual to stock form, specifically considering the following factors:

(1) The proposed use of the proceeds from the sale of stock, as set forth in the business plan;

(2) The adequacy of the disclosure materials;

(3) The participation of depositors in approving the transaction;

(4) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(5) Any proposed increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be granted to officers and directors/trustees of the bank in connection with the conversion;

(6) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(7) The process by which the bank's trustees approved the appraisal, the pricing of the stock, and the proposed compensation arrangements for insiders;

(8) The nature and apportionment of stock subscription rights; and

(9) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(b) *Additional considerations.* (1) In reviewing the notice and other materials submitted under this subpart, the FDIC will take into account the extent to which the proposed conversion transaction conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (OTS) (12 CFR part 563b), as currently in effect at the time the notice is submitted. Any non-conformity with those provisions will be closely reviewed.

(2) Conformity with the OTS requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion transaction would pose a risk to the bank's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty.

(c) *Notice period.* (1) The period in which the FDIC may object to the proposed conversion transaction shall be the later of:

(i) 60 days after receipt of a substantially complete notice of proposed conversion; or

(ii) 20 days after the last applicable state or other federal regulator has approved the proposed conversion.

(2) The FDIC may, in its discretion, extend the initial 60-day period for up to an additional 60 days by providing written notice to the institution.

(d) *Letter of non-objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction would not pose a risk to the institution's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty, then the FDIC shall issue to the institution proposing to convert a letter of non-objection to the proposed conversion.

(e) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction poses a risk to the institution's safety or soundness, violates any law or regulation, or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution not to consummate the proposed conversion until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking regulator and state or federal securities regulator involved in the conversion.

(f) *Consummation of the conversion.* (1) An institution may consummate the proposed conversion upon either:

(i) The receipt of a letter of non-objection; or

(ii) The expiration of the notice period.

(2) If a letter of objection is issued, then the institution shall not consummate the proposed conversion until the FDIC rescinds such letter.

§ 303.164 Delegation of authority.

(a) Authority is delegated to the Director and Deputy Director (DOS) to issue a letter of non-objection to an institution proposing to convert when the proposed conversion transaction is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and not to raise any unique legal or policy issues. Such authority will be exercised in accordance with the time periods contained in § 303.163, unless the institution proposing to convert agrees to a longer time period.

(b) Authority to approve or deny a waiver under § 303.162 is retained by the Board of Directors.

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to accept notices of intent to convert to stock form and to extend the initial 60-day period within which FDIC may object by an additional 60 days.

Subpart J—International Banking

§ 303.180 Scope.

This subpart sets forth procedures for complying with application requirements relating to the foreign activities of insured state nonmember banks, U.S. activities of insured branches of foreign banks, and certain foreign mergers of insured depository institutions. Related delegations of authority are also set forth in the subpart.

§ 303.181 Definitions.

For the purposes of this subpart, the following additional definitions apply:

(a) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(b) *Comptroller* means the Office of the Comptroller of the Currency.

(c) *Eligible insured branch.* An insured branch will be treated as an eligible depository institution within the meaning of § 303.2(r) if the insured branch:

(1) Received an FDIC-assigned composite ROCA rating of 1 or 2 as a result of its most recent federal or state examination, and the FDIC, Comptroller, or Board of Governors have not expressed concern about the condition or operations of the foreign banking organization or the support it offers the branch;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in subpart B of part 325 of this chapter; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory authority.

(d) *Federal branch* means a federal branch of a foreign bank as defined by § 347.202 of this chapter.

(e) *Foreign bank* means a foreign bank as defined by § 347.202 of this chapter.

(f) *Foreign branch* means a foreign branch of an insured state nonmember

bank as defined by § 347.102 of this chapter.

(g) *Foreign organization* means a foreign organization as defined by § 347.102 of this chapter.

(h) *Insured branch* means an insured branch of a foreign bank as defined by § 347.202 of this chapter.

(i) *Noninsured branch* means a noninsured branch of a foreign bank as defined by § 347.202 of this chapter.

(j) *State branch* means a state branch of a foreign bank as defined by § 347.202 of this chapter.

§ 303.182 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.103(b) of this chapter shall be provided to the appropriate regional director (DOS) no later than 30 days after taking such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other branch establishments.* (1) *Where to file.* An applicant seeking to establish a foreign branch other than under § 347.103(b) of this chapter shall submit an application to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The exact location of the proposed foreign branch, including the street address, and a statement whether the foreign branch will be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.103(a) of this chapter, the applicant's reasons why they should be approved.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.103(c) of this chapter by an eligible depository institution as defined in § 303.2(r) seeking to establish a foreign branch by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) *Closing.* Notices of branch closing under § 347.103(f) of this chapter, in the form of a letter including the name, location, and date of closing of the closed branch, shall be filed with the appropriate regional director (DOS) no later than 30 days after the branch is closed.

(e) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, if confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under paragraph (c) of this section if the following criteria are satisfied:

(1) The requirements of section 402 the NHPA Amendments Act have been favorably resolved;

(2) The applicant will only conduct activities authorized by § 347.103(a) of this chapter; and

(3) If the foreign branch will be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

§ 303.183 Investment by insured state nonmember banks in foreign organizations; § 347.108.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution making direct or indirect investments in a foreign organization pursuant to § 347.108(a) of this chapter shall be provided to the appropriate regional director (DOS) no later than 30 days after taking such action. The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other investments.* (1) *Where to file.* An applicant seeking to make a foreign investment other than under § 347.108(a) of this chapter shall submit an application to the appropriate regional director (DOS).

(2) *Content of filing.* A complete application shall include the following information:

(i) Basic information about the terms of the proposed transaction, the amount of the investment in the foreign organization and the proportion of its ownership to be acquired;

(ii) Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization;

(iii) A listing of all shareholders known to hold ten percent or more of any class of the foreign organization's stock or other evidence of ownership, and the amount held by each;

(iv) A brief description of the applicant's business plan with respect to the foreign organization;

(v) A brief description of any business or activities which the foreign organization will conduct directly or indirectly in the United States, and to the extent such activities are not authorized by subpart A of part 347 of this chapter, the applicant's reasons why they should be approved;

(vi) A brief description of the foreign organization's activities, and to the extent such activities are not authorized by subpart A of part 347 of this chapter, the applicant's reasons why they should be approved; and

(vii) If the applicant seeks approval to engage in underwriting or dealing activities, a description of the applicant's plans and procedures to address all relevant risks.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing.*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.108(b) of this chapter by an eligible depository institution as defined in § 303.2(r) seeking to make direct or indirect investments in a foreign organization by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) *Divestiture.* If an insured state nonmember bank holding 50 percent or more of the voting equity interests of a foreign organization or otherwise controlling the foreign organization divests itself of such ownership or control, the insured state nonmember bank shall file a notice in the form of a letter, including the name, location, and date of divestiture of the foreign organization, with the appropriate regional director (DOS) no later than 30 days after the divestiture.

(e) *Delegations of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, if confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve applications under paragraph (c) of this section so long as:

(1) The investment complies with the amount limits in § 347.104 through § 347.107 of this chapter and is in a foreign organization which only conducts such activities as authorized thereunder; and

(2) For foreign investments resulting in the applicant holding 20 percent or more of the voting equity interests of the foreign organization or controlling such organization, if the organization is located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

§ 303.184 Moving an insured branch of a foreign bank.

(a) *Filing procedures.*—(1) *Where and when to file.* An application by an insured branch of a foreign bank seeking the FDIC's consent to move from one location to another, as required by section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)), shall be submitted in writing to the appropriate regional director (DOS) on the date the notice required by paragraph (c) of this section is published, or within 5 days after the date of the last required publication.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The exact location of the proposed site, including the street address;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A statement of the impact of the proposal on the human environment, including information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA, and the FDIC ''Statement Policy on NEPA'' (2 FDIC Law, Regulations, Related Acts 5185; see § 309.4 (a) and (b) of this chapter for availability);

(iv) A statement as to whether or not the site is eligible for inclusion in the National Register of Historic Places for purposes of complying with the applicable provisions of the NHPA, and the FDIC ''Statement on NHPA'' (2 FDIC Law, Regulations, Related Acts 5175; see § 309.4 (a) and (b) of this chapter for availability), including documentation of consultation with the State Historic Preservation Officer, as appropriate;

(v) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA; and

(vi) A copy of the newspaper publication required by paragraph (c) of this section, as well as the name and address of the newspaper and the date of the publication.

(3) *Comptroller's application.* If the applicant is filing an application with the Comptroller which contains the information required by paragraph (a)(2) of this section, the applicant may submit a copy to the FDIC in lieu of a separate application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.*—(1) *Expedited processing for eligible insured branches.* An application filed by an eligible insured branch as defined in § 303.181(c) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

(2) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(c) *Publication requirement and comment period.*—(1) *Newspaper publications.* The applicant shall publish a notice of its proposal to move from one location to another, as described in § 303.7(b), in a newspaper of general circulation in the community in which the insured branch is located prior to its being moved and in the community to which it is to be moved. The notice shall include the insured branch's current and proposed addresses.

(2) *Public comments.* All public comments must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (c)(1) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(3) *Lobby notices.* If the insured branch has a public lobby, a copy of the newspaper publication shall be posted in the public lobby for at least 15 days beginning on the date of the publication required by paragraph (c)(1) of this section.

(d) *Delegation of authority.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to

an associate director and the appropriate regional director and deputy regional director to approve an application under this section. For the delegate to exercise this authority, the criteria in paragraphs (d)(1)(i) through (d)(1)(vi) of this section must be satisfied:

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The applicant is at least adequately capitalized as defined in subpart B of part 325 of this chapter;

(iii) Any financial arrangements which have been made in connection with the proposed relocation and which involve the applicant's directors, officers, major shareholders, or their interests are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(v) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(vi) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve applications under this section which meet all criteria in paragraph (d)(1) of this section except that the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

(3) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to deny applications under this section.

§ 303.185 Merger transactions involving foreign banks or foreign organizations.

(a) *Merger transactions involving an insured branch of a foreign bank.* Merger transactions requiring the FDIC's prior approval as set forth in § 303.62 include any merger transaction in which the resulting institution is an insured branch of a foreign bank which is not a federal branch, or any merger transaction which involves any insured branch and any uninsured institution. In such cases:

(1) References to an eligible depository institution in subpart D of this part include an eligible insured branch as defined in § 303.181;

(2) The definition of a corporate reorganization in § 303.61(b) includes a merger transaction between an insured branch and other branches, agencies, or subsidiaries in the United States of the same foreign bank; and

(3) For the purposes of § 303.62(b)(1) on interstate mergers, a merger transaction involving an insured branch is one involving the acquisition of a branch of an insured bank without the acquisition of the bank for purposes of section 44 of the FDI Act (12 U.S.C. 1831u) only when the merger transaction involves fewer than all the insured branches of the same foreign bank in the same state.

(b) *Certain merger transactions with foreign organizations outside any State.* Merger transactions requiring the FDIC's prior approval as set forth in § 303.62 include any merger transaction in which an insured depository institution becomes directly liable for obligations which will, after the merger transaction, be treated as deposits under section 3(l)(5)(A)(i)–(ii) of the FDI Act (12 U.S.C. 1813(l)(5)(A)(i)–(ii)), as a result of a merger or consolidation with a foreign organization or an assumption of liabilities of a foreign organization.

§ 303.186 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206.

(a) *Filing procedures.*—(1) *Where to file.* An application by a state branch for consent to operate as a noninsured state branch, as permitted by § 347.206(b) of this chapter, shall be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The kinds of deposit activities in which the state branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How the activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application.

(2) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

(a) *Filing procedures.*—(1) *Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 347.213(a) of this chapter, shall be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with §§ 347.210 and 347.211 of this chapter, Pledge of assets and Asset maintenance, respectively;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Bank Insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Divestiture or cessation.*—(1) *Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by § 347.213(e) of this chapter, shall be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (b) of this section.

Subpart K—Prompt Corrective Action

§ 303.200 Scope.

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter, § 325.103(b) for state nonmember banks and § 325.103(c) for insured branches of foreign banks.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B of part 325 of this chapter apply primarily to insured state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

§ 303.201 Filing procedures.

Applications shall be filed with the appropriate regional director (DOS). The application shall contain the information specified in each respective section of this subpart, and shall be in letter form as prescribed in § 303.3. Additional information may be requested by the FDIC. Such letter shall be signed by the president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application.

§ 303.202 Processing.

The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

§ 303.203 Applications for capital distributions.

(a) *Scope.* An insured state nonmember bank and any insured branch of a foreign bank shall submit an application for capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under section 18(i) of the FDI Act (12 U.S.C. 1828(i)) as implemented by § 303.241 regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

§ 303.204 Applications for acquisitions, branching, and new lines of business.

(a) *Scope.* (1) Any insured state nonmember bank and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured state nonmember bank or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured state nonmember bank or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

(b) *Content of filing.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications also shall state the date the institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

§ 303.206 Application for payment of principal or interest on subordinated debt.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to pay principal or interest on subordinated debt.

(b) *Content of filing.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the FDI Act (action other than receivership or conservatorship). The application also shall explain how such payments would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831*o*). Existing approvals pursuant to requests filed under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (capital stock reductions or retirements) shall not be deemed to be the permission needed pursuant to section 38.

§ 303.207 Restricted activities for critically undercapitalized institutions.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to engage in certain restricted activities.

(b) *Content of filing.* Applications to engage in any of the following activities, as set forth in sections 38(i)(2) (A) through (G) of the FDI Act, shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831*o*):

(1) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate federal banking agency. Materiality will be determined on a case-by-case basis;

(2) Extend credit for any highly leveraged transaction (as defined in part 325 of this chapter);

(3) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(4) Make any material change in accounting methods;

(5) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b));

(6) Pay excessive compensation or bonuses. Part 364 of this chapter provides guidance for determining excessive compensation; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Section 337.6 of this chapter (Brokered deposits) provides guidance for defining the relevant terms of this provision; however this provision does not supersede the general prohibitions contained in § 337.6 of this chapter.

§ 303.208 Delegation of authority.

Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny the following applications, requests or petitions submitted pursuant to this subpart:

(a) Applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) (prompt corrective action), including applications to make a capital distribution;

(b) Applications for acquisitions, branching, and new lines of business (except that the delegation is limited to the authority as delegated to approve or deny any concurrent application filed pursuant to section 18 (c) or (d) of the FDI Act (12 U.S.C. 1828 (c) or (d));

(c) Applications to pay a bonus or increase compensation;

(d) Applications for an exception to pay principal or interest on subordinated debt; and

(e) Applications by critically undercapitalized insured depository institutions to engage in any restricted activity listed in this subpart.

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

§ 303.220 Scope.

This subpart covers applications under section 19 of the FDI Act (12 U.S.C. 1829). Pursuant to section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party of an insured depository institution; own or control, directly or indirectly, any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution without the prior written consent of the FDIC.

§ 303.221 Filing procedures.

(a) *Regional office.* An application under section 19 shall be filed with the appropriate regional director (DOS).

(b) *Contents of filing.* Application forms may be obtained from any FDIC regional office. The FDIC may require additional information beyond that sought in the form, as warranted, in individual cases.

§ 303.222 Service at another insured depository institution.

In the case of a person who has already been approved by the FDIC under this subpart or section 19 of the FDI Act in connection with a particular insured depository institution, such person may not become an institution affiliated party, or own or control directly or indirectly another insured depository institution, or participate in the conduct of the affairs of another insured depository institution, without the prior written consent of the FDIC.

§ 303.223 Applicant's right to hearing following denial.

An applicant may request a hearing following a denial of an application in accordance with the provisions of part 308 of this chapter.

§ 303.224 Delegation of authority.

(a) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director or to the appropriate regional director and deputy regional director, to approve applications made by insured depository institutions pursuant to section 19 of the FDI Act, after consultation with the Legal Division; provided however, that authority may not be delegated to the regional director or deputy regional director where the applicant's primary supervisory authority interposes any objection to such application.

(b) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the FDI Act.

(c) *Concurrent legal certification.* The authority to deny applications delegated under this section shall be exercised only upon the concurrent certification by the General Counsel and, where confirmed in writing by the General Counsel, his or her designee, that the action taken is not inconsistent with section 19 of the FDI Act.

(d) *Conditions on application approvals.* Regional directors and deputy regional directors acting under delegated authority under this subpart may impose any of the following conditions on the approval of applications, as appropriate in individual cases:

(1) A participant or institution-affiliated party of an institution shall be

bonded to the same extent as others in similar positions; and/or

(2) When deemed necessary, the prior consent of the appropriate regional director (DOS) shall be required for any proposed significant changes in duties and/or responsibilities of the person who is the subject of the application.

(e) *Authority not delegated by FDIC Board of Directors.* The FDIC Board of Directors has not delegated its authority to consider and act upon an application under section 19 of the FDI Act after a hearing held in accordance with the provisions of part 308 of this chapter.

Subpart M—Other Filings

§ 303.240 General.

This subpart sets forth the filing procedures to be followed when seeking the FDIC's consent to engage in certain activities or accomplish other matters as specified in the individual sections contained herein. For those matters covered by this subpart that also have substantive FDIC regulations or related statements of policy, references to the relevant regulations or statements of policy are contained in the specific sections.

303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The type and amount of the proposed change to the capital structure and the reason for the change;

(2) A schedule detailing the present and proposed capital structure;

(3) The time period that the proposal will encompass;

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time which shall not exceed twelve months, the application shall certify that the insured depository institution will maintain itself as a well-capitalized institution as defined in part 325 of this chapter, both before and after each of the proposed transactions;

(5) If the proposal involves the repurchase of capital instruments, the amount of the repurchase price and the basis for establishing the fair market value of the repurchase price;

(6) A statement that the proposal will be available to all holders of a particular class of outstanding capital instruments on an equal basis, and if not, the details of any restrictions; and

(7) The date that the applicant's board of directors approved the proposal.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) are set forth in subpart K of this part (Prompt Corrective Action), § 303.203. Applications pursuant to sections 38 and 18(i) may be filed concurrently, or as a single application.

(f) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved 20 days after the FDIC's receipt of a substantially complete application.

(g) *Standard processing.* For those applications that are not processed pursuant to expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny an application pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)) to reduce the amount or retire any part of common or preferred capital stock, or to retire any part of capital notes or debentures.

§ 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a state nonmember bank to seek the FDIC's prior consent to exercise trust powers. The FDIC's prior consent to exercise trust powers is not required in the following circumstances:

(1) Where a state nonmember bank received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where an insured depository institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Filing procedures.* Applicants shall submit to the appropriate regional director (DOS) a completed form, ''Application for Consent To Exercise Trust Powers.'' This form may be obtained from any FDIC regional office.

(c) *Content of filing.* The filing shall consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(g) *Delegation of authority.* (1) Where the criteria listed in paragraph (g)(2) of this section are satisfied and the applicant agrees in writing to comply with any conditions imposed by the approving FDIC official, other than the standard conditions defined in § 303.2(ff), which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for the FDIC's consent to exercise trust powers.

(2) The following criteria must be satisfied before the authority delegated in paragraph (g)(1) of this section may be exercised:

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The proposed management of the trust business is determined to be capable of satisfactorily handling the anticipated business; and

(iii) The applicant's board of directors formally has adopted the FDIC Statement of Principles of Trust Department Management available from any FDIC regional office.

(h) *Denials and certain conditional approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to:

(1) Deny applications for trust powers; and

(2) Approve applications for trust powers where the criteria listed in paragraph (g)(2) of this section are satisfied but the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

§ 303.243 Brokered deposit waivers.

(a) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and part 337 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well-capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The time period for which the waiver is requested;

(2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(3) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(5) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in this § 303.243(e) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in § 303.2(r) except that the applicant may be adequately capitalized rather than well-capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Conditions for approval.* A waiver issued pursuant to this section shall:

(1) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and

(2) May be revoked by the FDIC at any time by written notice to the institution.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny brokered deposit waiver applications. Based upon a preliminary review, any delegate may grant a temporary waiver for a short period in order to facilitate the orderly processing of a filing for a waiver.

§ 303.244 Golden parachute and severance plan payments.

(a) *Scope.* Pursuant to section 18(k) of the FDI Act (12 U.S.C. 1828(k)) and part 359 of this chapter, an insured depository institution or depository institution holding company may not make golden parachute payments or excess nondiscriminatory severance plan payments unless the depository institution or holding company obtains permission to make such payments in accordance with the rules contained in part 359 of this chapter. This section contains the procedures to file for the FDIC's consent when such consent is necessary under part 359 of this chapter.

(1) *Golden parachute payments.* A troubled insured depository institution or a troubled depository institution holding company is prohibited from making golden parachute payments (as defined in § 359.1(f)(1) of this chapter) unless it obtains the consent of the appropriate federal banking agency and the written concurrence of the FDIC. Therefore, in the case of golden parachute payments, the procedures in this section apply to all troubled insured depository institutions and troubled depository institution holding companies.

(2) *Excess nondiscriminatory severance plan payments.* In the case of excess nondiscriminatory severance plan payments as provided by § 359.1(f)(2)(v) of this chapter, the FDIC's consent is necessary for state nonmember banks that meet the criteria set forth in § 359.1(f)(1)(ii) of this chapter. In addition, the FDIC's consent is required for all insured depository institutions or depository institution holding companies that meet the same criteria and seek to make payments in excess of the 12-month amount specified in § 359.1(f)(2)(v) of this chapter.

(b) *Filing procedures.* Applicants shall submit a letter application to the

appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The reasons why the applicant seeks to make the payment;

(2) An identification of the institution–affiliated party who will receive the payment;

(3) A copy of any contract or agreement regarding the subject matter of the filing;

(4) The cost of the proposed payment and its impact on the institution's capital and earnings; and

(5) The reasons why consent to the payment should be granted.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or to deny filings to make:

(1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and

(2) Golden parachute payments permitted by 12 CFR 359.4.

§ 303.245 Waiver of liability for commonly controlled depository institutions.

(a) *Scope.* Section 5(e) of the FDI Act (12 U.S.C. 1815(e)) creates liability for commonly controlled insured depository institutions for losses incurred or anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution or any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the best interests of the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF). This section describes procedures to request a conditional waiver of liability pursuant to section 5 of the FDI Act (12 U.S.C. 1815(e)(5)(A)).

(b) *Definition. Conditional waiver of liability* means an exemption from liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)) subject to terms and conditions.

(c) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(d) *Content of filing.* The application shall contain the following information:

(1) The basis for requesting a waiver;

(2) The existence of any significant events (e.g., change in control, capital injection, etc.) that may have an impact upon the applicant and/or any potentially liable institution;

(3) Current, and if applicable, pro forma financial information regarding the applicant and potentially liable institution(s); and

(4) The benefits to the appropriate FDIC insurance fund resulting from the waiver and any related events.

(e) *Additional information.* The FDIC may request additional information at any time during the processing of the filing.

(f) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Failure to comply with terms of conditional waiver.* In the event a conditional waiver of liability is issued, failure to comply with the terms specified therein may result in the termination of the conditional waiver of liability. The FDIC reserves the right to revoke the conditional waiver of liability after giving the applicant written notice of such revocation and a reasonable opportunity to be heard on the matter pursuant to § 303.10.

(h) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application for waiver of liability of commonly controlled depository institutions.

§ 303.246 Insurance fund conversions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the FDIC's prior approval to engage in an insurance fund conversion that involves the transfer of deposits between the SAIF and the BIF. Optional conversion transactions, commonly referred to as Oakar transactions, pursuant to section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)), which do not involve the transfer of deposits between the SAIF and the BIF, are governed by the procedures set forth in subpart D (Merger Transactions) of this part.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate FDIC regional director (DOS). The filing shall be signed by representatives of each institution participating in the transaction. Insurance fund conversions which are proposed in conjunction with a merger application filed by a state nonmember bank pursuant to section 18(c) of the FDI Act (12 U.S.C. 1828(c)) should be included with that filing.

(c) *Content of filing.* The application shall include the following information:

(1) A description of the transaction;

(2) The amount of deposits involved in the conversion transaction;

(3) A pro forma balance sheet and income statement for each institution upon consummation of the transaction; and

(4) Certification by each party to the transaction that applicable entrance and exit fees will be paid pursuant to part 312 of this chapter.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny filings for insurance fund conversions involving the transfers of deposits between the SAIF and the BIF.

§ 303.247 Conversion with diminution of capital.

(a) *Scope.* This section contains the procedures to be followed by an insured federal depository institution seeking the prior written consent of the FDIC pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to an insured state nonmember bank (except a District bank) where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholders' meeting approving such conversion.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following information:

(1) A description of the proposed transaction;

(2) A schedule detailing the present and proposed capital structure; and

(3) A copy of any documents submitted to the state chartering authority with respect to the charter conversion.

(d) *Additional information.* The FDIC may request additional information at any time during the processing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(f) *Delegation of authority.*—(1) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications to convert with diminution of capital.

(2) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny applications to convert with diminution of capital.

§ 303.248 Continue or resume status as an insured institution following termination under section 8 of the FDI Act.

(a) *Scope.* This section relates to an application by a depository institution whose insured status has been terminated under section 8 of the FDI Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution. This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance, but does not cover operating non-insured depository institutions which were previously insured by the FDIC, or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The filing shall contain the following information:

(1) A complete statement of the action requested, all relevant facts, and the reason for such requested action; and

(2) A certified copy of the resolution of the depository institution's board of directors authorizing submission of the filing.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application to continue or resume status as an insured institution following termination under section 8 of the FDI Act (12 U.S.C. 1818).

§ 303.249 Truth in Lending Act—relief from reimbursement.

(a) *Scope.* This section applies to requests for relief from reimbursement pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226). Related delegations of authority are also set forth.

(b) *Procedures to be followed in filing initial requests for relief.* Requests for relief from reimbursement shall be filed with the appropriate regional director (DCA) within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The filing shall contain a complete and concise statement of the action requested, all relevant facts, the reasons and analysis relied upon as the basis for such requested action, and all supporting documentation.

(c) *Additional information.* The FDIC may request additional information at any time during processing of any such requests.

(d) *Processing.* The FDIC will acknowledge receipt of the request and provide the applicant with written notification of its determination within 60 days of its receipt of the request.

(e) *Delegation of authority.*—(1) *Denial of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny initial requests for relief from the requirement for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); provided, however, that a regional director or deputy regional director is not authorized to deny any request where the estimated amount of reimbursement is greater than $25,000.

(2) *Approval of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the director, to an associate director, to approve requests for relief from the requirement for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(a)(2)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(g) *Procedures to be followed in filing requests for reconsideration.* Within 15 days of receipt of written notice that its request for relief has been denied, the requestor may petition the appropriate regional director (DCA) for reconsideration of such request in accordance with the procedures set forth in § 303.11(f).

§ 303.250 Management official interlocks.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)) and part 348 of this chapter.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) A description of the proposed interlock;

(2) A statement of reason as to why the interlock will not result in a monopoly or a substantial lessening of competition; and

(3) If the applicant is seeking an exemption set forth in § 348.5 or § 348.6 of this chapter, a description of the particular exemption which is being requested and a statement of reasons as to why the exemption is applicable.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director and the appropriate regional director, deputy regional director, to approve or deny a request to establish a management official interlock pursuant to § 348.5 or § 348.6 of this chapter or section 205(8) of the Depository Institutions Management Interlocks Act (12 U.S.C. 3207, 12 U.S.C. 1823(k)).

§ 303.251 Modification of conditions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC to modify the requirement of a prior approval of a filing issued by the FDIC.

(b) *Filing procedures.* Applicants should submit a letter application to the

appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

(1) A description of the original approved application;

(2) A description of the modification requested; and

(3) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests to modify the requirements of a prior approval of a filing issued by the FDIC subject to the following criteria;

(1) The Legal Division is consulted to the same extent as was required for approval of the original filing; and

(2) The approving delegate had the authority to approve the original filing.

§ 303.252 Extension of time.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC for additional time to fulfill a condition required in an approval of a filing issued by the FDIC or to consummate a transaction which was the subject of an approval by the FDIC.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following information:

(1) A description of the original approved application;

(2) Identification of the original time limitation;

(3) The additional time period requested; and

(4) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* (1) Except as provided in paragraph (f)(2) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests for extensions of time within which to perform acts or fulfill conditions required by a prior FDIC action on a filing of the insured depository institution.

(2) *Limits on exercise of delegated authority.* (i) An extension of time may not exceed one year; however, more than one extension may be granted regarding a particular filing.

(ii) Notwithstanding the delegations in paragraph (f)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate has the authority under this part to deny the original filing upon which the extension of time is predicated.

Subpart N—Enforcement Delegations

§ 303.260 Scope.

This subpart contains delegations of authority relating to the initiation, prosecution, and settlement of administrative enforcement actions under the FDI Act and other laws and regulations enforced by the FDIC, including investigations and subpoenas.

§ 303.261 Issuance of notification to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *Book capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director and to the appropriate regional director and deputy regional director, to issue notifications to primary regulator when the respondent depository institution's book capital is less than 2 percent of total assets; provided that authority may not be delegated to the regional director or deputy regional director whenever the respondent depository institution has issued any mandatory convertible debt or any form of Tier 2 capital (such as limited life preferred stock, subordinated notes and debentures).

(b) *Tier 1 capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to issue notifications to primary regulator when the respondent depository institution's adjusted Tier 1 capital is less than 2 percent of adjusted part 325 total assets as defined in § 303.2(b).

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues notifications to primary regulator, by the appropriate regional counsel, that the allegations contained in the findings of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for the issuance of a notification to primary regulator pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

§ 303.262 Issuance of notice of intention to terminate insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of intent to terminate insured status when the respondent depository institution has failed to correct any violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition as specified in the relevant notification to primary regulator.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the findings in the notice of intention to terminate insured status of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for termination of the insured status of the respondent depository institution pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

§ 303.263 Cease-and-desist actions under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director and to the appropriate regional director and deputy regional director to issue:

(1) Notices of charges; and

(2) Cease-and-desist orders (with or without a prior notice of charges) where the respondent depository institution or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue a joint notice of charges or

cease-and-desist order under this section, where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors, appropriate regional directors or deputy regional directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a section 8(b) order, or that the stipulated cease-and-desist order is authorized under section 8(b) of the FDI Act, and, upon its effective date, shall be a cease-and-desist order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.264 Temporary cease-and-desist orders under section 8(c) of the FDI Act (12 U.S.C. 1818(c)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue temporary cease-and-desist orders.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue a joint temporary cease-and-desist order where such order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action is not inconsistent with section 8(c) of the FDI Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

§ 303.265 Removal and prohibition actions under section 8(e) of the FDI Act (12 U.S.C. 1818(e)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) or the Director and Deputy Director (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notices of intention to remove an institution-affiliated party from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e) (1) and (2) of the FDI Act (12 U.S.C. 1818(e) (1) and (2)), and temporary orders of suspension pursuant to section 8(e)(3) of the FDI Act (12 U.S.C. 1818(e)(3)); and

(2) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the institution-affiliated party consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices and orders pursuant to this section where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or their deputy directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the FDI Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the FDI Act, and, upon issuance, shall be an order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.266 Suspension and removal action under section 8(g) of the FDI Act (12 U.S.C. 1818(g)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension or prohibition to an institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted of or enters a pretrial diversion or similar program, as to any criminal offense cited in or covered by section 8(g) of the FDI Act, when such institution-affiliated party consents to the suspension or prohibition.

(b) *Delegation of authority where suspension or prohibition mandated.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension and prohibition to any institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted or enters a pretrial diversion or similar program, as to any criminal offense involving mandatory suspension or prohibition under sections 8(g)(1) (A)(ii) and (C)(ii) of the FDI Act (12 U.S.C. 1818(g)(1) (A)(ii) and (C)(ii)), whether or not such institution-affiliated party consents to the suspension or prohibition.

(c) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint orders pursuant to this section where such order addresses both safety and soundness and consumer compliance matters. A joint order will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(g) of the FDI Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the FDI Act (12 U.S.C. 1818 (i) and (j)).

§ 303.267 Termination of insured status under section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) and, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel and, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

§ 303.268 Termination of insured status under section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of an insured depository institution where the liabilities of the insured institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, pursuant to section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) or, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

§ 303.269 Civil money penalties.

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notice of assessment of civil money penalties; and

(2) Final orders to pay (with or without a prior notice of assessment of civil money penalty) where the insured depository institution or institution-affiliated party consents to the issuance of the order to pay and waives, as applicable, receipt of a notice of assessment of civil money penalty and the right to an administrative hearing.

(b) *Legal concurrence.* The authority delegated under paragraph (a) of this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties, or that the stipulated final order to pay is authorized under the FDI Act, and upon its effective date, shall be an order to pay which has become final for purposes of enforcement pursuant to the FDI Act.

(c) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices pursuant to paragraph (a) of this section where such notice addresses both safety and soundness and consumer compliance matters. A joint notice will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Prosecution of civil money penalty actions and collection of civil money penalties.* Authority is delegated to the General Counsel or, where confirmed in writing, to his or her designee, to prosecute administrative civil money penalty actions and to collect civil money penalties under this section.

§ 303.270 Notices of assessment under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of assessment of liability to commonly controlled insured depository institutions for the estimated amount of loss to the deposit insurance funds.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

§ 303.271 Prompt corrective action directives and capital plans under section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.

(a) *General—notices, directives and orders.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to accept, reject, require new or revised capital restoration plans, or make any other determinations with respect to the implementation of capital restoration plans and, in accordance with subpart Q of part 308 of this chapter, to issue:

(1) Notices of intent to issue capital directives;

(2) Directives to insured state nonmember banks that fail to maintain capital in accordance with the requirements contained in part 325 of this chapter;

(3) Notices of intent to issue prompt corrective action directives, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831(f)(2)(F)(ii));

(4) Directives to insured depository institutions pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*), with or without the consent of the respondent bank to the issuance of the directive, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii));

(5) Directives to insured depository institutions requiring immediate action or imposing proscriptions pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) and part 325 of this chapter, and in accordance with the requirements contained in § 308.201(a)(2) of this chapter;

(6) Notices of intent to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter;

(7) Directives to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter with the consent of the respondent bank to the issuance of the directive; and

(8) Orders on request for informal hearings to reconsider reclassifications and designate the presiding officer at the hearing pursuant to § 308.202 of this chapter.

(b) *Notices—dismissal of director and officer.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue a prompt corrective action directive ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)) and in accordance with the requirements contained in § 308.203 of this chapter;

(2) Issue directives ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)); and

(3) Issue orders of dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)) where the individual consents to the issuance of such order prior to the filing of a recommendation by the presiding officer with the FDIC.

(c) *Reclassification of institution other than on basis of capital.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to:

(1) Act on recommended decisions of presiding officers pursuant to a request for reconsideration of a reclassification in accordance with the requirements contained in § 308.202 of this chapter; and

(2) Act on requests for rescission of a reclassification.

(d) *Appeals of immediately effective PCA directives.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to act on appeals from immediately effective directives issued pursuant to section 38

of the FDI Act (12 U.S.C. 1831*o*) and § 308.201 of this chapter.

(e) *Informal hearings.* Authority is delegated to the Executive Secretary of the FDIC to issue orders for informal hearings and designate presiding officers on directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues a notice, directive, or order, by the appropriate regional counsel, that the action taken is not inconsistent with section 38 of the FDI Act (12 U.S.C. 1831*o*) and part 325 of this chapter.

§ 303.272 Investigations under section 10(c) of the FDI Act (12 U.S.C. 1820(c)).

(a) *Authority of division directors.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), to the Director and Deputy Director of the Division of Resolutions and Receiverships, and where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to issue an order of investigation pursuant to section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of this chapter.

(b) *Authority of General Counsel.* Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his or her designee, to issue an order of investigation pursuant to sections 8 through 13 of the FDI Act (12 U.S.C. 1818–1823), as appropriate, and subpart K of part 308 of this chapter.

(c) *Concurrence in certain situations.* In issuing an order of investigation that pertains to an open insured depository institution or an institution making application to become an insured depository institution, or a post-conservatorship or post-receivership order of investigation, the authority delegated under this section shall be exercised only upon the concurrent execution of the order of investigation by the Director or Deputy Director (DOS), or the Director or Deputy Director (DCA), or the Director or Deputy Director of the Division of Resolutions and Receiverships, their respective associate directors, and the General Counsel or his or her designee. In the case of a joint order of investigation, such authority shall be exercised only upon the concurrent execution of the order of investigation by both Directors or Deputy Directors, or their associate directors, and upon the certification and execution of the order by the General Counsel or his or her designee.

§ 303.273 Unilateral settlement offers.

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept, deny or enter into negotiations for or regarding settlement and settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to or arising in connection with a proceeding under part 308 of this chapter. In cases where a proceeding under part 308 of this chapter was issued jointly by DOS and DCA, both Directors or Deputy Directors, or their associate directors, must agree to accept, deny or enter into negotiations regarding settlement and settlement offers with insured depository institutions or with an institution-affiliated party.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

§ 303.274 Acceptance of written agreements.

(a) *Written agreements under section 8(a) of the FDI Act.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any matter which may be addressed by the FDIC pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(b) *Written agreements in lieu of cease-and-desist orders.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any safety and soundness or consumer compliance matter which may be addressed by the FDIC pursuant to section 8(b) of the FDI Act (12 U.S.C. 1818(b)) or any other provision of the FDI Act which addresses safety and soundness or consumer compliance matters. In cases which would address both safety and soundness and consumer compliance matters, the Directors, or their designees, may accept or enter into joint written agreements with insured depository institutions or any institution-affiliated party.

(c) *Written agreements as condition attendant to FDIC filings contained in this part.* Authority is delegated to the Director and Deputy Director (DOS), and to the Director and Deputy Director (DCA), as appropriate, and, where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to accept or enter into any written agreements with any insured depository institution, any institution-affiliated party or any other petitioner which contains conditions precedent to the FDIC's non-objection to a filing pursuant to this part. A written agreement under this paragraph (c) shall not affect an institution's rating for prompt corrective action purposes, unless the written agreement expressly provides to the contrary.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

§ 303.275 Modifications and terminations of enforcement actions and orders.

(a) *Termination of section 8(a) (12 U.S.C. 1818(a)) orders and agreements.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate outstanding section 8(a) orders and agreements and to terminate actions and agreements which are pending pursuant to section 8(a) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution.

(b) *Termination of section 8(a) (12 U.S.C. 1818(a)) notification to primary regulator issued by Board of Directors.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate notifications to primary regulator issued by the Board of Directors pursuant to section 8(a) of the FDI Act where the

respondent depository institution is in material compliance with such notification or for good cause shown.

(c) *Termination of section 8(a) (12 U.S.C. 1818(a)) notice of intent to terminate insured status.* In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the FDI Act, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate the actions pending pursuant to such notice of intent to terminate insured status where the respondent depository institution is in material compliance with the applicable notification to primary regulator or for good cause shown.

(d) *Sections 8(b) and 8(c)(12 U.S.C. 1818(b) and (c)) actions and orders.* (1) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate outstanding section 8(b) and section 8(c) orders and agreements and to terminate actions and agreements which are pending pursuant to sections 8(b) and 8(c) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution. In cases where a joint order was issued by DOS and DCA, both Directors, or their Deputy Directors or associate directors, or the appropriate regional directors or deputy regional directors, must execute the order of termination.

(2) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors either where material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown. In cases where an order issued by the Board of Directors addresses both safety and soundness and consumer compliance matters, both Directors or Deputy Director, or the designees of the Directors, must execute the order of termination.

(e) *Modification and termination of section 8(e) (12 U.S.C. 1818(e)) orders and actions.* Authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to modify or terminate outstanding section 8(e) orders and pending actions and to grant consent under section 8(e)(7)(B) of the Act (12 U.S.C. 1818(e)(7)(B)) for the modification or termination of an outstanding section 8(e) order issued by another Federal financial institution regulatory agency where:

(1) The respondent has demonstrated his or her fitness to participate in any manner in the conduct of the affairs of an insured depository institution; and

(2) The respondent has shown that his or her participation would not pose a risk to the institution's safety and soundness; and

(3) The respondent has proven that his or her participation would not erode public confidence in the institution.

(f) *Modification and termination of section 8(g) (12 U.S.C. 1818(g)) orders and actions.* Pursuant to section 8(j) of the FDI Act (12 U.S.C. 1818(j)), authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by either the Board of Directors or under delegated authority.

(g) *Other matters not specifically addressed.* For all outstanding or pending notices, actions, orders, directives and agreements not specifically addressed in this subpart, the delegations of authority contained in this subpart shall include the authority to modify or terminate any outstanding or pending notice, order, directive or agreement issued pursuant to delegated authority, as may be appropriate.

(h) *Termination of pending actions—general.* Any pending enforcement action may be dismissed or terminated by the Director or Deputy Director of DOS or DCA, as appropriate, at any time prior to the commencement of a hearing on the merits by an administrative law judge. Once a hearing on the merits has been convened by an administrative law judge, a pending enforcement action may be dismissed or terminated by stipulation or consent of the affected parties no later than 14 days after the administrative law judge has closed the record of the hearing. Only the FDIC Board of Directors may terminate or dismiss an enforcement action more than 14 days after the record has been closed by an administrative law judge.

(i) *Legal concurrence.* Any dismissals, modifications or terminations pursuant to this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

§ 303.276 Enforcement of outstanding enforcement orders.

After consultation with the Director (DOS) or the Director (DCA), or a Deputy Director or an associate director, or the appropriate regional director or deputy regional director, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828, 1829, 1831*l*, 1831*o*, 1972, or 3909, or any provision thereof, in the appropriate United States District Court.

§ 303.277 Compliance plans under section 39 of the FDI Act (12 U.S.C. 1831p–1) (standards for safety and soundness) and part 308 of this chapter.

(a) *Compliance plans.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to accept, to reject, to require new or revised compliance plans, or to make any other determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(b) *Notices, orders, and other action.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(2) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(3) Act on requests for modification or rescission of an order.

(c) *Legal concurrence—compliance plans.* The authority delegated under this section as to compliance plans shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

(d) *Legal concurrence—notices and orders.* The authority delegated under this section as to notices and orders shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the FDI Act or that the issuance of a final order is not inconsistent with section 39 of the FDI Act or that the stipulated section 39 order is not inconsistent with section 39 of the FDI Act and is an order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.278 Enforcement matters where authority is not delegated.

Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(a) Notifications to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)) when the respondent bank's book capital is at or above 2 percent of total assets and adjusted Tier 1 capital is at or above 2 percent of adjusted part 325 total assets as defined in § 303.2(b);

(b) Orders terminating insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a));

(c) Cease-and-desist orders under section 8(b) of the FDI Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(d) Temporary orders of suspension and prohibition under section 8(e) of the FDI Act (12 U.S.C. 1818(e));

(e) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution under section 8(e) of the FDI Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(f) Orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution under section 8(g) of the FDI Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(g) Final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held;

(h) Denials of requests for modifications or terminations of orders issued pursuant to section 8(g) of the FDI Act;

(i) Grants or denials of requests for reinstatement to office, whether or not an informal hearing has been requested, pursuant to § 308.203 of this chapter; and

(j) Grants or denials of requests for waivers of liability of commonly controlled insured depository institutions as to assessments under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

PART 333—EXTENSION OF CORPORATE POWERS

2. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (''Seventh'', ''Eighth'' and ''Tenth''), 1828, 1828(m), 1831p–1(c).

3. Section 333.4 is amended by adding the word ''and'' at the end of paragraph (d)(2), by removing the words ''; and'' at the end of paragraph (d)(3) and adding a period in their place, by revising the last sentence of paragraph (a), removing paragraphs (b) and (d)(4), and redesignating paragraphs (c), (d), (e) and (f) as paragraphs (b), (c), (d) and (e) respectively, to read as follows:

§ 333.4 Conversions from mutual to stock form.

(a) * * * As provided in § 303.162 of this chapter, the Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

* * * * *

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

4. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821f, 1828(j)(2), 1831, 1831f–l.

5. Section 337.6 is amended by revising paragraph (a)(5)(iii), adding a sentence at the end of paragraph (c), removing paragraphs (d), (e), and (f) and redesignating paragraphs (g) and (h) as paragraphs (d) and (e), respectively, to read as follows:

§ 337.6 Brokered deposits.

(a) * * *

(5) * * *

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution that is not well-capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

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(c) * * * For filing requirements, consult 12 CFR 303.243.

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PART 341—REGISTRATION OF SECURITIES TRANSFER AGENTS

6. The authority citation for part 341 continues to read as follows:

Authority: Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q–1 and 78w(a)).

7. Section 341.7 is added to read as follows:

§ 341.7 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to act on disclosure matters under and pursuant to sections 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78).

(b) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)).

PART 347—INTERNATIONAL BANKING

8. The authority to citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98–181, 97 Stat. 1153.

Subpart D [Removed]

9. In part 347, subpart D is removed.

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

10. The authority citation for part 359 continues to read as follows:

Authority: 12 U.S.C. 1828(k).

11. Section 359.6 is revised to read as follows:

§ 359.6 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the appropriate regional director (DOS). For filing requirements, consult 12 CFR 303.244. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where only the prior consent of the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this section shall be submitted to the primary federal regulator as described in this section.

By order of the Board of Directors.

Dated at Washington, D.C., this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

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