

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 335

RIN 3064-AB79

### Securities of Nonmember Insured Banks

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

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is proposing revisions to its regulations, detailing registration and reporting requirements for non-member insured banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The proposal seeks to incorporate through cross reference the corresponding regulations of the Securities and Exchange Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation through cross reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law. The FDIC is requesting comments on the cross reference to the SEC's regulations and what additional provisions, if any it should include in the regulation.

**DATES:** Comments must be received September 26, 1996.

**ADDRESSES:** Comments should be directed to Jerry L. Langley, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Comments may be hand delivered to room F-402, 1776 F Street N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898-3838, Internet address: comments@FDIC.gov] Comments may also be inspected in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. between 8:30 a.m. and 5:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** M. Eric Dohm, Staff Accountant, Division

of Supervision (202-898-8921), Lawrence H. Pierce, Securities Activities Officer, Division of Supervision (202-898-8902), or Gerald J. Gervino, Senior Attorney, Legal Division (202-898-3723), Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

### SUPPLEMENTARY INFORMATION:

#### Background

Section 12(i) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78l(i), grants authority to the FDIC to issue regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (nonmember banks), which are substantially similar to the SEC's regulations under sections 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (election of directors contests), and 16 (beneficial ownership and reporting) of the Exchange Act. Section 12(i) does not however, require the FDIC to issue substantially similar regulations in the event that the FDIC finds that implementation of such regulation is not necessarily in the public interest or appropriate for protection of investors and the FDIC publishes such findings with detailed reasons therefor in the Federal Register.

To date, in 12 CFR part 335, the FDIC has generally maintained its own version of regulations pursuant to sections 12, 13, 14(a), 14(c), 14(d), and 14(f) of the Exchange Act. In 1989, the FDIC incorporated by cross reference the SEC regulations governing going private transactions and issuer tender offers. (54 FR 53592, 12 CFR 335.409 and 335.521). In 1992, SEC regulations under section 16 of the Exchange Act were incorporated by cross reference. (57 FR 4702, 12 CFR 335.401 and 335.402). In 1994, part 335 was amended to conform with more recent changes in the comparable SEC regulations. In connection with its proposed rule, the FDIC requested comment on the desirability of incorporating the SEC rules by cross reference into its own rules (59 FR 22555 (May 2, 1994)).

The FDIC received six comment letters in response to its solicitation.

Commentators were asked to comment upon the following: Should the FDIC consider proposing a revision to part 335, to incorporate by cross reference the comparable rules of the SEC, rather than continue to maintain the separate but substantially similar body of rules contained in part 335 as is done presently? Interested persons were asked to address: (1) The benefits and disadvantages of cross referencing as a method for assuring substantial similarity between the FDIC's and the SEC's regulations; (2) the potential cost savings or cost burden of cross referencing; (3) whether the FDIC should continue to review preliminary proxy materials and information statements; and (4) any other issues regarding a cross referencing proposal which commenters believe pertinent. Written comments were invited to be submitted during a 60-day comment period.

All of the commenters supported cross referencing to some extent. Two felt that the FDIC should be careful to adopt or preserve regulations different from those of the SEC, where FDIC drafted regulations would be more appropriate for banks. None provided an estimate of cost savings from the cross referencing procedure. One commenter indicated that if this cross referencing procedure is adopted, the FDIC should provide notice to banks filing under part 335 that the SEC has amended rules applicable to banks by cross reference.

In the interest of quickly bringing its rules into similarity with those of the SEC, the FDIC adopted the rule amendments as they had been previously proposed. Since the cross referencing proposal was only described generally, it is now necessary to publish an express cross referencing proposal for comment upon the actual method and language to be used.

The proposed revision would incorporate by cross reference the comparable rules of the SEC rather than continue to maintain the separate but substantially similar body of rules presently contained in part 335.

12 CFR part 335 generally applies only to nonmember banks having one or more classes of securities required to be registered under section 12 of the Exchange Act. There are presently 191 banks whose securities are registered.

### Proposed Revisions to Part 335

The FDIC proposes to amend 12 CFR part 335 by incorporating through cross reference, the regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), and 14(f) of the Exchange Act. As a result, with the exception of forms filed pursuant to section 16, the FDIC's Exchange Act forms would be eliminated and the SEC's Exchange Act forms would be utilized in filings with the FDIC. All forms filed with the FDIC however, would be required to contain the name of the FDIC in lieu of that of the SEC in order to avoid confusion. The FDIC believes that incorporation through cross reference will make its regulations substantially similar to those of the SEC, as well as those of other federal financial institution regulatory agencies.

The proposed revision would make appropriate SEC regulations applicable to persons subject to part 335, except where part 335 contains a differing or additional requirement or exception. Incorporation through cross reference generally makes all SEC regulations, and amendments thereto, applicable to registered nonmember banks, unless the FDIC acts to vary the SEC's specific requirements. The FDIC believes that this is an effective way to assure that FDIC regulations issued under the Exchange Act remain substantially similar to the SEC's regulations. However, the FDIC will still retain the ability to exempt nonmember banks, through a separate FDIC rulemaking, from any particular SEC rule it determines should not apply to such banks. The FDIC also retains its rulemaking authority to subject nonmember banks to additional or different regulations where warranted.

The FDIC believes that issuance of the proposed regulation would simplify the administration and enforcement of the disclosure provisions of the Exchange Act. This is the approach adopted by the Board of Governors of the Federal Reserve System (12 CFR 208.16), the Office of the Comptroller of the Currency (12 CFR 11.2), and the Office of Thrift Supervision (12 CFR 563d.1). Further, as registrants, investors, and their counsel acquire or expand their familiarity with SEC regulations, incorporation by cross reference should help promote uniformity and consistency of Exchange Act disclosure, without affecting the quality of the administration and enforcement of the provisions of the Exchange Act for which the FDIC is the appropriate regulatory agency.

The FDIC's principal concern with respect to the elimination of FDIC forms

and subsequent use of SEC forms is that filers may incorrectly forward the forms to the SEC. This can create embarrassment and legal liability on the part of the filers for unintentional failure to file the forms. Errors of this kind can interfere with the smooth and efficient administration of public filings under the Exchange Act. For this reason, the FDIC proposes that on all forms to be filed with the FDIC, the cover pages would be required to prominently display the name of the FDIC in lieu of that of the SEC in order to avoid confusion as to the appropriate filing agency.

### Proposed Differences From Current Part 335 Regulations

Following is a discussion of the significant differences between the FDIC's existing regulations and the SEC's regulations and procedures which would be incorporated by cross reference under this proposed rule. While there are other differences in the regulations, the FDIC believes them to be technical or minor in nature. If the FDIC adopts the proposed rule, each of these differences will be eliminated.

#### A. Minimum Asset Test for Registration

The regulations of the SEC and the FDIC differ in the minimum total asset size of an issuing company. The company's asset size is used as one of the triggering criteria (in addition to the number of shareholders) for requiring registration of securities under section 12 of the Exchange Act. Section 12(g) of the Exchange Act (17 U.S.C. 781(g)) requires any issuing company with at least 500 shareholders and a minimum total assets of \$1 million to register the class of securities, subject to limits, exemptions, and conditions prescribed by the SEC or other appropriate regulatory agency. The SEC's Rule 12g-1 (17 CFR 240.12g-1) prescribes the minimum asset test to be \$10 million in total assets. Currently, the FDIC rules do not alter the statutory standard. Incorporation of the SEC's regulations by cross reference, would adopt the SEC's threshold of \$10 million.

#### B. Shareholder Proposal Rules

The regulations of the SEC and the FDIC differ primarily with respect to the proponent's ownership requirements in stock of an issuing company, and the number of proposals which a proponent may present. The FDIC's rules presently require only that the proponent be a shareholder of the registrant, and that a proponent may submit a maximum of two proposals for inclusion in a registrant's annual meeting proxy statement. The SEC's Rule 14a-8 (17

CFR 240.14a-8) requires a proponent to beneficially own at least 1% or \$1,000 in market value of securities entitled to be voted on the proposal, requires a proponent to have held such securities for at least one year, and permits a proponent to submit only one proposal for inclusion in a registrant's annual meeting proxy statement. Incorporation of the SEC's regulations by cross reference, would adopt the SEC's requirements which include the differences described above.

#### C. Certification, Suspension of Trading, and Removal From Listing by Exchanges; Unlisted Trading; and Related Filing Requirements

The SEC's rules currently require a national securities exchange to formally certify that a registrant's security has been approved for listing. The SEC's rules contain provisions applicable to suspension of trading on a national securities exchange, withdrawal, and striking of a security from listing and registration. Also, SEC rules prescribe requirements relative to applications, changes, termination, suspension, or exemption of securities admitted to unlisted trading on a national securities exchange. The FDIC's rules currently also require certification by a national securities exchange, but do not contain the additional provisions summarized above. Incorporation of the SEC's regulations by cross reference, would adopt the SEC's rules on Certification By Exchanges (17 CFR 240.12d1-1 through 12d1-6), Suspension Of Trading, Withdrawal, And Striking From Listing And Registration (17 CFR 240.12d2-1 through 12d2-6), and Unlisted Trading (17 CFR 240.12f-1 through 12f-6).

#### D. Availability of Exchange Act Filings at Federal Reserve Banks

FDIC regulations currently require that copies of all registration statements and periodic reports required by 12 CFR 335.301 through 335.365 (exclusive of exhibits), the proxy and information statements required by 12 CFR 335.201, and annual reports to security holders required by 12 CFR 335.203 will be available for inspection at the Federal Reserve Bank (FRB) of the District in which the bank making the submission is located. The FDIC staff believes that there has been extremely little if any public interest in inspecting these Exchange Act filings at the Federal Reserve Banks. It is also believed that it is difficult for the public to access these filings. Adoption of this proposed rule would eliminate the availability of these Exchange Act filings at the Federal Reserve Banks. All Exchange Act filings

will still be available for inspection at and copies may be obtained from the FDIC in Washington, D.C.

**Proposed Differences From SEC Regulations (Superseded SEC Regulations and FDIC Substituted Regulations)**

Following is a discussion of the significant differences between the applicable requirements assuming adoption of this proposed rule by FDIC, and the SEC's regulations and procedures which would be incorporated by cross reference. Unless any particular provisions of the SEC's Exchange Act regulations are specifically superseded by the FDIC, incorporation by cross reference would make such provisions applicable to nonmember banks, related parties and investors. The FDIC rules under 12 CFR part 335 currently contain these provisions or requirements and retention thereof is considered warranted. If the FDIC adopts this proposed rule, each of the following differences between the rules of the FDIC and the rules of the SEC will remain in effect.

**A. Review of Proxy and Information Statements**

The SEC and the FDIC regulations differ significantly in the type of proxy and information statements subject to regulatory review prior to distribution to shareholders. The SEC requires preliminary filings of proxy and information statements, but only concerning those shareholder meetings which are other than "routine" annual meetings. In such cases, the SEC requires preliminary filings to be filed ten days prior to distribution to shareholders (17 CFR 240.14a-6 and 17 CFR 240.14c-5). The FDIC however, currently requires preliminary filings for all shareholder meetings, and requires that the preliminary filings be made at least ten days before routine meetings and 15 days before other than routine meetings (12 CFR 335.204).

The SEC regulations exempt proxy statements for "routine" annual meetings from the requirement of preliminary filing and advance review. While the FDIC receives a moderate number of "routine" meeting filings, the staff has found that it is this category of filings where the most fundamental errors are made. Proxy statements for "routine" annual meetings often contain more basic errors and omissions than in the case of "non-routine" meetings. In the absence of an advance filing, the FDIC must choose between requiring a new meeting after the problem is belatedly discovered or overlooking

noncompliance until the following year. A similar problem may occur in enforcing the regulations with banks that misread or are negligent in interpreting the term "routine".

Accordingly, the FDIC is proposing that its rules under 12 CFR part 335 continue to require the filing of both routine and non-routine preliminary proxy materials for staff review and comment prior to their distribution to shareholders. The FDIC staff believes that the overall benefits resulting from the current requirement under 12 CFR part 335 to file "routine" preliminary proxy statements, exceed the costs attributed to making those filings. Although the FDIC considers a continuation of these requirements appropriate subsequent to adoption of a cross referencing rule, it intends to perform a periodic assessment of this requirement in light of its experience and will propose revisions as warranted.

**B. Disclosure of Extensions of Credit to Insiders**

The SEC and the FDIC regulations contain requirements for financial institution disclosure of loans to its insiders. SEC regulations generally require the disclosure of certain insider indebtedness in excess of \$60,000 which have preferential terms, were not made in the ordinary course of business, or which involve more than the normal risk of collectibility or involve other unfavorable features. In contrast, since 1965, the FDIC has required: (a) disclosure of insiders' indebtedness on a basis substantially similar to that of the SEC, but without the \$60,000 threshold; and (b) basic disclosure of relatively large extensions of credit to insiders and to insiders as a group, based strictly upon the amount of indebtedness.

Even though loans to insiders are often subject to amount limitations in banking law and regulation, significant amounts of insider loans yet occur. The proposed rule would incorporate the SEC's indebtedness of management disclosure requirements and would also add a requirement to disclose large extensions of credit to insiders and to insiders as a group, based solely upon the amount of indebtedness. The FDIC staff believes that the overall benefit resulting from continuation of the FDIC's current disclosure requirements under 12 CFR part 335 is in the public interest and is appropriate to the banking industry.

**C. Filing Fees**

The regulations of SEC include very specific requirements for the payment of filing fees which are applicable to and

must be paid by any person or entity filing reports with the SEC under the Exchange Act. The FDIC's proposed rules will not require filing fees to be paid by any person, registrant, or entity making Exchange Act filings with the FDIC.

**D. Electronic Data Gathering Analysis and Retrieval (EDGAR)**

The SEC's Regulation S-T (17 CFR part 232) requires all registrants to submit filings in electronic format pursuant to its EDGAR system. Although the FDIC is studying the feasibility of the acceptance and administration of electronic filings under the Exchange Act, the FDIC does not accept and is not proposing to accept electronic filings at this time.

**E. Legal Proceedings**

The SEC and the FDIC regulations currently both require disclosure of legal proceedings in certain filings under the Exchange Act. The FDIC generally requires disclosure of all legal proceedings required to be disclosed by the SEC, and in addition, the FDIC's regulations deem as material and require disclosure of administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act. The FDIC is proposing that its rules under 12 CFR part 335 incorporate the SEC's legal proceedings disclosure requirements by cross reference, and in addition, continue to deem as material and require disclosure of administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act. The FDIC staff believes that the overall benefit resulting from the explicit requirement to disclose proceedings arising under section 8 of the Federal Deposit Insurance Act is in the public interest and is appropriate to the banking industry.

**Request for Public Comments**

The Board hereby requests comment on all aspects of the proposed rule, particularly those specifically mentioned above. The FDIC requests specific written comments from the public regarding:

(1) The benefits and disadvantages of cross referencing as a method for assuring substantial similarity between FDIC and SEC regulations;

(2) The potential cost savings or cost burden of cross referencing; Please include estimates of specific dollar amounts of any anticipated benefits, as well as amounts of transitional and continuing costs such as purchase of reference aides, staff training, and any

necessary additional professional assistance;

(3) Whether the FDIC should provide any specific exemptions from, or separate additions to the SEC's regulations;

(4) Whether the FDIC should continue to require disclosure of insider extensions of credit as it currently does under its rules in 12 CFR 335.212 Item 7(b); and

(5) Whether the FDIC should continue to also make Exchange Act filings available for inspection at the Federal Reserve Banks.

(6) The appropriate time frame for implementation of the final rule, including the amount of time which should pass after publication of the final rule before compliance with the final rule is required; and

(7) Any other issues regarding the proposal which commenters believe would assist in this rulemaking.

#### Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification in the Federal Register along with its general notice of proposed rulemaking. Pursuant to section 605(b) of the RFA, the FDIC certifies that this proposed rule would apply only to those banks whose securities are publicly held. Other covered persons include: insiders of banks; large shareholders of banks; and bidders for bank stock.

These regulations will cross-reference SEC regulations. By statute any differences must be specifically justified through the rulemaking process. The regulations are functionally almost identical. They are issued under the same statutory authority. They share a common legislative purpose. The FDIC considers the applicable SEC rule, defining "small entities", a necessary standard in order to maintain fair and comparable regulation. The FDIC is comparing FDIC regulated banks and SEC regulated nonbank entities, including bank holding companies. The applicable SEC definition of "small entities" sets the upper limit at \$5 million. The SEC has delayed raising this limit until it completes its current and future initiatives in this area. Any SEC revisions in this area should pass through to entities subject to part 335. Currently, there are no banks below this

limit filing under part 335. Further, this rulemaking does not substantially change existing filing requirements for any individual. Based upon this factual background, the FDIC certifies that the proposed amendments will have no economic impact on any identifiable small entities as defined for the class by SEC which is the general regulator in the area.

#### Paperwork Reduction Act

The collection of information in this proposed rule has been reviewed and approved by the Office of Management and Budget under control number 3064-0030 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Comments on the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064-0030), Washington, D.C. 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-400, 550 17th Street, N.W., Washington, D.C. 20429.

This information is needed to assure compliance with the Exchange Act and to provide information to investors and the public about the condition of registered nonmember banks. The likely respondents are for-profit financial institutions—registered nonmember banks, as well as their directors, executive officers and principal shareholders. The total reporting burden for all collections of information in this regulation is currently estimated as follows:

Number of Respondents .....	3,213
Number of Responses Per Respondent .....	1.67
Total Annual Responses .....	5,363
Hours Per Response .....	8.60
Total Annual Burden Hours .....	46,036

The estimated annual burden per respondent varies from 30 minutes to 200 hours, depending on the particular form and individual circumstances, with an estimated average of 8.60 hours.

#### Cost Benefit Analysis

This proposed revision is generally not expected to result in material increases in costs and burden to respondents. Some filers, however, may realize an increase in costs due to an increased need for professional guidance in order to facilitate the making of filings under the Exchange Act. Any overall increase in costs resulting from this proposed rule should be moderate, however, due to the existing general familiarity with the SEC's regulations on the part of registrants, investors, and their counsel.

Any such increase in overall costs should be offset by elimination of the need for potential filers to become familiar with two separate sets of regulations implementing the filing requirements of the Exchange Act.

#### Statutory Basis

The revisions to the FDIC's rules under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, are being adopted by the FDIC pursuant to Exchange Act section 12(i).

#### List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the FDIC proposes to revise part 335 to read as follows:

### **PART 335—SECURITIES OF NONMEMBER INSURED BANKS**

#### Sec.

- 335.101 Scope of part, authority and OMB control number.
- 335.111 Forms and schedules.
- 335.201 Securities exempted from registration.
- 335.211 Registration and reporting.
- 335.221 Forms for registration of securities and similar matters.
- 335.231 Certification, suspension of trading, and removal from listing by exchanges.
- 335.241 Unlisted trading.
- 335.251 Forms for notification of action taken by national securities exchanges.
- 335.261 Exemptions; terminations; and definitions.
- 335.301 Reports of issuers of securities registered pursuant to section 12.
- 335.311 Forms for annual, quarterly, current, and other reports of issuers.
- 335.321 Maintenance of records and issuer's representations in connection with required reports
- 335.331 Acquisition statements and acquisitions of securities by issuers.
- 335.401 Solicitations of proxies.
- 335.501 Tender offers.
- 335.601 Requirements of section 16 of the Securities Exchange Act of 1934.
- 335.611 Initial statement of beneficial ownership of securities (Form F-7).
- 335.612 Statement of changes in beneficial ownership of securities (Form F-8).
- 335.613 Annual statement of beneficial ownership of securities (Form F-8A).
- 335.701 Filing requirements, public reference, and confidentiality.
- 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

Authority: 15 U.S.C. 781(i).

#### **§ 335.101 Scope of part, authority and OMB control number.**

(a) This part is issued by the Federal Deposit Insurance Corporation (the

FDIC) under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78)(the Exchange Act) and applies to all securities of FDIC insured banks (including foreign banks having an insured branch) which are neither a member of the Federal Reserve System nor a District bank (collectively referred to as nonmember banks) that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act (registered nonmember banks). The FDIC is vested with the powers, functions, and duties vested in the Securities and Exchange Commission (the Commission or SEC) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act)(15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p)), regarding nonmember banks with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g).

(b) This part generally incorporates through cross reference, the regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. References to the Commission are deemed to refer to the FDIC unless the context otherwise requires.

(c) The Office of Management and Budget has reviewed and approved the recordkeeping and reporting required by this part (OMB control number 3064-0030).

#### **§ 335.111 Forms and schedules.**

The Exchange Act regulations of the SEC, which are incorporated by cross reference under this part, require the filing of forms and schedules as applicable. Reference is made to SEC Exchange Act regulation 17 CFR 249.0-1 regarding the availability of all applicable SEC Exchange Act forms. Required schedules are codified and are found within the context of the SEC's regulations. The filings of all applicable SEC forms and schedules shall be made with the FDIC at the address in this section. They shall be titled with the name of the FDIC in substitution for the name of the SEC. Forms F-7 (§ 335.611), F-8 (§ 335.612), F-8A (§ 335.613), are FDIC forms which are issued under section 16 of the Exchange Act and can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Reference is also made to § 335.701 for general filing requirements, public reference, and confidentiality provisions.

#### **§ 335.201 Securities exempted from registration.**

Persons generally subject to registration requirements under Exchange Act section 12 and subject to this part, shall follow the applicable and currently effective SEC regulations relative to exemptions from registration issued under sections 3 and 12 of the Exchange Act as codified at 17 CFR 240.3a12-1 through 240.3a12-11; 240.12a-4 through 240.12a-7; 240.12g-1 through 240.12h-4.

#### **§ 335.211 Registration and reporting.**

Persons with securities subject to registration under Exchange Act sections 12(b) and 12(g), required to report under Exchange Act section 13, and subject to this part shall follow the applicable and currently effective SEC regulations issued under section 12(b) of the Exchange Act as codified at 17 CFR 240.12b-1 through 240.12b-36.

#### **§ 335.221 Forms for registration of securities and similar matters.**

(a) The applicable forms for registration of securities and similar matters are codified in subpart C of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks may also refer to the instructions for FFIEC Reports of Income and Reports of Condition when preparing unaudited interim statements. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR 229.300. Industry Guide 3, Statistical Disclosure by Bank Holding Companies, is codified at 17 CFR 229.802.

(c) A "small business issuer", as defined under 17 CFR 240.12b-2, has the option of filing Small Business (SB) Forms (as codified in 17 CFR part 249) in lieu of the Exchange Act forms otherwise required to be filed, which provide for financial and other item disclosures in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR part 228). The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

#### **§ 335.231 Certification, suspension of trading, and removal from listing by exchanges.**

The provisions of the applicable and currently effective SEC regulations

under section 12(d) of the Exchange Act shall be followed as codified at 17 CFR 240.12d1-1 through 240.12d2-2.

#### **§ 335.241 Unlisted trading.**

The provisions of the applicable and currently effective SEC regulations under section 12(f) of the Exchange Act shall be followed as codified at 17 CFR 240.12f-1 through 17 CFR 240.12f-6.

#### **§ 335.251 Forms for notification of action taken by national securities exchanges.**

The applicable forms for notification of action taken by national securities exchanges are codified in subpart A of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

#### **§ 335.261 Exemptions; terminations; and definitions.**

The provisions of the applicable and currently effective SEC regulations under sections 12(g) and 12(h) of the Exchange Act shall be followed as codified at 17 CFR 240.12g-1 through 240.12h-4.

#### **§ 335.301 Reports of issuers of securities registered pursuant to section 12.**

The provisions of the applicable and currently effective SEC regulations under section 13(a) of the Exchange Act shall be followed as codified at 17 CFR 240.13a-1 through 240.13a-17.

#### **§ 335.311 Forms for annual, quarterly, current and other reports of issuers.**

(a) The applicable forms for annual, quarterly, current, and other reports are codified in subpart D of 17 CFR part 249. All forms shall be filed with the FDIC as appropriate and shall be titled with the name of the FDIC instead of the SEC.

(b) The requirements for Financial Statements can generally be found in Regulation S-X (17 CFR part 210). Banks may also refer to the instructions for FFIEC Reports of Income and Reports of Condition when preparing unaudited interim reports. The requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations can be found at 17 CFR 229.300. Industry Guide 3, Statistical Disclosure by Bank Holding Companies, is codified at 17 CFR 229.802.

(c) A "small business issuer", as defined under 17 CFR 240.12b-2, has the option of filing Small Business (SB) Forms (as codified in 17 CFR part 249) in lieu of the Exchange Act forms otherwise required to be filed, which provide for financial and other item disclosures in conformance with Regulation S-B of the Securities and

Exchange Commission (17 CFR part 228). The definition of "small business issuer", generally includes banks with annual revenues of less than \$25 million, whose voting stock does not have a public float of \$25 million or more.

**§ 335.321 Maintenance of records and issuer's representations in connection with required reports.**

The provisions of the applicable and currently effective SEC regulations under section 13(b) of the Exchange Act shall be followed as codified at 17 CFR 240.13d2-1 through 240.13b2-2.

**§ 335.331 Acquisition statements and acquisitions of securities by issuers.**

The provisions of the applicable and currently effective SEC regulations under section 13(d) and 13(e) of the Exchange Act shall be followed as codified at 17 CFR 240.13d-1 through 240.13e-102.

**§ 335.401 Solicitations of proxies.**

The provisions of the applicable and currently effective SEC regulations under section 14(a) and 14(c) of the Exchange Act shall be followed as codified at 17 CFR 240.14a-1 through 17 CFR 240.14a-103 and 17 CFR 240.14c-1 through 240.14c-101.

**§ 335.501 Tender offers.**

The provisions of the applicable and currently effective SEC regulations under section 14(d), 14(e), and 14(f) of the Exchange Act shall be followed as codified at 17 CFR 240.14d-1 through 240.14f-1.

**335.601 Requirements of section 16 of the Securities Exchange Act of 1934.**

Persons subject to section 16 of the Act with respect to securities registered under this part shall follow the applicable and currently effective SEC regulations issued under section 16 of the Act (17 CFR 240.16a-1 through 240.16e-1), except that the forms described in § 335.611 (Form F-7), § 335.612 (Form F-8), and § 335.613 (Form F-8A) shall be used in lieu of SEC Form 3 (17 CFR 249.103), Form 4 (17 CFR 249.104), or Form 5 (17 CFR 249.105), respectively. Copies of Forms F-7, F-8, F-8A and the instructions thereto can be obtained from the Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

**§ 335.611 Initial statement of beneficial ownership of securities (Form F-7).**

This form shall be filed in lieu of SEC Form 3 pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for initial statements of

beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

**§ 335.612 Statement of changes in beneficial ownership of securities (Form F-8).**

This form shall be filed pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for statements of changes in beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w) and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

**§ 335.613 Annual statement of beneficial ownership of securities (Form F-8A).**

This form shall be filed pursuant to SEC rule 16a-3 (17 CFR 240.16a-3) for annual statements of beneficial ownership of securities. The FDIC is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p and 78w), and the rules and regulations thereunder. SEC regulations referenced in this form are codified at 17 CFR 240.16a-1 through 240.16e-1.

**§ 335.701 Filing requirements, public reference, and confidentiality.**

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, D.C. Official filings made at the FDIC's office in Washington, D.C. should be addressed as follows: Attention: Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the FDIC shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal

Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C.

(c) *Nondisclosure of certain information filed.* Any person filing any statement, report, or document under the Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below.

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the FDIC.

(2) The person shall file with the copies of the statement, report, or document filed with the FDIC:

(i) As many copies of the confidential portion, each clearly marked "Confidential Treatment", as there are copies of the statement, report, or document filed with the FDIC and with each exchange, if any. Each copy shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document;

(ii) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain:

(A) An identification of the portion of the statement, report, or document that has been omitted;

(B) a statement of the grounds of objection;

(C) consent that the FDIC may determine the question of public disclosure upon the basis of the application, subject to proper judicial reviews;

(D) the name of each exchange, if any, with which the statement, report, or document is filed;

(iii) The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

(3) Pending the determination by the FDIC as to the objection filed in accordance with paragraph (c)(2)(ii) of

this section, the confidential portion will not be disclosed by FDIC.

(4) If the FDIC determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(5) If the FDIC shall have determined that disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(6) The confidential portion shall be made available to the public:

(i) Upon the lapse of 15 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC described in paragraph (c)(5) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination;

(ii) Upon the lapse of 60 days after the dispatch of notice by registered or certified mail of the finding and determination of the FDIC, if the statement described in paragraph (c)(6)(i) of this section shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(iii) If such petition for judicial review shall have been filed within such 60 days upon final disposition, adverse to the person, of the judicial proceedings.

(7) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the FDIC and with each exchange concerned.

**§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.**

(a) *Filing fees.* Filing fees will not be charged relative to any filings or submissions of materials made with the FDIC pursuant to the cross reference to regulations of the SEC issued under sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act, and this part.

(b) *Electronic filings.* The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232), and does not permit electronically transmitted filings or submissions of materials in electronic format to the FDIC.

(c) *Legal proceedings.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure

of legal proceedings, administrative or judicial proceedings arising under section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

(d) *Indebtedness of management.* Whenever this part or cross referenced provisions of the SEC regulations require disclosure of indebtedness of management, extensions of credit to specified persons in excess of ten (10) percent of the equity capital accounts of the bank or \$5 million, whichever is less, shall be deemed material and shall be disclosed in addition to any other required disclosure. The disclosure of this material indebtedness shall include the largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time since the beginning of the bank's last fiscal year and as of the latest practicable date.

(1) If aggregate extensions of credit to all specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year, the aggregate amount of such extensions of credit shall also be disclosed.

(2) Other loans are deemed material and shall be disclosed where:

(i) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons;

(ii) The extension(s) of credit were not made in the ordinary course of business; or

(iii) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(e) *Additional information; filing of other statements in certain cases.* (1) In addition to the information expressly required to be included in a statement, form, schedule or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(2) The FDIC may, upon the written request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements or disclosures herein required, or the filing in substitution therefor of appropriate

statements or disclosures of comparable character.

(3) The FDIC may also require the filing of other statements or disclosures in addition to, or in substitution for those herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or disclosure about which is otherwise necessary for the protection of investors.

By Order of the Board of Directors.

Dated at Washington, DC this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

*Deputy Executive Secretary.*

[FR Doc. 96-16256 Filed 6-27-96; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[KY86-2-6933b; FRL-5456-3]

**Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to the Kentucky State Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is approving revisions to the Kentucky State Implementation Plan (SIP) submitted on December 29, 1994, by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). The revisions pertain to Kentucky regulations 401 KAR 59:101 New Bulk Gasoline Plants and 401 KAR 61:056 Existing Bulk Gasoline Plants. The revisions were the subject of a public hearing held on July 26, 1994, and became state effective September 28, 1994. The intended effect of these revisions is to clarify certain provisions and ensure consistency with requirements of the Clean Air Act.

In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all