

maintain records of the owner's animals, authorizing the breed associations or registries to release to APHIS all records maintained by the breed associations or registries on animals currently or formerly owned by the owner.

(b) APHIS will evaluate each application to determine whether it is complete and includes the agreement required by § 54.4, and whether the animals for which indemnification is requested are eligible for indemnification payments in accordance with § 54.2. APHIS will approve an application, and notify the applicant in writing of the date of approval, after determining that the application requests indemnification only for:

(1) Animals in a flock that has been determined to be an infected flock or a source flock, or

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks. Indemnity will be paid until available indemnification funds have been exhausted.

§ 54.4 Certification by owners.

Before any indemnification payment is made to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review, within 30 days of a request by an APHIS representative, all bills of sale, pedigree registration certificates issued by breed or registry associations, and other records regarding movement of animals into and from the flock containing animals for which an indemnification application is made;

(b) If the owner maintains any flock after the payment of indemnification, the owner shall maintain the flock in accordance with the Voluntary Scrapie Flock Certification Program procedures referenced in subpart B of this part;

(c) If the animal for which indemnification is paid is subject to any mortgage, the owner shall consent to the payment of the indemnification to the person holding the mortgage.

§ 54.5 Amount of indemnification payments.

Indemnity paid in accordance with § 54.2 shall be paid in the amount of \$150 for each registered animal destroyed and \$50 for each other animal destroyed.

§ 54.6 Procedures for destruction of animals.

(a) Animals for which indemnity is sought, other than animals destroyed for

diagnostic testing, shall be destroyed on the premises where the animals are held, pastured, or penned at the time indemnity is approved; except that the animals may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative.

(b) The carcasses of animals destroyed in accordance with this section shall be disposed of by burial, incineration, or other disposal methods authorized by applicable State law.

(c) The destruction and disposition of animals destroyed in accordance with this section shall be performed in the presence of an APHIS representative.

Done in Washington, DC, this 3rd day of December, 1992.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-29897 Filed 12-8-92; 8:45 am]

BILLING CODE 3410-34-F

FEDERAL ELECTION COMMISSION

11 CFR Part 201

[Notice 1992-23]

Ex Parte Communications

AGENCY: Federal Election Commission.

ACTION: Interim rules, with request for comments.

SUMMARY: The Federal Election Commission is establishing procedures for handling communications made to Commissioner offices in connection with Commission audits, litigation, rulemaking proceedings and advisory opinions, by persons not employed by the Commission. These communications are prohibited, in the case of audits and litigation; and are to be made part of the public record, in the case of rulemaking proceedings and advisory opinions.

EFFECTIVE DATE: These interim rules are effective on December 9, 1992. The Commission will accept comments on these rules received on or before January 8, 1993, and may re-evaluate them in light of these comments.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is establishing procedures for handling ex parte communications made in connection with Commission audits,

litigation, rulemaking proceedings and the advisory opinion process. These new rules complement those found at 11 CFR 7.15 and 111.22, which prohibit these communications in connection with Commission enforcement actions.

The Commission anticipates that there will be future revisions to the Standard of Conduct rules that could change the 11 CFR 7.15 citation. Any such change will be reflected in the final publication of these rules.

The interim rules prohibit ex parte communications made in connection with ongoing Commission audits and litigation. These communications are permitted in the case of rulemaking proceedings and advisory opinions, but are to be made part of the public record.

The new rules apply to Commissioners, Special Deputies of ex officio Commissioners, and all individuals serving under their personal supervision. The Commission also plans to consider recommendations for internal guidelines in this area for other Commission employees.

Audits and Litigation

The ban on ex parte communications in connection with Commission audits and litigation is necessary to avoid the possibility of prejudice, real or apparent, to the public interest in these activities. The new and former rules interrelate so that, if an audit or enforcement matter leads to litigation, the ban on ex parte communications extends from the start of the audit or enforcement action through the conclusion of any related litigation. The ban applies to both written and oral communications.

The Commission is required to audit the records of any presidential campaign that receives payments from the Presidential Election Campaign Fund. 26 U.S.C. 9007(a), 9009(b), 9038(a), 9039(b). If a party receives funding for its presidential nominating convention, the Commission is required to audit the records of the party's convention committee. The Commission is also required to audit the records of all convention host committees. 26 U.S.C. 9008 (g) and (h), 11 CFR 9008.9.

In addition, the Commission is authorized at 2 U.S.C. 438(b), under its general administrative authority, to conduct audits for cause of any political committee that is required to file campaign finance reports under the Federal Election Campaign Act's general reporting requirement, 2 U.S.C. 434.

The prohibition on ex parte contacts in connection with a Commission audit covers different time periods, depending on which type of audit is involved, to

reflect the different procedures followed in each instance.

In the case of an audit of a presidential campaign committee, a convention committee or host committee, the prohibition on ex parte communications begins when the Commission sends a letter to the committee asking that it make a pre-inventory check of its records prior to the commencement of audit fieldwork by the Commission. Commissioners' offices will be provided with contemporaneous copies of these letters.

The prohibition on audits of all publicly funded committees extends until the end of the audit process. This occurs when the Commission issues a final audit report ("FAR"), if the report does not contain a repayment determination. If the FAR contains a repayment determination, the process ends when the United States Treasury receives the final repayment check from the committee, or when the Commission authorizes suit to pursue the repayment.

In addition, the Commission invites comments on whether broader ex parte rules should be adopted that would apply from the time a candidate or committee seeks eligibility to receive matching federal funds. The Commission is seeking comments on three possible approaches: (1) A ban on ex parte communications, but only while a candidate or committee's eligibility was being determined, or during other Commission determinations pursuant to 11 CFR 9033.10; (2) a ban throughout the public funding process, i.e., from the date the candidate or committee seeks eligibility through the end of the audit process; or (3) permitting ex parte communications from the time the candidate or committee seeks eligibility through the end of the audit process, but requiring public disclosure of such contacts: (a) While eligibility was being determined, or during other Commission determinations pursuant to 11 CFR 9033.10, or (b) throughout the public funding process. The Commission also welcomes comments on any other way to deal with this situation.

When an audit is conducted pursuant to 2 U.S.C. 438(b), the prohibition takes effect when the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, and extends until the Commission publicly issues the final audit report. If the matter is referred to the Office of General Counsel and there is reason to believe that a violation has occurred, the prohibition on ex parte communications made in connection with an enforcement matter,

found at 11 CFR 111.22, becomes applicable.

The prohibition involving litigation takes effect with the Commission's authorization to file suit, in the case of offensive litigation; or at the time a suit is filed against the Commission, in the case of defensive litigation. It extends through the conclusion of the litigation, that is, the date on which a judgment is entered which cannot be appealed, or on which the deadline for appealing a judgment expires.

The rules state that a Commissioner or member of a Commissioner's staff who receives a prohibited communication shall attempt to prevent the communication. If the Commissioner or staff member is unsuccessful in preventing the communication, he or she shall advise the person making the communication that it will not be considered. In addition, if unable to prevent the communication, he or she shall prepare a statement setting forth the substance and circumstances of the communication no later than 48 hours after its receipt, or prior to the next Commission discussion of the matter, whichever is earlier, and deliver this statement to the Designated Agency Ethics Official for placement in the file of the litigation case or audit. A copy of written comments must be filed with the Designated Agency Ethics Official within the same timeframe. (This is similar to the Commission's existing rules regarding enforcement matters.)

Rulemaking Proceedings and Advisory Opinion Requests

The Commission encourages members of the public to state their views on rulemakings and advisory opinion requests in writing, during the public comment period on each such matter. Communications prior to the start of a rulemaking proceeding or the receipt of an advisory opinion request are also welcome. Communications made after the rulemaking or advisory opinion process has started are permitted, but these must be made public so that all persons will have equal notice of the information before the Commission.

A Commissioner or member of a Commissioner's staff who receives written comments on a rulemaking or advisory opinion once the rulemaking or advisory opinion process has started shall transmit the communication to the Commission Secretary no later than 48 hours after receipt, or prior to the next Commission discussion of the matter, whichever is earlier, to be made part of the public record. If a Commissioner or member of a Commissioner's staff has a discussion that would qualify as an ex parte communication regarding a

rulemaking proceeding or advisory opinion during the pertinent time period established by these rules, the Commissioner or staff member shall, no later than 48 hours after the conversation or prior to the next Commission discussion of the matter, whichever is earlier, summarize the conversation in writing and transmit this summary to the Commission Secretary, who shall make it part of the public record.

For advisory opinions, the pertinent period begins when a request for an advisory opinion is circulated to Commissioners' offices and extends through the date the opinion is issued. The restrictions also apply during any reconsideration of an advisory opinion, and any discussion of reconsideration.

For rulemaking proceedings, the period begins on the date a proposal for rulemaking is circulated to Commissioners' offices, or the date on which a rulemaking petition is received. It extends through the conclusion of the rulemaking. This can occur at different times, depending on the course of a particular rulemaking; E.g., when a rulemaking petition is denied; when the reconsideration process regarding a petition is concluded; when final rules are approved and transmitted to Congress; or when the Commission concludes its consideration of any action relating to proposed or actual congressional disapproval of a pending rule.

Exceptions

The rules contain an exception for communications limited to the procedural status of a pending matter, where the communication is not made for the purpose of influencing a decision, does not address the substance or merits of a matter before the Commission, and does not tend to have an effect on Commission consideration of the matter. Commissioners or their staff who receive status inquiries regarding audit or litigation matters shall direct the inquiries to the appropriate Commission staff.

Also, Commissioners and other covered personnel making public appearances may express their views either spontaneously or in response to inquiries from members of the audience at such appearances on a subject involved in a pending rulemaking or advisory opinion request, without triggering these requirements.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached interim regulations will not have a significant economic impact

on a substantial number of small entities. The basis for this certification is that no small entities are impacted under these rules.

List of Subjects in 11 CFR Part 201

Administrative practice and procedure.

For the reasons set out in the preamble, subchapter B, chapter I of title 11 of the Code of Federal Regulations is amended by adding new part 201 as follows:

PART 201—EX PARTE COMMUNICATIONS

Sec.

- 201.1 Purpose and scope.
- 201.2 Definitions.
- 201.3 Audits and litigation.
- 201.4 Rulemaking proceedings and advisory opinions.

Authority: 2 U.S.C. 437d(a)(8), 437f, 438(a)(8), 438(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, 9039(b).

§ 201.1 Purpose and scope.

This part prescribes procedures for handling ex parte communications made in connection with Commission audits, litigation, rulemaking proceedings and the advisory opinion process. Rules governing such communications made in connection with Commission enforcement actions are found at 11 CFR 111.22, while provisions setting forth employee responsibilities under the Commission's Standards of Conduct rules are found at 11 CFR 7.15.

§ 201.2 Definitions.

As used in this part:

- (a) *Ex parte communication* means:
- (1) For purposes of 11 CFR 201.3, any written or oral communication between a Commissioner or a member of a Commissioner's staff and any person outside the agency concerning any audit or litigation case pending before the Commission, other than a communication limited to a discussion of the procedural status of an audit or litigation case and not made for the purpose of influencing or tending to have an effect on the Commission's consideration of the matter; and
 - (2) For purposes of 11 CFR 201.4, any oral or written communication between a Commissioner or a member of a Commissioner's staff and any person outside the agency, not on the public record, regarding a pending rulemaking proceeding or advisory opinion request, other than a communication limited to a discussion of the procedural status of a pending rulemaking proceeding or advisory opinion request, and not made for the purpose of influencing or

tending to have an effect on the Commission's consideration of the matter.

(b) *Commissioner* means an individual appointed by the President to the Federal Election Commission pursuant to 2 U.S.C. 437c(a), and also means the Secretary of the Senate, the Clerk of the House, or their Special Deputies or other designees, ex officio.

(c) *Commissioner's staff* means all individuals working under the personal supervision of a Commissioner including executive assistants, executive secretaries, and assistants to Special Deputies of ex officio Commissioners.

§ 201.3 Audits and litigation.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in audits undertaken by the Commission, and in any litigation to which the Commission is a party, no person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any ex parte communication regarding any audit or litigation matter, nor shall any Commissioner or member of any Commissioner's staff make or entertain any such ex parte communications.

(b) The requirements of this section apply:

(1) In the case of an audit undertaken pursuant to 26 U.S.C. 9007(a) and (b), 9008(g) and (h), or 9038(a) and (b), from the date of the Commission's letter to a presidential campaign committee, a convention committee, or a host committee asking that it make a pre-inventory check of its records, prior to the commencement of audit fieldwork by the Commission, through the end of the audit process;

(2) In the case of an audit undertaken pursuant to 2 U.S.C. 438(b), from the date the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, until the Commission publicly issues the final audit report; and

(3) In the case of litigation, from the date on which the Commission authorizes a suit to be filed, or on which a suit is filed against the Commission, through the conclusion of the litigation.

(c)(1) A Commissioner or member of a Commissioner's staff who receives an oral ex parte communication concerning any audit or litigation pending before the Commission during the period described in paragraph (b) of this section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or staff member shall

advise the person making the communication that he or she will not consider the communication and shall, no later than 48 hours after receipt of the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication and deliver the statement to the Designated Agency Ethics Official for placement in the file of the audit or litigation case.

(2) A Commissioner or member of a Commissioner's staff who receives a written ex parte communication concerning any audit or litigation pending before the Commission during the period described in paragraph (b) of this section shall, no later than 48 hours after receipt of the communication or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Designated Agency Ethics Official for placement in the file of the audit or litigation case.

(3) A Commissioner or member of a Commissioner's staff who receives a request for the procedural status of an audit or litigation case shall direct the inquiry to the appropriate Commission staff.

§ 201.4 Rulemaking proceedings and advisory opinions.

(a) Except as provided in paragraph (c) of this section, a Commissioner or member of a Commissioner's staff who receives or makes an ex parte communication concerning any rulemaking or advisory opinion during the period described in paragraph (b) of this section shall, no later than 48 hours after the communication or prior to the next Commission discussion of the matter, whichever is earlier, provide a copy of a written communication or a written summary of an oral communication to the Commission Secretary for placement in the public file of the rulemaking or advisory opinion. The Commissioner or staff member shall advise any person making or receiving an oral communication that a written summary of the conversation will be made part of the public record.

(b) The requirements of paragraph (a) of this section apply:

(1) In the case of a rulemaking proceeding, from the date on which a proposal for rulemaking is circulated to Commissioners' offices, or a rulemaking petition is received by the Commission, through the conclusion of the rulemaking; and

(2) In the case of an advisory opinion, from the date a request for an advisory opinion is circulated to Commissioners'

offices through the date on which the advisory opinion is issued, and during any period of reconsideration pursuant to 11 CFR 112.6.

(c) Commissioners and other covered personnel making public appearances may express their views either spontaneously or in response to inquiries from members of the audience at such appearances on a subject involved in a pending rulemaking or advisory opinion request, without triggering these requirements.

Dated: December 4, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-29842 Filed 12-8-92; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; technical amendments.

SUMMARY: The FDIC is hereby amending its regulations on securities of nonmember insured banks. The amendments are necessary to correct various errors and omissions which appear in the Code of Federal Regulations. These regulations are applicable to nonmember FDIC insured banks with a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT:

M. Eric Dohm, Staff Accountant, Division of Supervision (202-898-8921) or Gerald J. Gervino, Senior Attorney, Legal Division (202-898-3723).

SUPPLEMENTARY INFORMATION: This document amends Part 335 to eliminate inadvertent typos and other errors which occurred in the last three amendments to the regulation (48 FR 55553, 54 FR 53571, and 57 FR 4699).

List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential Business Information, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, part 335 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for part 335 continues to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f(i)).

§ 335.102 [Amended]

2. In § 335.102:

a. Paragraph (r)(2), the reference "paragraph (l)(1)" is revised to read "paragraph (r)(1)"; and

b. Paragraph (nn)(2)(ii)(C) is amended by revising the first occurrence of "is" to read "in".

§ 335.203 [Amended]

3. In section 335.203, paragraph (c) is amended by revising the words "10 days" to read "20 days".

§ 335.212 [Amended]

4. In section 335.212, in form F-5, under the heading "Information Required in Statement":

1. In item 6:

i. Under the heading "Instructions to Paragraph (e) of Item 6", instruction 4. is amended by revising the reference "paragraph (b)" to read "paragraph (e)"; and

ii. Paragraph (i) is removed;

b. In item 7:

i. Paragraph (b)(2) is amended by revising the reference "paragraph (b)(1)(vi)" to read "paragraph (b)(1)(iv)"; and

ii. Instruction 1. to paragraph (g) is amended by revising "instruction (b)(1) to item 7(a)" to read "General Instructions to Paragraphs (a) through (e) of item 7";

c. Item 8 is amended by revising the reference "item 15" to read "item 13" in the introductory paragraph, and removing paragraph (f);

d. Item 9 is amended by removing paragraphs (c), (d), (e), (f), and the instructions 1. through 3. to paragraph (f);

e. In item 12:

i. Paragraph (a)(3)(vi) is amended by revising the reference "(Form F-1, Item 14)" to read "(Form F-1, item 13)", and the reference "in accordance with the provisions of paragraph (b)(1)" to read "required by Item 14(b)(1) of the SEC's Schedule 14A (17 CFR 240.14a-101)";

ii. Paragraph (b)(1) is amended by revising the reference "item 1 of this Form F-5" to read "item 1 of Form F-2 (§ 335.312 of this part)";

iii. Paragraph (b)(2) is amended by revising the reference "Item 3 of this Form F-5" to read "item 2 of Form F-2 (§ 335.312 of this part)";

iv. Paragraph (b)(9) is amended by revising "Item 8 of this Form F-5,

changes in and disagreements with accountants on accounting and financial disclosure" to read "Items 4, 5, 6, 7 and 8 of this Form F-5";

v. Paragraph (c)(4) is amended by revising the reference "Item 8 of this Form F-5" to read "items 4, 5, 6, 7 and 8 of this Form F-5"; and

vi. Instructions to item 12, instruction 3. is amended by revising the words "the information regarding the other persons is required by this item," to read "the information regarding the other persons that is required by this item,"; and

f. Under the heading "Option Disclosure Instruction", by revising the words "instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c)" to read "item 9(a)(3)" in the first sentence of the first paragraph, and by revising the words "directors and" to read "principal" each place they appear in the second paragraph, the heading of the last column in the table, and footnote 2 to the table.

§ 335.309a [Amended]

5. In section 335.309a, in form F-1, item 2, instruction 6. is amended by revising the reference "instructions 5(a), (b) and (c) to this item 2" to read "instructions 7, 8, 9, 10, and 11 to this item 2".

§ 335.312 [Amended]

6. In section 335.312, in form F-2, part III, item 9, is amended by redesignating paragraph (d) as paragraph (c).

§ 335.331 [Amended]

7. In section 335.331, in form F-4, item 2, the first sentence is amended by revising the reference "in (1) and (2) below" to read "in (c)(1) and (c)(2) of item 1 of this Form F-4".

§ 335.401 [Amended]

8. In section 335.401, paragraph (b)(1) introductory text is amended by revising the words "six copies" to read "three copies" and paragraph (b)(2) is amended by revising the words "Six copies" to read "Three copies".

§§ 335.413 and 335.414 [Removed]

9. Sections 335.413 and 335.414 are removed.

§ 335.627 [Amended]

10. Section 335.627 is amended:

a. By moving the heading "D. Schedules (Format F-9D)" from immediately following paragraph 14. under "B. Statement of Income", and placing it immediately following paragraph 11. under "C. Statement of Changes in Equity Capital"; and