

# Rules and Regulations

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 303, 333, 347, 348, and 359

RIN 3064-AC55

#### Filing Procedures, Corporate Powers, International Banking, Management Official Interlocks, Golden Parachute and Indemnification Payments

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC has adopted a final rule amending its procedures relating to filings, mutual to stock conversions, international banking, management official interlocks and golden parachute payments. The changes are mostly technical in nature or clarify previous FDIC positions; however, the final rule includes a waiver provision to its regulations. The waiver provision grants discretionary power to the FDIC Board of Directors to waive regulatory provisions that are not based on statutory requirements.

**DATES:** September 22, 2003.

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

Part 303 of the FDIC's regulations (part 303) generally describes the procedures to be followed by both the FDIC and applicants with respect to applications and notices required to be filed by statute or regulation. On December 27, 2002, the FDIC issued in final form a revised part 303 to reflect a recent internal reorganization at the

FDIC and to remove the delegations of authority from the regulation. *See:* 67 FR 79246. On the same date, the FDIC issued the Notice of proposed rulemaking ("the notice of proposed rulemaking") for revisions to parts 303, 347, 348, and 359 and technical corrections to other regulations in chapter III. *See:* 67 FR 79271.

##### II. Final Rule Part 303

The FDIC is amending § 303.2 to clarify how the statutory definitions in the FDI Act apply to part 303. Several provisions in part 303 utilize terms, such as "bank," "company," and "depository institution holding company," that are defined in the FDI Act. The FDIC is clarifying that unless such terms are expressly defined differently in part 303, those terms will have the meanings given them in the FDI Act. Therefore, § 303.2 specifies that wherever a term that is defined in the FDI Act is used in part 303, it will have the meaning given the term in the FDI Act except to the extent part 303 expressly defines that term differently.

The FDIC is amending § 303.4—*Computation of time*, to clarify when the general rule regarding the commencement of the various time periods in part 303 applies. Several subparts of part 303 include a provision that specifies when a particular time period commences. *See, for example,* subpart E—Change in Bank Control. It is the FDIC's intention that in those instances where a specific provision exists, the specific provision prevails over the general rule set forth in § 303.4. The FDIC is modifying the first sentence of § 303.4 to clarify that the general rule only applies to the extent there is no specific provision regarding when a particular time period commences.

The FDIC is revising § 303.11(g) to provide a time within which the FDIC has to respond to an institution or institution-affiliated party that files a response to a notice of intent or temporary order issued pursuant to this section. The FDIC believes that 30 days is a reasonable time in which to review any response submitted by an institution or institution-affiliated party. Additionally, the FDIC is placing the last sentence of current § 303.11(g)(3)(ii) into a separate paragraph to clarify that it applies to § 303.11(g)(3) in its entirety, and not only to § 303.11(g)(3)(ii).

The FDIC is adding a provision setting forth its authority to waive any non-

statutorily required provision for good cause. New § 303.12 provides that the Board may, for good cause and to the extent permitted by statute, waive the applicability of any provision of chapter III. The provisions could be waived, in whole or in part, at any time by the Board when good cause is shown, subject to the provisions of the Administrative Procedure Act and the provisions of chapter III. Any provision of the rules may be waived by the Board on its own motion or on petition if good cause is shown.

The FDIC is revising § 303.22(a)(1) in order to clarify the rating required for a bank or thrift holding company to be eligible for expedited processing for a proposed institution seeking deposit insurance. The existing § 303.22(a)(1) rating for a thrift holding company of a "2" is inappropriate since the Office of Thrift Supervision has ratings of "A", "S", and "U". Revised § 303.22(a)(1) would provide that an eligible holding company would be defined as a bank or thrift holding company that has consolidated assets of at least \$150 million or more; a BOPEC rating of at least "2" for bank holding companies or an above average or "A" rating for thrift holding companies; and at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions.

The FDIC is amending several sections in subpart E to clarify that the acquisition of control of a parent company of a state nonmember bank generally requires a change in control notice. Section 7(j)(18) of the FDI Act (12 U.S.C. 1817(g)(18)) indicates that the Change in Bank Control Act applies to acquisitions of control of companies that control insured depository institutions. It has long been the FDIC's interpretation that a change in control notice is required whenever any person acquires control of a company that controls, directly or indirectly, a state nonmember bank. Such control could be indirect in that the company exerts control of the bank through one or more intermediate companies of a multi-tiered organization. The amendments merely clarify the regulations in this regard. Specifically, the FDIC is adding a definition of "parent company" to the definitions listed in § 303.81; adding a reference to parent company in the