

prior to implementation would have been unnecessary and contrary to the public interest. A portion of this rule expands the categories of persons who may transit the United States without a visa and is thus considered beneficial to both the traveling public and the United States Government. Moreover, this aspect of the rule grants or recognizes an exemption or relieves a restriction within the scope of the exception set forth at 5 U.S.C. 553(d)(1). Certain other countries have been added to the countries ineligible to transit without a visa. The reason for the necessity for implementation of this aspect of the interim rule is as follows: It is necessary to prevent an anticipated sharp increase in the abuse of the TWOV program by citizens of the countries placed on the list of ineligible TWOV countries. These countries are placed on the ineligible to TWOV list for a variety of reasons including past abuse of the transit without visa privilege; the country's nonimmigrant visa refusal rate; whether the country grants United States citizens reciprocal treatment; the country's crime rate; the stability of the country; any security concerns; and, whether the country has diplomatic relations with the United States, among other reasons.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs whether a citizen of a particular country may transit the United States under the TWOV program. These aliens are not considered small entities as that term is defined under 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any 1-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100

million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory actions" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and Visas.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

- 2. Section 212.1 is amended by:
 - a. Removing paragraph (f)(2);
 - b. Redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(2) and (f)(3) respectively; and by
 - c. Revising newly redesignated paragraph (f)(2), to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *
(f) * * *

(2) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Angola, Bangladesh, Belarus, Bosnia-Herzegovina, Burma, Burundi, Central African Republic, People's Republic of China, Congo (Brazzaville), Cuba, India, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Russia, Serbia, Seirra Leone, Somalia, Sri Lanka, and Sudan.

* * * * *
Dated: December 21, 2000.

Mary Ann Wyrtsch,
Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01-354 Filed 1-4-01; 8:45 am]
BILLING CODE 4410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337, and 362

RIN 3064-AC38

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule and confirmation of interim final rule with changes.

SUMMARY: The FDIC is adopting a final rule to implement certain provisions of the Gramm-Leach-Bliley Act (G-L-B Act), governing activities and investments of insured state banks. Under the final rule, the FDIC adopts a streamlined certification process for insured state nonmember banks to follow before they may conduct activities as principal through a financial subsidiary. State nonmember banks will self-certify that they meet the requirements to carry out these activities, which will allow the banks to conduct the new activities immediately. There will be no delay for administrative approval or review, although the FDIC will evaluate these activities as part of its normal supervision process for safety and soundness standards pursuant to the FDIC's authority under section 8 of the Federal Deposit Insurance Act (FDI Act). The final rule confirms, with modifications, an interim rule that has been in effect since March 11, 2000. To eliminate unnecessary provisions and make technical amendments, the FDIC also has revised its rule implementing sections 24 and 18(m) of the FDI Act dealing with other activities and investments of insured state banks.

EFFECTIVE DATE: January 5, 2001.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. Background**

On March 23, 2000, the FDIC published an interim final rule with request for comment (65 FR 15526) to implement certain provisions of the G-L-B Act (Pub. L. 106-102), which President Clinton signed into law on November 12, 1999. Section 121(d) of the G-L-B Act amended the FDI Act (12 U.S.C. 1811 *et seq.*) by adding a new section 46 (12 U.S.C. 1831w). New section 46(a) of the FDI Act provides that an insured state bank may control or hold an interest in a subsidiary that engages as principal in activities that would be permissible for a national bank to conduct only through a "financial subsidiary," subject to certain conditions. Because section 46(a) applies only to "as principal" activities, state nonmember banks may engage in agency activities without considering the requirements of this rule or section.

As set forth in the interim final rule, section 121(a) of the G-L-B Act permits national banks to control or hold an interest in a financial subsidiary, which is a new type of subsidiary governed by new section 5136A of the Revised Statutes. A financial subsidiary may engage in specified newly authorized activities that are financial in nature and activities that are incidental to financial activities, if the bank and the subsidiary meet certain requirements and comply with stated safeguards. A financial subsidiary also may combine these financial subsidiary activities with activities that are permissible for national banks to engage in directly. The financial subsidiary activities include many of the activities which are authorized for the new "financial holding companies" as laid out in new section 4(k) of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841 *et seq.*) as created by section 103(a) of the G-L-B Act. In the future, the Secretary of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (FRB) may determine that additional activities are financial in nature and therefore authorized for a financial subsidiary of a national bank.

Section 121(d) of the G-L-B Act, which creates new section 46 of the FDI Act, permits state banks to control or hold an interest in a financial subsidiary that engages in activities as principal.

To qualify, a state bank must comply with four statutory conditions and a mandatory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement found in section 103(a) of the G-L-B Act, which added a new subsection (4)(l)(2) to the BHCA (12 U.S.C. 1843(l)(2)).

The FDIC has a long history of reviewing applications from state banks to engage in activities not permissible for national banks under section 24 of the FDI Act (12 U.S.C. 1831a) as implemented through part 362 of the FDIC's rules and regulations. As stated in the preamble to the interim final rule, certain activities which the FDIC previously addressed under section 24 and subpart A of part 362, such as general securities underwriting, are now authorized for a financial subsidiary of a national bank. As a result, the FDIC will now analyze the commencement of such activities under section 46(a) rather than section 24, and the FDIC will apply the restrictions contained in subpart E rather than those in subpart A of part 362. These statutory changes necessitate that the FDIC conform its regulation by limiting the sections pertaining to such activities from subpart A to existing subsidiaries.

Other activities conducted as principal, such as real estate development or investment, which are prohibited to national bank financial subsidiaries, are outside the scope of section 46(a). These activities will continue to be governed by section 24 and subpart A of part 362. State banks that wish to engage in activities prohibited to national banks may continue to seek the FDIC's consent by filing a notice or application. Should the Treasury and FRB in the future determine that additional activities are authorized for a financial subsidiary of a national bank, state nonmember banks commencing such activities for the first time after such determinations will have to proceed under section 46(a). However, banks that obtained FDIC consent under section 24, whether by notice, order, or regulation before such determination may continue to engage in any such activity pursuant to the requirements imposed under section 24.

II. Comments Received

The FDIC received 15 comments in response to the interim final rule. The comments came from four trade associations, four state banking departments, two community-based associations, a law firm, a state regulators association, a bank holding company, and four United States Senators. Three commenters expressed support for the FDIC's interim final rule.

The other commenters expressed various objections to the rule. Several of the commenters recommended specific changes to the interim final rule. A discussion of these comments and the changes and additions made to the interim final rule and the rule implementing sections 24 and 18(m) of the FDI Act are discussed in the section by section analysis. The final rule adopts a more streamlined process than the interim rule. A summary of the comments follows.

The FDIC's interim rule to implement section 46 of the G-L-B Act provided that section 46 is the exclusive method for an insured state nonmember bank to engage in "financial subsidiary activities." Six of the comments, including a comment from three United States Senators, argued that Congress intended to preserve the FDIC's authority to approve activities under section 24. These commenters argued that the preservation of authority provision¹ was meant to ensure that the FDIC's authority to approve activities under section 24 is not diminished by section 46, and that section 46 was intended to permit (but not require) state banks to use the financial subsidiary vehicle to conduct financial or incidental activities. On the other hand, another United States Senator argued that the interim final rule was consistent with the statutory language and legislative history of the G-L-B Act and that the interim final rule correctly applies the G-L-B Act to require state banks to use the financial subsidiary vehicle to conduct financial or incidental activities.

Four commenters argued that if section 46 was read as the only method under which a state nonmember bank could engage in financial subsidiary activities, then innovation in the state bank system would be stifled and the dual banking system would be undermined. Some commenters argued that Congress' purpose behind section 46 was to assure state banks that they would not be disadvantaged if national banks are authorized to engage in activities through financial subsidiaries that the FDIC concludes would not be permitted to state banks under section 24. The four commenters also noted that although certain activities which were previously addressed by the FDIC under section 24 are now authorized for a national bank financial subsidiary, the grandfather provisions of the G-L-B Act² make it clear that any activities lawfully conducted prior to the G-L-B Act through a subsidiary under section

¹ 12 U.S.C. 1831w(d)(1).

² 12 U.S.C. 1831w(b).

24 survive. These commenters believed that Congress intended to preserve the FDIC's section 24 authority regardless of whether the activities are permissible for national bank financial subsidiaries and that the requirements placed on state banks under section 24 have proven to be appropriate.

With regard to the structure of the FDIC's interim rule, half of the commenters believed the FDIC's rule was more restrictive than the Office of the Comptroller of the Currency's (OCC's) and the FRB's comparable rules. They argued that the inconsistencies between the FDIC's rule and the other federal banking agencies' rules have the effect of competitively disadvantaging state nonmember banks. Some of them believed that the potential disadvantage to state nonmember banks could lead to confusion and increased regulatory burden, all for no apparent safety and soundness reason.

One commenter noted that while section 24 of the FDI Act expressly requires state banks to apply to the FDIC before they can engage in any activity not authorized for national banks, section 46 does not have a similar requirement. This commenter contended that the FDIC recognized that section 46 does not include a discretionary "gatekeeping" regulatory authority since the FDIC stated in its preamble to the interim final rule that it was imposing requirements in addition to those specified in the G-L-B Act. Other commenters read section 46 as not requiring state banks to seek FDIC approval prior to engaging in covered activities. One commenter argued that section 8 of the FDI Act and section 114(c) of the G-L-B Act, which provides that the FDIC may impose restrictions or requirements on relationships or transactions between a state nonmember bank and a subsidiary of a state nonmember bank, do not provide the FDIC with authority to require state nonmember banks to obtain prior approval before a subsidiary engages in financial subsidiary activity.

Another commenter contended that the prior approval requirement is not necessary because the activities will have been approved by the Congress or the Treasury and the FRB. This commenter believed that an approval process is only appropriate where the activity is not already authorized for a national bank and noted that the FDIC has sufficient authority under general supervisory authority to intervene should it be necessary.

Also with regard to the structure of the FDIC's rule, several of the commenters favored a more uniform

approach to the rules. These commenters believed that all of the federal banking agencies' rules on financial subsidiary activities should be consistent, and that because the rules of the OCC and the FRB are similar, the FDIC should adopt a rule that is as consistent with those rules as is possible given the differing statutes. Specifically, some of the commenters state that the OCC's self-certification, streamlined approval process should be adopted by the FDIC because it would reduce regulatory burden and establish parity for state banks and national banks. Other commenters believed the FDIC's rule should be consistent with the FRB's rule that requires only a 15-day approval as opposed to the FDIC's 30-day approval.

The FDIC also received comment on the scope of the activities covered by the rule. Some of the commenters contended that the FRB's rule provides more flexibility to the state system because it excludes from coverage activities that the state member bank is permitted to engage in directly, but chooses to do so in a subsidiary, or conducts in a subsidiary as is otherwise authorized by federal law. These commenters believed the FDIC should permit state nonmember banks to follow section 24 if the state nonmember bank is authorized to engage in the activity directly or in any state bank subsidiary that is otherwise expressly permitted under state or federal law. They believe this would allow state nonmember banks to continue to choose where to conduct these activities and not force state banking authorities to conform determinations to that of the OCC.

Some commenters expressed concern that the FDIC's rule would require a state nonmember bank that is conducting an activity approved under section 24 after the effective date of the G-L-B Act that is later determined to be permissible for a national bank financial subsidiary to switch from section 24 to section 46. These commenters are concerned about the burden and uncertainty entailed in altering the subsidiary's structure and operations so as to bring it into compliance with the statutory conditions of section 46(a), rather than the conditions the FDIC previously imposed under section 24. Several commenters believed this will create potentially significant administrative, compliance, personnel, and legal burdens, and will cast a pall of uncertainty over the FDIC's section 24 post G-L-B Act approvals because it will be unclear whether the conditions placed upon the activity will change at some unknown date in the future. They contend that this uncertainty also would

be disruptive to bank supervisors who would have to examine banks under a different set of conditions. One of the commenters found this to be inconsistent with FDIC practice and detrimental to its authority under section 24 and believed that once an activity is approved under section 24, it should not have to be re-qualified under section 46.

The FDIC received a small number of comments on other areas of concern. Two commenters contended that the FDIC's rule would limit existing state authority. Three commenters raised concern about the CRA rating requirement. Two of them asked that the FDIC's rule allow for public comment with regard to the CRA rating requirement because they felt the public should be given the opportunity to comment on a bank's plans to engage in financial subsidiary activity. These commenters also asked that in cases where the CRA rating is a low satisfactory, the FDIC should condition approval of new activities on specific improvements in a bank's CRA performance rating. One of the commenters believed the FDIC was importing a CRA standard that Congress did not impose on section 24 directly or through the G-L-B Act by forcing state banks to conduct activities in financial subsidiaries under section 46 requirements instead of section 24 requirements. This commenter suggested that because most state banks have a satisfactory or better rating, the FDIC rule disadvantages a majority of them for the purpose of preventing a few banks from evading the CRA requirements.

Another commenter believed that the FDIC's rule should require that state nonmember banks be well-managed just like national banks and state member banks because this will promote consistency and alleviate FDIC concerns that may be behind the FDIC's reason for advance review of section 46 activities.

Last, the FDIC received some comments seeking clarification of certain provisions in the interim final rule. One commenter asked that the FDIC's rule clearly provide that authorizations given to state nonmember banks prior to the FDIC's adoption of the current subpart A of part 362 are covered by the grandfather provision. Another commenter asked for further clarification on the financial and operational safeguards requirement.

We have responded to these comments by conforming the FDIC's definition of "financial subsidiary" to the definition adopted by the FRB and adopting a streamlined self-certification

process similar to the OCC but without any waiting period. More specific discussions of the FDIC's particular responses to the comments are found in the section by section analysis.

III. Final Rule—Section by Section Analysis

Part 362

A. Subpart A—Activities of Insured State Banks

The FDIC made several technical amendments to subpart A. As noted in the preamble to the interim final rule, the G–L–B Act provisions amending the FDI Act created a need for the elimination and clarification of certain provisions of subparts A and B. We discuss the specific changes below.

Section 362.1 Purpose and Scope

The references to safety and soundness concerns relating to real estate investment activities of insured state nonmember banks and their subsidiaries in subpart B of part 362 have been eliminated from paragraph (c) of § 362.1. The G–L–B Act expressly provides that national banks may not engage in real estate development and real estate investment activities³ through a financial subsidiary or operating subsidiary. Thus, the safety and soundness standards set forth in subpart B of part 362 relating to real estate investment activities of a type that are not permissible for a national bank, but may be otherwise permissible for a subsidiary of a national bank, are not necessary. Any insured state nonmember bank desiring to engage in real estate investment activities through a subsidiary will continue to be subject to the requirements relating to such activities in subpart A.

Section 362.2 Definitions

We are changing the definition of “subsidiary” in paragraph (r) of § 362.2 to make it consistent with the exception in § 362.4(b)(3)(ii), which permits a subsidiary of an insured state bank to own equity securities of certain companies if, among other things, the subsidiary controls the company or the company is controlled by insured depository institutions. Thus, a more appropriate definition for “subsidiary” would include any company that is owned or controlled directly or indirectly by one or more insured depository institutions. The rule has been changed accordingly.

Section 362.4 Subsidiaries of Insured State Banks

Paragraphs (b)(5) (i) and (ii) of § 362.4 formerly provided the requirements for a state nonmember bank to engage in real estate investment activities and general securities underwriting through a majority-owned subsidiary. Under the G–L–B Act, a financial subsidiary of a national bank is permitted to engage in general securities underwriting activities. Thus, state nonmember banks may commence conducting this activity pursuant to section 46(a) of the FDI Act through a financial subsidiary as set forth in subpart E. Applications to engage in general securities underwriting will no longer be processed under section 24 and subpart A of part 362. However, the regulatory language found in § 362.4(b)(5)(ii) will continue to govern those banks engaged in this activity as of the effective date of the G–L–B Act. The restrictions contained in this section will continue to apply only to existing state bank subsidiaries that are covered by section 46(b) of the FDI Act.⁴

In § 362.4(c)(2)(vi), the word “officers” is more inclusive than the FDIC had intended and has required the FDIC to provide repeated informal interpretations that “officers” should be read as “executive officers.” To eliminate the need for repeated informal interpretations and to utilize the definition for “executive officers” already contained in part 362, this paragraph of the rule has been changed to conform to the defined term.

Section 362.5 Approvals Previously Granted

Due to the passage of time, some of the transitional deadlines contained in this section have expired and the provisions are no longer of any effect. We removed and reserved § 362.5(b) (1), (2), and (3), which relate to securities underwriting activities, grandfathered insurance underwriting activities, and the ownership of the stock of certain corporations approved by the FDIC prior to January 1, 1999.

B. Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

Section 362.6 Purpose and Scope

Section 362.8 Restrictions on Activities of Insured State Nonmember Banks

We removed the safety and soundness standards governing real estate investment activities formerly found in this section of the rule because they are

no longer necessary. As provided in the G–L–B Act, national bank financial subsidiaries are not permitted to engage in real estate development or real estate investment activities, unless otherwise expressly authorized by law.⁵

Regarding the separation standards that any affiliate company that engages in general securities underwriting and any state nonmember bank must meet, we also revised the introductory paragraph to more clearly cover the appropriate entities in the scope of the rule. Now, the language provides that unless the affiliated company that engages in general securities underwriting is a subsidiary of an entity that is supervised by a federal banking agency, the affiliated company that engages in general securities underwriting and the state nonmember bank must meet the separation standards. To conform to the less burdensome separation standards found in the sections implementing section 46, we also streamlined the separation standards to lessen the burden of compliance with this section.

On December 1, 1998 (63 FR 66339), the FDIC proposed and published an amendment to part 362 that added safety and soundness standards to govern insured state nonmember banks that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank itself. In addition, the FDIC proposed and published a proposal (63 FR 66339) to require that insured state nonmember banks file a notice before commencing any activities permissible for subsidiaries of a national bank that are not permissible for the parent national bank itself. This proposal also contained language to remove and reserve the provisions found in § 337.4 entitled, “Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies.” The effect of these amendments was described as requiring banks to notify the FDIC prior to conducting securities or other activities through subsidiaries that are not permissible for the bank itself. The FDIC also stated that when the FDIC adopts these amendments in final form, the FDIC's securities activities regulation would be fully consolidated in part 362. Only two comments were received on this proposal, both of which supported the elimination of § 337.4. One of the commenters stated that it agrees with

³ 12 U.S.C. 24a(a)(2)(B)(ii).

⁴ 12 U.S.C. 1831w(b).

⁵ 12 U.S.C. 24a(a)(2)(B)(ii).

the FDIC's assertion that the revised standards contain more flexible physical separation requirements than those currently imposed on the bank and its subsidiaries in § 337.4. This most recent and still outstanding proposal was limited in scope and followed the more comprehensive revision of part 362 that was published in final form in the Federal Register on the same day and became effective on January 1, 1999.

During this interim period, § 337.4 has continued to be operative to govern separation standards for affiliations among banks and general securities underwriting companies when coverage is not provided under § 362.8(b). Thus, § 337.4 currently provides separation standards for any such affiliated entity that may not otherwise be covered by the language in the currently effective version of § 362.8(b). As we indicated in the December 1, 1998 Proposed Rule, we intended to reserve and remove § 337.4. As a part of that effort, we are moving the coverage of those entities into § 362.8 and making the standards more flexible and reducing the regulatory burden. By modifying the language of § 362.8(b) in the manner suggested, the coverage of separation standards also is made more transparent to banks and their general securities underwriting affiliates.

As set forth in this final rule, the separation standards under § 362.8, which will be imposed on these affiliates, are nearly identical to the separation standards to be imposed on financial subsidiaries of insured state nonmember banks engaged in underwriting securities under new § 362.18(a)(4)(B). Because of the G–L–B Act, financial subsidiaries of insured state nonmember banks engaged in general securities underwriting are subject to two additional requirements, which are a CRA rating requirement applicable to the bank and all insured depository institution affiliates and compliance with the financial and operational safeguards applicable to a financial subsidiary of a national bank. The FDIC believes it is appropriate to have substantially the same requirements apply to securities underwriting activities, whether they are conducted by an affiliate engaging in general securities underwriting under subpart B or a financial subsidiary engaging in general securities underwriting under new subpart E. The FDIC believes that it makes no difference to the safety and soundness of the insured state nonmember bank whether the general securities underwriting activity is conducted by a securities underwriting affiliate under subpart B or in a financial subsidiary

under new subpart E. To achieve that consistency, the FDIC is adopting comparable standards for all of these entities in its final rule. In addition, to provide flexibility to the regulated entities, the FDIC will consider applications for relief from these separation safeguards in appropriate circumstances.

Section 362.7 Definitions

In paragraph (a) of § 362.7, “affiliate” is defined as any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state nonmember bank but does not include a subsidiary of an insured state nonmember bank. We have changed this definition to be consistent with the definition in subpart E of part 362, which provides that an “affiliate” has the same meaning contained in section 3 of the FDI Act (12 U.S.C. 1813). That section incorporates by reference the definition in section 2 of the BHCA (12 U.S.C. 1841(k)), which provides that an “affiliate” means any company that controls, is controlled by, or is under common control with another company. For the purpose of uniformity and to avoid confusion and inconsistency, we will now use a definition for “affiliate” that is the same in all subparts of part 362 that use the term “affiliate.” Therefore, the rule has been changed accordingly.

We also removed the definition for “real estate investment activity” in paragraph (b) of § 362.7 because of the changes to the substantive §§ 362.6 and 362.8.

C. Subpart C—Activities of Insured Savings Associations

Section 362.10 Definitions

Because of the substantive change to the definition for “affiliate,” and our decision to use a uniform definition for “affiliate” throughout part 362, we have removed the prior definition for “affiliate” in paragraph (a) of § 362.10 and replaced it with a simple cross-reference to the newly defined term in subpart B of part 362.

Section 362.12 Service Corporations of Insured State Savings Associations

In paragraph (b)(2)(i) of § 362.12, an incorrect reference to “bank” has been changed to “savings association” since that provision pertains to activities of service corporations of insured state savings associations.

We removed the safety and soundness standards and the requirements governing service corporations of insured state savings associations

conducting securities underwriting activities under paragraphs (b)(2)(ii) and (b)(4) of § 362.12 because no insured state savings associations have asked the FDIC for permission to engage in this activity. The FDIC's decision to remove these provisions from the rule should not be construed as a prohibition to engage in securities underwriting activity by service corporations of insured state savings associations. Rather, the FDIC believes that any request to engage in such activity could be better handled by a custom drafted order that deals with the particular circumstances of the institution requesting the authority, rather than through a general rule that also will require interpretation. We removed the authority granting provisions for insured state banks to commence securities underwriting activities from subpart A because the authority to commence engaging in that activity is now found in section 46 of the FDI Act and subpart E. However, any subsidiaries lawfully in existence and engaging in these activities under this authority on November 11, 1999 will continue to be covered under the regulatory language found in subpart A. We also removed the comparable authority granting provisions from subpart C of part 362 governing savings associations. Hereafter, any service corporation of an insured state savings association desiring to engage in securities underwriting activities through a service corporation may submit an application to the FDIC for consent to engage in the activity. At such time, the FDIC will determine the appropriate safety and soundness standards that should be applicable to the institution's particular situation.

D. Subpart E—Financial Subsidiary Activities of Insured State Nonmember Banks

Section 362.16 Purpose and Scope

As provided in the interim final rule, the FDIC will continue to implement section 46(a) through subpart E of part 362. Section 362.16 sets out the purpose and scope of the subpart, including the scope of the activities covered. Subpart E applies to any financial subsidiaries of state nonmember banks.

Several commenters stated that Congress intended to preserve the FDIC's authority to approve activities under section 24 given the specific reference in section 46(d). Section 46(d) provides that section 46 shall not be construed as superseding the authority of the FDIC to review subsidiary activities under section 24. Some commented that if section 46(a) is read

as the only method under which a state nonmember bank could engage in financial subsidiary activities, then innovation in the state bank system would be stifled and the dual banking system would be undermined. In light of the comments received, the FDIC has reconsidered some of its interpretation of section 46 and other relevant provisions of the G-L-B Act. For example, the FDIC has adopted the definition for "financial subsidiary" used by the FRB to exclude activities that may be carried out directly by the bank. However, the other comments have not dissuaded the FDIC as to the correctness of much of its interpretation of section 46. The FDIC believes that the statutory language in section 46 that preserves the authority of the FDIC under section 24 and the grandfather provision for subsidiaries lawfully in existence before enactment of the G-L-B Act would not be necessary, if section 46 was intended to serve only as an alternative mechanism for approving financial activities. This interpretation also is consistent with the FDIC's historic practices in applying section 24 to activities: Once an activity becomes permissible for a national bank, section 24 no longer applies to insured state nonmember banks that want to commence engaging in the activity. The FDIC believes that this construction of the statute will have little effect on innovation in the state bank system because state nonmember banks are still free to seek the FDIC's approval under section 24 to engage in innovative activities that are not permissible to national banks directly or through a financial subsidiary. The only constraint that this interpretation imposes on state nonmember banks is that insured state nonmember banks will have to conform to standards that are consistent with those imposed on national banks and state member banks when engaging in the same activities as principal through a financial subsidiary. State banks under the authority of the States are free to innovate with respect to all other activities with the FDIC's consent under section 24, as Congress intended and expressed in section 46(d).

Some commenters expressed apprehension about the impact of the FDIC's interpretation upon a state nonmember bank subsidiary that obtains a section 24 approval to engage in an activity, if the Treasury and FRB subsequently authorize the same activity for financial subsidiaries of national banks. The statutory grandfather under section 46(b) covers subsidiary activities lawfully conducted as of the G-L-B Act's enactment date.

These commenters infer from this grandfather provision that section 24 approvals issued by the FDIC after enactment of the G-L-B Act are subject to being voided if the activity in question later becomes subject to section 46(a).

The FDIC recognizes that this paradox exists under one possible interpretation of section 46(a). However, the FDIC wishes to clarify that, under the FDIC's interpretation of section 46, this is not the case. As the FDIC stated in the preamble to the interim final rule, activities will become subject to section 46(a) rather than section 24 only if the Treasury and FRB declare activities to be financial in nature and permissible for financial subsidiaries of national banks. However, this means only that state nonmember banks seeking to commence such activities for the first time *after* a Treasury and FRB determination will proceed under section 46(a). If a state nonmember bank has obtained a section 24 approval to conduct the activity before the Treasury and FRB determination, the state nonmember bank remains subject to any section 24 approval obtained from the FDIC, and the section 24 approval conditions remain in effect. Existing orders under section 24 and part 362 continue to apply to the particular banks bound by those orders until modified by the FDIC.

Because section 46 does not explicitly address what is to be done in this situation the FDIC is exercising its administrative expertise to determine the outcome. In resolving this issue, the FDIC must determine how to best interpret section 46. Congress, in reserving the FDIC's section 24 authority over activities not covered by section 46, clearly intended to foster state innovation with respect to these reserved activities. In order for state nonmember banks to be able to venture into these innovative opportunities still open to them as a result of Congress' action, a certain amount of predictability is necessary. A state nonmember bank contemplating whether to engage in a line of business subject to the FDIC's conditions under section 24 must be reasonably comfortable that the ground rules will not change suddenly at some uncertain future point. Therefore, the FDIC's interpretation best effectuates Congress' intent to foster innovation as a continuing dynamic within the dual banking system.

Section 362.17 Definitions

Section 362.17 of the final rule contains the definitions used in this subpart. Rather than repeating terms

defined in subpart A, certain of the definitions contained in § 362.2 are incorporated into subpart E by reference. The definitions of "activity", "company," "control," "insured depository institution," "insured state bank," and "subsidiary" apply as they are described in subpart A. In a similar way, we have incorporated into subpart E by reference the definition of "affiliate" as it is described in subpart B. These definitions remain consistent throughout part 362 to avoid confusion among the various subparts of the rule.

This subpart E sets forth the requirements for financial subsidiaries of insured state nonmember banks. In response to the comments, the FDIC has changed the scope of the rule by defining "financial subsidiary" in the same way as the FRB did in its rule, except that the definition is conformed to the circumstances of the state nonmember bank. Thus, any activity that may lawfully be conducted by the state nonmember bank directly is not required to be conducted through a financial subsidiary whenever the bank employs a subsidiary to conduct the activity.

This result was reached because of comments the FDIC received that the interim rule was more restrictive than the FRB's rule governing financial subsidiaries. This view is based on the fact that the FRB's rule excludes from the definition of "financial subsidiary" those activities that the state member bank is permitted to engage in directly or through a subsidiary of a state member bank that is otherwise authorized by federal law. The commenters say the FDIC's interim rule competitively disadvantages insured state nonmember banks.

In response to the comments, the FDIC has adopted the FRB's definition while conforming it to the circumstances of the state nonmember bank. In the final rule, "financial subsidiary" is defined as any company that is controlled by one or more insured depository institutions other than a subsidiary that only engages in activities that the state nonmember bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state nonmember bank; or the state nonmember bank is specifically authorized to control by the express terms of a federal statute (other than section 46(a) of the FDI Act), and not by implication or interpretation, such as the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

In the interim final rule, the FDIC implicitly carried the literal statutory restriction from the definition of

financial subsidiary in section 5136A. In contrast, the FRB substituted the state member bank for the national bank when reproducing this definition in its regulation.

The FDIC has been persuaded by the comments and has revised its rule to make it consistent with the FRB's rule by defining a financial subsidiary to exclude subsidiaries that conduct only activities that may be conducted by the state nonmember bank directly. The goals of parity among the banking charters and making banking regulations as uniform as possible among the banking agencies are enhanced by this interpretation and are goals that the FDIC consistently pursues whenever possible.

In the interim rule, the FDIC defined "affiliate" differently in subpart E from subparts B and C. The subpart E definition incorporated the definition from section 3 of the FDI Act (12 U.S.C. 1813). To make the entire regulation more internally consistent, the definition of "affiliate" has been changed in subparts B and C to match the subpart E definition. Subpart E now incorporates the definition from subpart B, which incorporates the definition from section 3 of the FDI Act (12 U.S.C. 1813). Thus, the final rule has the same definition of "affiliate" in subpart E as is contained in the interim rule, but the source is different.

Section 362.17 also includes definitions for "tangible capital," "Tier 2 capital" and "well-managed." These were included because of the comments we received in favor of making the FDIC's rule consistent with the OCC's and FRB's rules. As discussed below with regard to § 362.18(a), the FDIC requires that any insured state nonmember bank desiring to control or hold an interest in a financial subsidiary or commence any new financial activity pursuant to section 46(a) must certify, among other things, that it is well-managed. This is not required by section 46(a), but as discussed below, the FDIC has decided to revise the interim rule to allow for a self-certification process similar to the OCC's, except that the FDIC's self-certification process does not impose any waiting period on a state nonmember bank before the state bank may engage in any activity pursuant to section 46(a). The state nonmember bank only has to file a notice with the FDIC and certify to certain facts. Compliance with the requirements will be evaluated using the FDIC's usual supervisory powers. This process is more streamlined than the 30-day processing that was included in the FDIC's interim rule. However, for safety and soundness reasons, the insured

state nonmember bank must certify that it is well-managed in order to qualify for this streamlined process. Although the G-L-B Act imposes a well-managed requirement on national banks and state member banks as well as their insured depository institution affiliates, the FDIC's statute does not include such a requirement. In adopting the streamlined notice process with no waiting period, the FDIC believes it is necessary to impose the requirement that the state bank be well-managed by this regulation. The FDIC will, however, consider applications for relief from the "well-managed" requirement in appropriate circumstances.

Section 362.18 Financial Subsidiaries of Insured State Nonmember Banks

Section 362.18(a) requires that an insured state nonmember bank file a notice that contains the usual information required for a notice or application under § 303.121(b) prior to acquiring control of, or holding an interest in a financial subsidiary under section 46(a). In addition, the insured state nonmember bank must certify that it is well-managed; that it and all of its insured depository institution affiliates are well-capitalized; and that the insured state nonmember bank will comply with the capital deduction requirement, which is found in the statute and in the OCC's and FRB's rules. The insured state nonmember bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in all financial subsidiaries that engage in activities as principal pursuant to section 46(a), from the bank's total assets and tangible equity and deduct such investment from its total risk-based capital (this deduction shall be made equally from Tier 1 and Tier 2 capital). An insured state nonmember bank may not commence any new activity under section 46(a) or directly or indirectly acquire control of a company engaged in any such activity pursuant to § 362.18, if the bank or any of its insured depository institution affiliates received a rating of less than satisfactory in its most recent CRA examination.⁶ An insured state nonmember bank controlling or holding an interest in a financial subsidiary also must comply with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1), as amended by the G-L-B Act and meet the financial and operational safeguards required by section 5136A(d) of the Revised Statutes of the United

States (12 U.S.C. 24a(d)), unless otherwise determined by the FDIC.

However, the FDIC continues to be concerned that adequate separation standards exist between an insured state nonmember bank and its financial subsidiary when the financial subsidiary engages in certain types of securities underwriting activities. Thus, if the financial subsidiary of the insured state nonmember bank will engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities activity of a type permissible for a national bank only through a financial subsidiary, then the state nonmember bank and the financial subsidiary also must comply with the same separation standards as are applicable to affiliates of insured state nonmember banks that are not controlled by an entity regulated by a federal banking agency under subpart B. These separation standards require that the securities business of the financial subsidiary be physically separate and distinct in its operations from the operations of the bank; that the financial subsidiary conduct its securities business pursuant to independent policies and procedures designed to inform customers and prospective customers of the financial subsidiary that the financial subsidiary is a separate organization from the insured state nonmember bank and that the insured state nonmember bank is not responsible for and does not guarantee the obligations of the financial subsidiary. In addition, the bank must adopt policies and procedures, including appropriate limits on exposure, to govern its participation in financing transactions underwritten by its financial subsidiary and may not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by its financial subsidiary, unless the bank notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is a financial subsidiary of the bank.

Notwithstanding the comments on the CRA requirement, the FDIC will not revise its rule to allow for public comment with regard to the CRA rating requirement or give the FDIC the authority to condition approval of new activities on specific improvements in a bank's CRA performance rating because the FDIC does not have the authority to impose such additional CRA requirements on state nonmember banks.

The final rule provides that an insured state nonmember bank may not acquire control or hold an interest in a financial subsidiary that engages in

⁶ This prohibition is required by section 4(l)(2) of the BHCA as enacted in section 103(a) of the G-L-B Act which is codified at 12 U.S.C. 1843(l)(2).

financial activities as principal or commence any such new activity pursuant to section 46(a) of the FDI Act, unless the insured state nonmember bank submits a notice under the procedures set forth in § 362.18(a). An insured state nonmember bank that submits such a notice must comply with the requirements of § 362.18(a), (b), (c) and (d), as applicable. The bank must file the notice with the appropriate regional office prior to acquiring control of, or holding an interest in, a financial subsidiary that engages in financial activities as principal that a national bank must conduct through a financial subsidiary. Similarly, the bank must file such notice prior to commencing any additional as principal financial activity under section 46(a). Before acquiring control of a financial subsidiary or commencing any new as principal financial activity under section 46(a), the insured state nonmember bank also must meet the CRA requirement and certify that it is well-managed; that it and all of its insured depository institution affiliates are well-capitalized; and that the insured state nonmember bank will comply with the capital deduction requirement.

The insured state nonmember bank is not required to certify that the bank and its insured depository institution affiliates have received a rating of at least a satisfactory record of meeting community credit needs under the CRA. As specified in § 362.18(a)(2), an insured state nonmember bank is prohibited from commencing a new activity under section 46(a) or directly or indirectly acquiring control of a company as a financial subsidiary under section 46(a), if the state bank or any of the state bank's insured depository institution affiliates has received at each one's most recent examination a CRA rating of less than a satisfactory record of meeting community credit needs. The FDIC will monitor compliance with this CRA requirement at the time the new activity is commenced or control is acquired. Should the FDIC find that the bank or any of its insured depository institution affiliates is not in compliance with this CRA requirement, the FDIC will take appropriate action, including requiring divestiture.

As discussed above, one comment on the FDIC's interim final rule was that the agencies' rules should be uniform. Since the FDIC favors uniformity in rules as much as possible among the banking agencies, we considered whether the interim final rule's approach that required a 30-day advance notice process was the best way to implement section 46(a) or whether the OCC's self-certification process with

a five-day advance notice or the FRB's approach, which requires a 15-day advance notice, would be preferable. After serious consideration of the comments and a careful evaluation of all of these approaches, the FDIC determined that conduct of as principal financial activities under section 46(a) can be adequately evaluated during the normal supervisory process. Thus, the final rule requires only that the bank file a certification prior to acquiring control of, or an interest in, a financial subsidiary that engages in section 46(a) financial activities as principal. A certification must also be filed prior to commencing a new as principal financial activity under section 46(a). The FDIC believes that this streamlined process will relieve regulatory burden and increase the predictability of regulatory compliance for insured state nonmember banks without sacrificing safety or soundness.

In the future, the FDIC will evaluate any section 46(a) activity by an insured state nonmember bank through the normal supervisory process.

The FDIC was asked to clarify the financial and operational safeguards requirement in § 362.18. The insured state nonmember bank and the financial subsidiary must comply with the financial and operational safeguards required by section 5136A(d) of the Revised Statutes. In the preamble to the interim rule, the FDIC stated that the OCC had not released any guidance or interpretations of these financial and operational safeguards, and there are still no guidelines from the OCC for the FDIC to evaluate. The FDIC has the authority to interpret this section as it is made applicable to state nonmember banks and their financial subsidiaries. Thus, the FDIC may relieve such banks and subsidiaries from any financial or operational safeguards that may be imposed by the OCC on national banks. The FDIC derives this authority from its independent interpretative and supervisory authority over state nonmember banks including the safety and soundness standards that govern state nonmember banks. The final rule now expressly provides a process for a state nonmember bank to seek such relief. Such determinations will be made by the FDIC on a case-by-case basis as it becomes aware of appropriate circumstances where the financial and operational safeguards applicable to national bank financial subsidiaries are not appropriate for state nonmember banks collectively or individually.

Section 362.18(c) provides that the bank must comply with the requirements of § 362.18(a) at the time of filing its certification and continue to

comply with these requirements as long as the bank's subsidiary is engaged in financial activities. Section 362.18(f) also provides that the insured state nonmember bank and its insured depository institution affiliates must continue to comply with the requirements of § 362.18(d), unless the FDIC has granted an exception as set forth in § 362.18(e). If a bank or any of its insured depository institution affiliates fails to continue to meet the applicable requirements, then the FDIC may limit the bank's financial activities.

The FDIC believes that it has some discretion in this area since section 46 does not prescribe in detail what the FDIC must do should an insured state nonmember bank not be in compliance with the requirements. Section 5136A and new section 4(m) of the BHCA prescribe what the OCC and the FRB must do. In contrast, the statutory provisions do not prescribe how the FDIC should treat any such deficiencies. As a result, the FDIC will determine what is appropriate on a case-by-case basis.

Section 362.18(g) addresses subsidiaries covered under section 46(b), permitting insured nonmember state banks to retain their interests in subsidiaries lawfully held before the date of enactment of the G-L-B Act. The FDIC received one comment requesting that the final rule clearly state that any authorizations issued by the FDIC under section 24 prior to the adoption of subpart A of part 362 is covered by the grandfather provision. This clarification was made. Section 362.18(g)(1) provides that any insured state nonmember bank that began conducting an activity with the FDIC's approval under section 24 before such activity became subject to section 46(a) may continue to conduct the activity in compliance with the conditions and restrictions of the applicable section 24 order or regulation. In addition, any such state nonmember bank may submit an application to the FDIC for modification of any conditions the FDIC previously imposed in connection with such approval or imposed by regulation in association with notice-type approval for the activity. The FDIC interprets section 46 to invest the FDIC with retained section 24 jurisdiction over these activities. The FDIC draws this conclusion from two items in the G-L-B Act. First, the grandfather language in section 46(b) clearly authorizes state banks to retain pre-G-L-B Act subsidiaries and conduct pre-G-L-B Act activities through them, without also requiring the subsidiary to conduct the activity subject to conditions or restrictions in place as of the effective

date of the G–L–B Act. Second, the reservation of authority language in section 46(d) clearly states that the FDIC’s authority to review subsidiary activities under section 24 is not superseded by anything in section 46.

As a separate matter, the FDIC has determined that the banks that are grandfathered to hold equity securities under section 24(f) may form new subsidiaries to engage in the grandfathered investment activity. Under the grandfathered authority provided by section 24(f), this activity is lawful for these banks at the bank level. As a result, subsidiaries established under this authority are exempt from the definition of financial subsidiary, as interpreted by both the FDIC and the FRB. Accordingly, banks that are grandfathered to hold equity securities under section 24(f) may form new subsidiaries to engage in the grandfathered investment activity.

The FDIC also has amended its notice processing rules to be consistent with part 303, subpart G to add references to the new certifications and applications required by the final rule.

Part 337

Section 337.4 Securities Activities of Insured State Nonmember Banks: Bank Transactions With Affiliated Securities Companies

On December 1, 1998, the FDIC proposed an amendment to subpart B that would have added safety and soundness guidelines to govern an insured state nonmember bank subsidiary which engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities activity that would be permissible for a subsidiary of a national bank but not permissible for a national bank directly.⁷ These securities provisions were intended to address pending or approved applications under regulations issued by the OCC which permitted national banks to engage in certain activities through subsidiaries, even though the activities were not permissible for the national bank itself. Part 5 of the OCC’s regulations governs operating subsidiaries. Former § 5.34(f), which confirmed that there could be activities not permissible for a national bank itself that could be conducted by an operating subsidiary, has been superseded and removed from the OCC’s regulations. (65 FR 12905 (March 10, 2000)). Because of this change in the OCC’s regulations and the fact that the G–L–B Act, through section 5136A of the Revised Statutes and section 46(a) of

the FDI Act, established a new analytical framework, the FDIC will not be pursuing these amendments to subpart B.

The FDIC’s proposal to amend subpart B also included a proposal to consolidate the remaining provisions of the FDIC’s securities activities regulation found in § 337.4 into subpart B. The FDIC received two comments on this proposal, both of which expressed approval of eliminating § 337.4, and imposing less restrictive standards than those currently found in § 337.4. The FDIC has decided to finalize its proposal to eliminate § 337.4. Therefore, the FDIC is removing and reserving § 337.4.

Part 303

Section 303.120 Scope

Subpart G of part 303 contains the procedures for complying with the notice and application requirements of part 362 including the procedures for filing notices and applications described in subpart E of part 362. Subpart E of part 362 allows a state nonmember bank to file a notice and follow the FDIC’s self-certification process if the bank chooses to engage in activities pursuant to section 46(a) of the FDI Act. The notice filing content and procedures in § 303.121(b) are unchanged for section 46(a) notices, but these notices will no longer be processed under § 303.122. In addition, § 303.120 provides the procedures for filing an application for relief from certain of the requirements contained in subpart E of part 362. These applications will continue to be processed under § 303.122(b).

Section 303.122 Processing

In paragraphs (a) and (b) of § 303.122, references to certain sections in part 362 have to be corrected because they were either inadvertently omitted or need to be deleted as a result of substantive changes to part 362. In § 303.122(a), a reference to § 362.3(a)(2)(iii)(A)(2) was inadvertently omitted. The substantive section, § 362.3(a)(2)(iii)(A)(2) references the expedited processing section. Thus, § 362.3(a)(2)(iii)(A)(2) is being added to the list of sections listed under § 303.122(a). Also, in § 303.122(a), because the substantive § 362.8(a)(2) is listed as one of those sections but is being removed from part 362, it is being removed from the list of sections listed under § 303.122(a).

In § 303.122(b), because §§ 362.5(b)(2) and 362.8(a)(2) are being removed from part 362, they also are being removed from the list of sections subject to the standard processing section under § 303.122(b). In addition, the reference to § 362.18(a) also will be removed

because notices filed under that section would no longer be processed under § 303.122.

The delegations contained in § 303.123(b) are unchanged. This section continues to permit the review of notices and any additional supervisory follow-up to be handled at the regional offices.

Section 303.141 Filing Procedures

In paragraph (b)(1)(ii) of § 303.141, the language “of part 362” has been added to enhance the clarity of the reference to subparts C and D in that sentence.

Section 303.142 Processing

In paragraph (a) of § 303.142, because §§ 362.12(b)(2)(i) and 362.12(b)(4) are being removed from part 362, they also are being removed from the list of sections subject to the expedited processing section under § 303.142(a). In paragraphs (a) and (b) of § 303.142, references to certain sections in part 362 have to be corrected because they were incorrectly referenced. In paragraph (a) of § 303.142, the reference to § 362.11(b)(2)(i) was removed because it was inadvertently added. This change is consistent with § 362.11(b)(2)(i). In paragraph (b), the reference to § 362.11(a)(2) was incomplete and has been modified to add the paragraph (ii) to correspond to the substantive section, and the reference to § 362.11(b)(2) was incomplete and has been modified to add the paragraph (i) to correspond to the substantive section.

In paragraph (c) of § 303.142, “insured state savings association” has been replaced with “insured savings association” because some filings required under this section are made by federal savings associations. This change is consistent with the substantive section.

IV. Administrative Procedure Act

The FDIC will make this final rule effective immediately to permit state nonmember banks to immediately take advantage of the streamlined procedures and benefit from the regulatory burden relief that is found in this final rule. The interim final rule was effective as of March 11, 2000 because the FDIC found that it was impracticable to review public comments prior to the effective date of the interim final rule, and that there was good cause to make the interim rule effective on March 11, 2000, due to the fact that the rule set forth procedures to implement statutory changes that became effective on March 11, 2000. While the FDIC invited interested parties to comment on the rule at that time, the FDIC determined it would amend the rule as appropriate

⁷ 63 FR 66339 (December 1, 1998).

after reviewing the comments. In addition in December 1998, the FDIC published a proposed amendment to part 362 on which the FDIC received and reviewed comments (63 FR 66339). This proposed amendment has not been the subject of final Board action. Accordingly, the FDIC reviewed the comments applicable to activities conducted under the new section 46 of the FDI Act and considered technical changes to subparts A and B with respect to activities conducted under section 24 of the FDI Act and subparts C and D with respect to activities conducted under section 28 and section 18(m) of the FDI Act that were necessitated by the new section 46. The FDIC finds that it may adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)), because this rule removes restrictions and regulatory burden. Therefore, the regulation is effective upon publication. In addition, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994⁸ states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication. This rule does not impose new requirements; rather, depository institutions will be allowed to commence new activities immediately with no waiting period under the final rule. The FDIC finds that the final rule does not impose new reporting, disclosure or other requirements on insured depository institutions. Instead, this rule relieves burden and permits banks to engage in new activities in a more expedited fashion than was permitted under the interim rule. Thus, this final rule is effective immediately upon publication.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (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. No comments were received explicitly about PRA issues in response to the interim final rule. The collection of information contained in this rule was submitted to OMB for review and approval in accordance with the PRA and has been approved under OMB control number 3064-0111, which expires on May 31, 2003. The FDIC continues to welcome comments about

any of its collections of information. Please send comments to: Steven F. Hanft, Assistant Executive Secretary, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The incidences in which insured state nonmember banks will be required to file a certification under the rule with respect to activities under the new section 46 of the FDI Act will be infrequent and will not require significant time to complete. Furthermore, the final rule streamlines requirements for insured state nonmember banks. It simplifies the requirements that apply when insured state nonmember banks conduct certain activities through subsidiaries. Whenever possible, the final rule clarifies the expectations of the FDIC when it requires filings to consent to activities by insured state banks. The final rule also will make it easier for smaller insured state nonmember banks to locate the rules that apply to their activities.

VII. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this regulation will not affect family well-being within the meaning of 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).

VIII. Congressional Review Act

The OMB has determined that this final rule is not a "major rule" within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*). The FDIC will file the appropriate reports with Congress and the General Accounting Office so that this final rule can be reviewed.

List of Subjects

12 CFR Part 337

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 337

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

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a)(Tenth), the interim final rule amending 12 CFR parts 303 and 362 which was published at 65 FR 15526 on March 23, 2000 is adopted as a final rule with changes and 12 CFR parts 303, 362, and 337 are amended to read as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

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, 1843(l), 3104, 3105, 3108; 3207; 15 U.S.C. 1601-1607.

2. Section 303.120 is revised to read as follows:

§ 303.120 Scope.

This subpart sets forth procedures for complying with notice and application requirements contained in subpart A of part 362 of this chapter, governing insured state banks and their subsidiaries engaging in activities which are not permissible for national banks and their subsidiaries. This subpart sets forth procedures for complying with notice and application requirements contained in subpart B of part 362 of this chapter, governing certain activities of insured state nonmember banks, their subsidiaries, and certain affiliates. This subpart also sets forth procedures for filing the notices and applications described in subpart E of part 362 of this chapter, governing subsidiaries of insured state nonmember banks engaging in financial activities.

3. In § 303.122, the first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 303.122 Processing.

(a) *Expedited processing.* A notice filed by an insured state bank seeking to commence or continue an activity under § 362.3(a)(2)(iii)(A)(2), § 362.4(b)(3)(i), or § 362.4(b)(5) of this chapter will be acknowledged in writing by the FDIC

⁸ 12 U.S.C. 4802.

and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. * * *

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state bank seeking to commence or continue an activity under § 362.3(a)(2)(iii)(A)(2), § 362.3(b)(2)(i), § 362.3(b)(2)(ii)(A), § 362.3(b)(2)(ii)(C), § 362.4(b)(1), § 362.4(b)(2), § 362.4(b)(4), § 362.8(b), or seeking a waiver or modification under § 362.18(e) or § 362.18(g)(3) of this chapter, or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured bank with written notification of the final action as soon as the decision is rendered. * * *

4. In § 303.141, paragraph (b)(1)(ii) is revised to read as follows:

§ 303.141 Filing procedures.

* * * * *

(b) * * *

(1) * * *

(ii) The amount of the association's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subpart C or D of part 362 of this chapter;

* * * * *

5. In § 303.142, the first sentence of paragraph (a), the first sentence of paragraph (b), and the first sentence of paragraph (c) are revised to read as follows:

§ 303.142 Processing.

(a) *Expedited processing.* A notice filed by an insured state savings association seeking to commence or continue an activity under § 362.11(b)(2)(ii) of this chapter 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 a basis for that decision. * * *

(b) *Standard processing for applications and notices that have been removed from expedited processing.* For an application filed by an insured state savings association seeking to commence or continue an activity under § 362.11(a)(2)(ii), § 362.11(b)(2)(i), or § 362.12(b)(1) of this chapter or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured state savings association with written notification of the final action as soon as the decision is rendered. * * *

(c) *Notices of activities in excess of an amount permissible for a federal savings association; subsidiary notices.* Receipt of a notice filed by an insured savings association as required by § 362.11(b)(3) or § 362.15 of this chapter will be acknowledged in writing by the appropriate regional director (DOS). * * *

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

6. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831, 1831f-1.

§ 337.4 [Removed and Reserved]

7. Section 337.4 is removed and reserved.

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

8. The authority citation for part 362 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

9. In § 362.1, paragraph (c) is revised to read as follows:

§ 362.1 Purpose and scope.

* * * * *

(c) A subsidiary of an insured state bank may not engage in real estate investment activities that are not permissible for a subsidiary of a national bank unless the bank does so through a subsidiary of which the bank is a majority owner, is in compliance with applicable capital standards, and the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund. This subpart provides standards for majority-owned subsidiaries of insured state banks engaging in real estate investment activities that are not permissible for a subsidiary of a national bank.

* * * * *

10. In § 362.2, paragraph (r) is revised to read as follows:

§ 362.2 Definitions.

* * * * *

(r) *Subsidiary* means any company that is owned or controlled directly or indirectly by one or more insured depository institutions.

* * * * *

11. In § 362.4, paragraphs (b)(5)(ii) introductory text and (c)(2)(vi) are revised to read as follows:

§ 362.4 Subsidiaries of insured State banks.

* * * * *

(b) * * *

(5) * * *

(ii) *Securities activities.* Engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank under section 16 of the Banking Act of 1933 (12 U.S.C. 24 Seventh), provided that the insured state nonmember bank lawfully controlled or acquired the subsidiary and had an approved notice or order from the FDIC prior to November 12, 1999 and provided that the following additional conditions are, and continue to be, met:

* * * * *

(c) * * *

(2) * * *

(vi) Has a majority of its board of directors who are neither directors nor executive officers of the state-chartered depository institution;

* * * * *

§ 362.5 [Amended]

13. In § 362.5, paragraphs (b)(1), (b)(2), and (b)(3) are removed and reserved.

14. Section 362.6 is revised to read as follows:

§ 362.6 Purpose and scope.

This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. This subpart contains the required prudential separations between certain securities underwriting affiliates and insured state nonmember banks. The standards only will apply to affiliates of insured state nonmember banks that are not controlled by an entity that is supervised by a federal banking agency.

15. In § 362.7, paragraphs (a) and (b) are revised to read as follows:

§ 362.7 Definitions.

(a) *Affiliate* has the same meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) *Activity, company, control, equity security, insured state nonmember bank, security and subsidiary* have the same meaning as provided in subpart A of this part.

16. Section 362.8 is revised to read as follows:

§ 362.8 Restrictions on activities of insured state nonmember banks affiliated with certain securities companies.

(a) The FDIC has found that an unrestricted affiliation between an insured state nonmember bank and certain companies may have adverse effects on the safety and soundness of insured state nonmember banks.

(b) An insured state nonmember bank is prohibited from becoming or remaining affiliated with any securities underwriting affiliate company that directly engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities activity, of a type not permissible for a national bank directly, unless the company is controlled by an entity that is supervised by a federal banking agency or the state nonmember bank submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedure in § 303.122(b) of this chapter, or the state nonmember bank and the securities underwriting affiliate company comply with the following requirements:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and the state-chartered depository institution is not responsible for and does not guarantee the obligations of the affiliate;

(3) The bank adopts policies and procedures, including appropriate limits on exposure, to govern its participation in financing transactions underwritten by an underwriting affiliate;

(4) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank; and

(5) The bank complies with the investment and transaction limitations in sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1) with respect to the affiliate.

17. In § 362.10, paragraph (a) is revised to read as follows:

§ 362.10 Definitions.

* * * * *

(a) *Affiliate* has the same meaning as provided in subpart B of this part.

* * * * *

18. In § 362.12, paragraphs (b)(2)(i) and (b)(4) are removed and reserved, the paragraph (c) heading "Investments and transaction limits." is italicized, and paragraph (b)(1) is amended by adding a new sentence at the end to read as follows:

§ 362.12 Service corporations of insured State savings associations.

* * * * *

(b) * * *

(1) * * * The activities covered by this paragraph may include, but are not limited to, acquiring and retaining equity securities of a company engaged in the public sale distribution or underwriting of securities.

* * * * *

19. Subpart E is revised to read as follows:

Subpart E—Financial Subsidiaries of Insured State Nonmember Banks

Sec.

362.16 Purpose and scope.

362.17 Definitions.

362.18 Financial subsidiaries of insured state nonmember banks.

Subpart E—Financial Subsidiaries of Insured State Nonmember Banks

§ 362.16 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter, implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that an insured state nonmember bank certify certain facts and file a notice with the FDIC before the insured state nonmember bank may control or hold an interest in a financial subsidiary under section 46(a) of the Federal Deposit Insurance Act. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement set forth in subsection (4)(l)(2) of the Bank Holding Company Act (12 U.S.C. 1843(l)(2)), which is applicable to state nonmember banks that commence new activities through a financial subsidiary or directly or indirectly acquire control of a company engaged in an activity under section 46(a).

(b) This subpart does not cover activities conducted other than "as principal". For purposes of this subpart, activities conducted other than "as principal" are defined as activities conducted as agent for a customer,

conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

§ 362.17 Definitions.

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

(a) *Activity, company, control, insured depository institution, insured state bank, insured state nonmember bank and subsidiary* have the same meaning as provided in subpart A of this part.

(b) *Affiliate* has the same meaning provided in subpart B of this part.

(c) *Financial subsidiary* means any company that is controlled by one or more insured depository institutions other than:

(1) A subsidiary that only engages in activities that the state nonmember bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state nonmember bank; or

(2) A subsidiary that the state nonmember bank is specifically authorized to control by the express terms of a federal statute (other than section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w)), and not by implication or interpretation, such as the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(d) *Tangible equity and Tier 2 capital* have the same meaning as set forth in part 325 of this chapter.

(e) *Well-managed* means:

(1) Unless otherwise determined in writing by the appropriate federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent state or federal examination or subsequent review of the depository institution and at least a rating of 2 for management, if such a rating is given; or

(2) In the case of any depository institution that has not been examined by its appropriate federal banking agency, the existence and use of managerial resources that the appropriate federal banking agency determines are satisfactory.

§ 362.18 Financial subsidiaries of insured state nonmember banks.

(a) "*As principal*" activities. An insured state nonmember bank may not

obtain control of or hold an interest in a financial subsidiary that engages in activities as principal or commence any such new activity pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) unless the insured state nonmember bank files a notice containing the information required in § 303.121(b) of this chapter and certifies that:

(1) The insured state nonmember bank is well-managed;

(2) The insured state nonmember bank and all of its insured depository institution affiliates are well-capitalized as defined in the appropriate capital regulation and guidance of each institution's primary federal regulator; and

(3) The insured state nonmember bank will deduct the aggregate amount of its outstanding equity investment, including retained earnings, in all financial subsidiaries that engage in activities as principal pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w), from the bank's total assets and tangible equity and deduct such investment from its total risk-based capital (this deduction shall be made equally from Tier 1 and Tier 2 capital).

(b) *Community Reinvestment Act (CRA)*. An insured state nonmember bank may not commence any new activity subject to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) or directly or indirectly acquire control of a company engaged in any such activity pursuant to § 362.18(a)(1), if the bank or any of its insured depository institution affiliates received a CRA rating of less than "satisfactory record of meeting community credit needs" in its most recent CRA examination.

(c) *Other requirements*. An insured state nonmember bank controlling or holding an interest in a financial subsidiary under section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) must meet and continue to meet the requirements set forth in paragraph (a) of this section as long as the insured state nonmember bank holds the financial subsidiary and:

(1) Disclose and continue to disclose the capital separation required in paragraph (a)(3) in any published financial statements;

(2) Comply and continue to comply with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c-1) as if the subsidiary were a financial subsidiary of a national bank; and

(3) Comply and continue to comply with the financial and operational standards provided by section 5136A(d)

of the Revised Statutes of the United States (12 U.S.C. 24A(d)), unless otherwise determined by the FDIC.

(d) *Securities underwriting*. If the financial subsidiary of the insured state nonmember bank will engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities activity of a type permissible for a national bank only through a financial subsidiary, then the state nonmember bank and the financial subsidiary also must comply and continue to comply with the following additional requirements:

(1) The securities business of the financial subsidiary must be physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its financial subsidiary from sharing the same facility if the area where the financial subsidiary conducts securities business with the public is physically distinct from the routine deposit taking area of the bank;

(2) The financial subsidiary must conduct its securities business pursuant to independent policies and procedures designed to inform customers and prospective customers of the financial subsidiary that the financial subsidiary is a separate organization from the insured state nonmember bank and that the insured state nonmember bank is not responsible for and does not guarantee the obligations of the financial subsidiary;

(3) The bank must adopt policies and procedures, including appropriate limits on exposure, to govern its participation in financing transactions underwritten by its financial subsidiary; and

(4) The bank must not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by its financial subsidiary unless the bank notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is a financial subsidiary of the bank.

(e) *Applications for exceptions to certain requirements*. Any insured state nonmember bank that is unable to comply with the well-managed requirement of § 362.18(a)(1) and (c)(1), any state nonmember bank that has appropriate reasons for not meeting the financial and operational standards applicable to a financial subsidiary of a national bank conducting the same activities as provided in § 362.18(c)(3) or any state nonmember bank and its financial subsidiary subject to the securities underwriting activities requirements in § 362.18(d) that is unable to meet such requirements may

submit an application in compliance with § 303.121 of this chapter to seek a waiver or modification of such requirements under the procedure in § 303.122(b) of this chapter. The FDIC may impose additional prudential safeguards as are necessary as a condition of its consent.

(f) *Failure to meet requirements*. (1) *Notification by FDIC*. The FDIC will notify the insured state nonmember bank in writing and identify the areas of noncompliance, if:

(i) The FDIC finds that an insured state nonmember bank or any of its insured depository institution affiliates is not in compliance with the CRA requirement of § 362.18(b) at the time any new activity is commenced or control of the financial subsidiary is acquired;

(ii) The FDIC finds that the facts to which an insured state nonmember bank certified under § 362.18(a) are not accurate in whole or in part; or

(iii) The FDIC finds that the insured state nonmember bank or any of its insured depository institution affiliates or the financial subsidiary fails to meet or continue to comply with the requirements of § 362.18(c) and (d), if applicable, and the FDIC has not granted an exception under the procedures set forth in § 362.18(e) and in § 303.122(b) of this chapter.

(2) *Notification by state nonmember bank*. An insured state nonmember bank that controls or holds an interest in a financial subsidiary must promptly notify the FDIC if the bank becomes aware that any depository institution affiliate of the bank has ceased to be well-capitalized.

(3) *Subsequent action by FDIC*. The FDIC may take any appropriate action or impose any limitations, including requiring that the insured state nonmember bank to divest control of any such financial subsidiary, on the conduct or activities of the insured state nonmember bank or any financial subsidiary of the insured state bank that fails to:

(i) Meet the requirements listed in § 362.18(a) and (b) at the time that any new section 46 activity is commenced or control of a financial subsidiary is acquired by an insured state nonmember bank; or

(ii) Meet and continue to meet the requirements listed in § 362.18(c) and (d), as applicable.

(g) *Coordination with section 24 of the Federal Deposit Insurance Act*. (1) *Continuing authority under section 24*. Notwithstanding § 362.18(a) through (f), an insured state bank may retain its interest in any subsidiary:

(i) That was conducting a financial activity with authorization in accordance with section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) and the applicable implementing regulation found in subpart A of this part 362 before the date on which any such activity became for the first time permissible for a financial subsidiary of a national bank; and

(ii) Which insured state nonmember bank and its subsidiary continue to meet the conditions and restrictions of the section 24 order or regulation approving the activity as well as other applicable law.

(2) *Continuing authority under section 24(f) of the Federal Deposit Insurance Act.* Notwithstanding § 362.18(a) through (f), an insured state bank with authority under section 24(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(f)) to hold equity securities may continue to establish new subsidiaries to engage in that investment activity.

(3) *Relief from conditions.* Any state nonmember bank that meets the requirements of paragraph (g)(1) of this section or that is subject to section 46(b) of the Federal Deposit Insurance Act (12 U.S.C. 1831w(b)) may submit an application in compliance with § 303.121 of this chapter and seek the consent of the FDIC under the procedure in § 303.122(b) of this chapter for modification of any conditions or restrictions the FDIC previously imposed in connection with a section 24 order or regulation approving the activity.

(4) *New financial subsidiaries.* Notwithstanding subpart A of this part 362, an insured state bank may not, on or after November 12, 1999, acquire control of, or acquire an interest in, a financial subsidiary that engages in activities as principal or commences any new activity under section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) other than as provided in this section.

By order of the Board of Directors.

Dated at Washington, D.C. this 21st day of December, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 01-175 Filed 1-4-01; 8:45 am]

BILLING CODE 6714-14-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-214-AD; Amendment 39-12064; AD 2000-26-14]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that requires repetitive detailed visual inspections to detect cracks propagating from the fastener holes that attach the left- and right-hand pick-up angles at frame 40 to the wing lower skin and fuselage panel, and corrective actions, if necessary. The actions specified by this AD are intended to prevent reduced structural integrity of the airplane due to fatigue damage and consequent cracking of the pick-up angles at frame 40. This action is intended to address the identified unsafe condition.

DATES: Effective February 9, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes was published in the **Federal Register** on October 25, 2000 (65 FR 63817). That action proposed to require repetitive detailed visual inspections to detect cracks

propagating from the fastener holes that attach the left- and right-hand pick-up angles at frame 40 to the wing lower skin and fuselage panel, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be \$5,640, or \$120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory