

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 dele-

gated 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 filing.*—(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.