

time when an institution has failed to meet the record keeping requirements of the deposit insurance regulations and without a waiver of such requirements, accountholders in a failed bank situation would suffer substantial penalties because of the bank's failure to keep adequate records. Consequently, the FDIC is adopting the waiver provision as proposed.

VI. Regulatory Flexibility Act Analysis

Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FDIC hereby certifies that the amendments set forth in this final rule will not have a significant economic impact on a substantial number of small entities. The final rule makes primarily technical changes to the existing rule.

VII. Paperwork Reduction Act

This final rule does not create or modify any collection of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VIII. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 (GLBA) requires the federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No comments were received.

IX. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning the section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277, 112 Stat. 2681).

List of Subjects

12 CFR Part 203

Administrative practice and procedure, Banks, banking, Bank merger, Branching, 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 347

Banks deposit insurance, Banks, Credit, Foreign banking, Foreign

investments, Insured branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 359

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

■ For the reasons set out in the preamble, the FDIC hereby amends 12 CFR parts 303, 333, 347, 348 and 359.

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1828a, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 3104, 3105, 3108, 3207, 15 U.S.C. 1601-1607, 6716.

§ 303.2 [Amended]

■ 2. In § 303.2 remove the phrase, "For purposes of this part," and add in its place the phrase, "Except as modified or otherwise defined in this part, terms used in this part that are defined in the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) have the meanings provided in the Federal Deposit Insurance Act. Additional definitions of terms used in this part are as follows:"

§ 303.4 [Amended]

■ 3. In § 303.4 after the phrase, "For purposes of this part," add the words, "and except as otherwise specifically provided,".

■ 4. In § 303.11, paragraph (9)(3)(ii) is revised to read as follows:

§ 303.11 Decisions.

* * * * *

(g) * * *

(3) * * *

(ii)(A) Any other relevant information, mitigation circumstance, documentation, or other evidence in support of the applicant's position. An applicant may also request a hearing under § 303.10.

(B) 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). The FDIC shall consider any such response, if filed in a timely manner, within 30 days of receiving the response.

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■ 5. Section 303.12 is added to read as follows:

§ 303.12 Waivers.

(a) The Board of Directors, of the FDIC (Board) may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter.

(b) The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Board, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Board on its own motion or on petition if good cause thereof is shown.

■ 6. In § 303.22, paragraph (a)(1) is amended by revising the second sentence to read as follows:

§ 303.22 Processing.

(a) * * *

(1) * * * An eligible holding company is 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.

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■ 7. Section 303.80 is revised to read as follows:

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank or a parent company 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)).

■ 8. Section 303.81 is revised to read as follows:

§ 303.81 Definitions.

For purposes of this subpart:

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

(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 or a parent company, whether or not pursuant to an express agreement.