

Service regulations at 8 CFR 100.4(c) (2) and (3) will be amended by removing Ranier, MN, and Eagle Pass, TX, and adding Maverick County Airport.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. (Customs will serve as the clearing house for comments received and coordinate a response with the Service.) Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 4th floor, 1099 14th St., NW, Washington, DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301, 8 U.S.C. 1103, and 19 U.S.C. 2, 66, and 1624.

Inapplicability of the Regulatory Flexibility Act and Executive Orders 12866, 12612, and 12606

Customs and the Service routinely establish, expand, and consolidate ports of entry throughout the United States to accommodate the volume of Customs- and Service-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

In accordance with the provisions of E.O. 12612, it is certified that the regulations proposed herein have been assessed in light of the principles, criteria, and requirements specified in that E.O. and that they will not have substantial direct effects 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, the preparation of a Federalism Assessment is not warranted.

In accordance with the provisions of E.O. 12606, the Commissioners of the Customs and the Immigration and

Naturalization Services certify that they have assessed these proposed amendments in light of the criteria set forth in that E.O., and determined that the regulations proposed herein will not have a significant impact on family formation, maintenance, and general well-being.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, U.S. Customs Service; however, personnel from other offices and agencies participated in its development.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 100 of Chapter I of title 8 of the Code of Federal Regulations and Part 122 of Chapter I of title 19 of the Code of Federal Regulations as set forth below:

TITLE 8—ALIENS AND NATIONALITY

PART 100—STATEMENT OF ORGANIZATION

1. The general authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. In § 100.4, it is proposed to amend paragraph (c)(2) by:

a. Removing "Ranier, MN" from the Class A listing under District No. 10—St. Paul, Minnesota;

b. Removing "Eagle Pass, TX" from the Class A listing under District No. 14—San Antonio, Texas; and

c. Adding, in proper alphabetical sequence, "Maverick, TX" to the Class A listing under District No. 14—San Antonio, Texas.

3. In § 100.4, it is proposed to amend paragraph (c)(3) by:

a. Removing "Ranier, MN, International Seaplane Base" from the listing under District No. 10—St. Paul, Minnesota;

b. Removing "Eagle Pass, TX, Eagle Pass Airport" from the listing under District No. 14—San Antonio, Texas; and

c. Adding, in proper alphabetical sequence, "Maverick, TX, Maverick County Airport" to the Class A listing under District No. 14—San Antonio, Texas.

TITLE 19—CUSTOMS DUTIES

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644.; 49 U.S.C.App. 1509.

2. In § 122.13, it is proposed to amend the list of international airports by removing "Eagle Pass, Tex.—Eagle Pass Municipal Airport" and "Ranier, Minn.—Ranier International Seaplane Base" and adding, in appropriate alphabetical order, "Maverick, Tex.—Maverick County Airport".

George J. Weise,

Commissioner of Customs.

Approved: February 23, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

Dated: January 30, 1995.

Doris Meissner,

Commissioner of Immigration and Naturalization Service.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 10, 11, and 18

Office of the Secretary

31 CFR Part 1

[Docket No. 95-06]

RIN 1557-AA67

Description of Office, Availability and Release of Information, Contracting Outreach Program; Municipal Securities Dealers; Securities Exchange Act Disclosure Rules; Disclosure of Financial and Other Information by National Banks; Disclosure of Records

AGENCY: Office of the Comptroller of the Currency and Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules that describe the agency

and its rules that govern the availability and release of information. By clarifying these rules, this proposal will help the banking industry and the public better interact with the OCC. This proposal also makes technical and clarifying amendments to the OCC's rules governing municipal securities dealers, disclosures under the Securities Exchange Act, and the disclosure of financial and other information by national banks, and, under delegated authority, to the Department of the Treasury's rules regarding disclosure of records. This proposal is another component of the OCC's Regulation Review Program, which is intended to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

DATES: Comments must be received by May 26, 1995.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95-06. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090 (except with respect to proposed 12 CFR part 4, subpart C); Lester N. Scall, Senior Attorney, Administrative and Internal Law Division, (202) 874-4460, or Daniel L. Cooke, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090 (with respect to proposed 12 CFR part 4, subpart C).

SUPPLEMENTARY INFORMATION:

Background

The OCC proposes to amend 12 CFR parts 4, 10, 11, and 18, and, under delegated authority, 31 CFR part 1 as a component of its Regulation Review Program. One goal of the Regulation Review Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Regulation Review Program is to improve clarity and to better communicate the standards that the rules intend to convey. In the case of the current proposal, improved clarity will promote better and more efficient interaction between the OCC and the banking industry and the public at large.

Part 4

Subpart A—Description of Office

The OCC proposes to revise the description of the OCC contained in current § 4.1a and relocate that information to a new subpart A. Specifically, the proposal provides separate descriptions of the functions and responsibilities of the OCC generally in § 4.2, the Comptroller of the Currency in § 4.3, the Washington office in § 4.4, and the district and field offices in § 4.5. The proposal eliminates from current § 4.1a all detailed job descriptions of OCC positions subordinate to the Comptroller of the Currency. These changes update and clarify the regulation, and eliminate unnecessary provisions.

The OCC will continue to provide the public with current and accurate descriptions of the functions of its major departments and divisions in the OCC's annual report to Congress. The annual report, required under 12 U.S.C. 14, consists of the four issues of the *Quarterly Journal* published each year. The first issue of each year contains the Comptroller's Report of Operations, which describes in detail the functions of the major departments and divisions of the OCC. The OCC believes that the *Quarterly Journal* is a better source of current and detailed descriptions of specific departments, divisions, and officials. Additionally, persons may contact the OCC's Communications Division for further information concerning the OCC's organizational structure.

The OCC also proposes to eliminate the information contained in current § 4.11, which describes the frequency of national bank examinations and provides a partial list of required national bank reports. These changes eliminate information that merely repeats statutory provisions, or is otherwise unnecessary. For a current description of the frequency of bank examinations, persons may refer to 12 U.S.C. 1820(d), as amended by section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, 108 Stat. 2160. For a current listing of required national bank reports, persons may contact the OCC's Communications Division.

Subpart B—Availability of Information Under the FOIA

In General

The OCC proposes to revise its rules regarding the availability of information under the Freedom of Information Act (FOIA) (5 U.S.C. 552), currently found

in §§ 4.13-4.17a, and 4.18(d), and relocate the rules to a new subpart B, consisting of §§ 4.11-4.17. This subpart updates, clarifies, reorganizes, and streamlines the rules to better communicate to the public the standards, policies, and procedures that the OCC applies in administering the FOIA. The OCC does not intend this subpart B to materially affect current OCC standards, policies, or procedures. Each section in the new subpart B is described below.

Section 4.11—Purpose and Scope

Proposed § 4.11 sets forth the purpose of subpart B—namely, to describe the standards, policies, and procedures that the OCC applies in administering the FOIA. This section also sets forth the scope of subpart B by briefly describing each section in the subpart. This section explicitly does not apply to a request for records pursuant to the Privacy Act (5 U.S.C. 552a). A person requesting records from the OCC pursuant to the Privacy Act should refer to 31 CFR part 1, subpart C, and appendix J of that subpart.

Section 4.12—Information Available Under the FOIA

Proposed § 4.12 delineates the scope of information that the FOIA requires the OCC to disclose to the public. This section clarifies, reorganizes, and streamlines the OCC's rules, but does not materially affect current OCC standards, policies, or procedures. Paragraph (a), derived from current § 4.16(a), declares that, in accordance with the FOIA, all information in the OCC's possession is available to the public, except the exempt records described in paragraph (b).

Paragraph (b), derived from current § 4.16(b), describes the nine types of records that the FOIA exempts from disclosure (see 5 U.S.C. 552(b)). However, paragraph (b)(8) differs somewhat from its current counterpart, § 4.16(b)(8). Current § 4.16(b)(8), which describes the FOIA exemption concerning bank supervisory records, contains language not found in the statute. The additional language in the current regulation may confuse rather than clarify the FOIA exemption. Thus, proposed paragraph (b)(8) eliminates, as unnecessary, this language. This change is clarifying in nature, and merely amends the OCC's rule to better reflect the statute. This change does not materially affect current OCC standards, policies, or procedures.

Paragraph (c), added in accordance with 5 U.S.C. 552(c)(1), states that the OCC may deny the existence of exempt records in certain circumstances where

disclosure of the existence of the records may interfere with criminal law enforcement proceedings. This addition clarifies the OCC's rules by properly reflecting an applicable FOIA provision.

Paragraph (d), derived from current § 4.16(c), states that on a case-by-case basis, even if a record is exempt under paragraph (b), the OCC may elect not to apply the exemption to the requested record. The OCC's discretionary disclosure of an exempt record under this paragraph does not affect the applicability of an exemption to any other record.

Paragraph (e), derived from current § 4.16(d), explains that the OCC provides non-exempt portions of a requested record to the extent that those portions are reasonably segregable from exempt portions.

Section 4.13—Publication in the Federal Register

Proposed § 4.13 sets forth the first of three methods by which the OCC provides information to the public under the FOIA. This section clarifies the OCC's rules, but does not materially affect current OCC standards, policies, or procedures.

This section, derived from current § 4.14(a), lists the types of information that the OCC publishes in the **Federal Register** for the guidance of the public. Generally, the OCC publishes in the **Federal Register** proposed and final rules, and certain notices and policy statements of concern to the general public (such as notices of certain Federal preemption interpretations, in accordance with 12 U.S.C. 43).

Section 4.14—Public Inspection and Copying

Proposed § 4.14 sets forth the second method by which the OCC provides information to the public under the FOIA. This section updates, clarifies, reorganizes, and streamlines the rules, but does not materially affect current OCC standards, policies, or procedures.

Information covered under this section is readily available to the public for inspection and copying. Any person seeking this information may contact the Disclosure Officer in the OCC's Communications Division at the address specified in paragraph (c) to schedule an appropriate time to inspect and copy documents.

Paragraph (a) lists the seven types of information that this section covers. These types of information are: (1) Final orders, agreements, or other enforceable documents made in the adjudication of a case (paragraph (a)(1), derived from current § 4.15(a)(1)); (2) final opinions made in the adjudication of a case

(paragraph (a)(2), derived from current § 4.15(a)(2)); (3) statements of general policy or interpretations of general applicability not published in the **Federal Register** (paragraph (a)(3), derived from current § 4.15(a)(3)); (4) administrative staff manuals or instructions to staff that may affect a member of the public (paragraph (a)(4), derived from current § 4.15(a)(4)); (5) a current index identifying each document described in paragraphs (a)(1)–(4) that the OCC issued, adopted, or promulgated after July 4, 1967 (a date set under 5 U.S.C. 552(a)(2)) (paragraph (5), derived from current § 4.15(b)); (6) a list of OCC publications available (paragraph (a)(6), derived from current § 4.14(b)); and (7) a list of OCC forms available, and specific forms and instructions (paragraph (a)(7), derived from current § 4.13).

Paragraph (a) eliminates several items unnecessarily listed in current § 4.15(a). Current § 4.15(a)(6)–(9) involves securities disclosure documents already addressed in other regulations, and contains outdated references to regulations; and current § 4.15(a)(10) involves requests for staff no-objection positions and staff responses. Currently, requesters may obtain these documents upon specific request. While the new subpart B does not specifically mention these documents, they, like all OCC records not exempt from the FOIA, will remain available to the public.

Paragraph (a) also eliminates current § 4.15(a)(11), which involves transcripts of public hearings. The OCC currently contracts with a commercial service to produce these documents and provide them upon request. The OCC refers persons seeking a transcript of a public hearing to this contractor.

Paragraph (b), derived from current § 4.15(c) explains that the OCC, to the extent necessary to prevent an invasion of personal privacy, may redact identifying details from any document described in paragraph (a) before making the document available for public inspection and copying. The OCC provides a justification for any redaction if the basis of that redaction is not evident.

Section 4.15—Specific Requests for Records

Proposed § 4.15 sets forth the third method by which the OCC provides information to the public under the FOIA. This section updates, clarifies, reorganizes, and streamlines the rules, but does not materially affect current OCC standards, policies, or procedures.

Paragraph (a), derived from current § 4.16(a), provides that any OCC record

not exempt from disclosure is available to any person upon specific request.

Paragraph (b), derived from current § 4.17 (b), (c), and (d)(1), identifies where a person must submit a request for records or an administrative appeal of a denial of a request for records. Paragraph (b)(1) directs a person to submit a request generally to the Disclosure Officer in the OCC's Communications Division. Paragraph (b)(2) lists a few exceptions to this general rule. Unlike the current regulation, paragraph (b)(2) does not include a specific provision relating to the public sections of Community Reinvestment Act (CRA) evaluations. Current § 4.17(b)(2)(ii) indicates that these public sections are available from the CRA Contact in the OCC's Department of Compliance Management. In the proposed regulation, these public sections are available from the Disclosure Officer under the general rule in paragraph (b)(1).

Paragraph (c), derived from current §§ 4.17 (d)(2), (d)(3), and (g), and 4.17a(b), describes the required contents of a request for records, indicates that the OCC's Director of Communications or that person's designee initially determines whether to grant or deny a request for records, and explains the procedures that the OCC follows in granting or denying a request for records.

Paragraph (d), derived from current §§ 4.17(e) and 4.17a(c), describes the procedures a requester must follow to appeal a denial of a request for records, indicates that the Comptroller or the Comptroller's designee determines whether to grant or deny an appeal, and explains the procedures that the OCC follows in granting or denying an appeal.

Paragraph (e)(1), added in accordance with 5 U.S.C. 552(a)(4)(B), provides that if the OCC denies an appeal, or fails to make an initial or appellate determination within the time limits set forth in paragraph (f), the requester may commence action to compel disclosure in an appropriate United States district court. This addition clarifies the OCC's current rules by including statutory language that provides the context of paragraph (e)(2). Paragraph (e)(2), derived from current § 4.17(f), identifies the OCC's Chief Counsel as the officer on whom a litigant under paragraph (e)(1) must serve process.

Paragraph (f), derived from current § 4.17a(d), sets forth the time limits that the OCC must follow in making initial and appellate determinations under this section. In general, the OCC determines whether to grant or deny a request for

records within ten business days after the date of receipt of the request, and determines whether to grant or deny an administrative appeal within 20 business days after the date of receipt of the appeal.

Paragraph (g), derived from current § 4.17a(a), explains how the OCC determines the date of receipt of a request or appeal for purposes of the time limits set forth in paragraph (f).

Section 4.16—Predisclosure Notice for Confidential Commercial Information

Proposed § 4.16, derived from current § 4.18(d), sets forth predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235), when the OCC receives a request under § 4.15 for disclosure of records that arguably are exempt from disclosure under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)); proposed § 4.12(b)(4) as confidential commercial information. This section clarifies and reorganizes the rules, but does not materially affect current OCC standards, policies, or procedures.

Section 4.17—Fees for Services

Proposed § 4.17, derived from current § 4.17(h), describes the fees that the OCC assesses for the services it renders in providing information under the FOIA. This section clarifies, reorganizes, and streamlines the rules, but does not materially affect current OCC standards, policies, or procedures.

Subpart C—Release of Non-public OCC Information

In General

The OCC proposes to amend and relocate to a new subpart C, current §§ 4.18 and 4.19 to clarify the procedures that must be followed by persons who seek non-public OCC information and to clarify the restrictions on dissemination of non-public OCC information. Non-public OCC information, as that term is used in this proposal, is information, confidential or otherwise, that is not available to the public pursuant to the FOIA. FOIA specifically exempts from disclosure several categories of information including records contained in or related to examination, operating, or condition reports concerning financial institutions.

In recent years, requests for non-public OCC information, particularly requests arising from litigation, have increased substantially. These requests have caused the OCC concerns about burden and confidentiality. Persons requesting information have sought

confidential OCC records, such as reports of examination and other OCC summary information, large portions of records and files about specific banks, and testimonial appearances or interviews of OCC employees or former employees. The OCC recognizes a public need in individual cases for certain information, but is concerned that a candid dialogue in the bank examination and supervision process be maintained. The OCC is aware that release of non-public OCC information may inhibit open consultation between banks and the OCC. The OCC, therefore, has attempted to balance its need to preserve appropriate confidentiality and the public interest in ensuring effective consultations between banks and the OCC, on the one hand, and the needs of parties requesting information from the OCC, on the other hand.

To this end, the proposal provides new detail in defining non-public OCC information, listing the information requesters must include in their requests for non-public OCC information, and identifying the standards the OCC uses to decide requests. The proposal also explains the OCC procedural response to service of subpoenas on the OCC and its employees and former employees, restricts the further dissemination of released information and testimony, and states the fee schedule for records search, copying, certification, and testimony.

The OCC, as other Federal agencies, has authority, pursuant to the 5 U.S.C. 301, the "housekeeping" statute, to prescribe procedures for the production of agency records, property, and testimony. This proposal is issued pursuant to 5 U.S.C. 301, which is intended to allow agencies to control the burdens associated with production of non-public information. See *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194 (11th Cir. 1991). The proposal is also based on 5 U.S.C. 552 and recent judicial interpretation of the bank examination privilege. See *In Re: Subpoena Served Upon the Comptroller of the Currency, and the Secretary of the Board of Governors of the Federal Reserve System*, 967 F.2d 630, 634 (D.C. Cir. 1992); and *Schreiber v. Society for Savings Bancorp, Inc.*, 11 F.3d 217 (D.C. Cir. 1993) (describing the type of information that is privileged and subject to a balancing test). *In Re Subpoena* and *Schreiber* have clarified the responsibilities of Federal bank regulatory agencies in the discovery process. These cases and *Moore* have led the OCC to conclude that it should amend §§ 4.18 and 4.19.

Courts have upheld the privileged nature of certain types of information generated in the government's supervision of banks. Consistent with the *In Re Subpoena* and *Schreiber* decisions, this proposal provides for the OCC's case-by-case determination of privilege and provides an orderly mechanism for the OCC to assert or waive privilege. Also consistent with these decisions, the proposal allows the OCC to reconcile its need to preserve the confidential nature of its bank examination functions with its responsibility to provide access to information in appropriate situations. The proposal also is intended to provide an efficient mechanism for the OCC to release relevant non-privileged records.

The non-public OCC information covered by this proposal includes information about failed banks and operating banks. This is consistent with Congress's view that, even when regulatory information about a failed bank is used by the FDIC, the privileges available to the bank regulatory agencies are not intended to be waived. See H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 440-41 (1989), reprinted in 1989 U.S.C.C.A.N. 86, 479-80 (explaining section 11(o) of the Federal Deposit Insurance Act (12 U.S.C. 1821(o)) as amended by section 909 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183, 477). See also The Housing and Community Development Act of 1992, Public Law 102-550, 1544, 106 Stat. 3672, 4069.

This proposal is not intended to affect the policies and procedures the OCC follows in providing information and assistance for criminal cases and investigations. It also does not change the OCC's policies for releasing non-public OCC information to other Federal agencies that require such information in support of their civil investigations and cases. The proposal is furthermore not intended to supersede information sharing agreements that the OCC has with other Federal agencies. However, the OCC anticipates that, under the proposal, government agencies will use the OCC's procedures as guidance when seeking non-public OCC information.

Section 4.31—Purpose and Scope

Proposed § 4.31 sets out the purposes and scope of this portion of part 4. As stated in paragraph (a), the proposal seeks to achieve several purposes. First, it is intended to provide an orderly mechanism for the OCC to process requests for non-public information. Second, it is intended to provide information to requesters while preserving the confidentiality of the

information. Third, it is intended to ensure that the released information is used in the public interest. Fourth, it is intended to provide a mechanism for the OCC to assert evidentiary privileges when necessary. Finally, it is intended to protect the interests of the OCC in fulfilling its mission, which includes fostering candid communication between banks and the OCC to ensure effective supervision.

Paragraph (b) describes the scope of subpart C by specifying the types of litigation to which subpart C applies and the type of information covered by the regulation.

Section 4.32—Definitions

Proposed § 4.32 adds new definitions for the following terms: “compelling need,” “complete request,” “non-public OCC information,” “showing that the information has high relevance,” and “testimony.” The new definitions should make the rule easier to interpret and apply.

In particular, the definition of “non-public OCC information” clarifies the precise scope of the rule by defining the type of information to which the rule applies. The OCC intends that the definition of “non-public OCC information” include records generated by the OCC as well as certain records not generated by the OCC. “Non-public OCC information” includes interviews with OCC employees as well as employee testimony.

Section 4.33—Requirements for a Request of Records or Testimony

Proposed § 4.33 specifies the information that requesters must provide to the OCC when seeking non-public OCC information. The OCC intends this new section to ensure that it will not unnecessarily compromise the essential confidentiality, and consequently the open information exchange of the examination and supervisory process. Paragraph (a) specifies what all requests must contain, the additional showing the requester must make if a response is sought in less than 60 days, and the additional submissions a requester must make in adversarial situations.

Paragraph (b) specifies the additional information that a requester must provide when requesting records.

Paragraph (c) specifies the additional information that a requester must provide when seeking testimony.

Section 4.34—Where to Submit a Request

Proposed § 4.34(a) specifies that requests for non-public OCC information, requests for authentication

of a record, and notifications regarding the issuance of subpoenas or other compulsory process must be addressed to the OCC’s Litigation Division in Washington, DC.

Paragraph (b) permits a person who is requesting public OCC information along with non-public OCC information to submit a combined request for both to the Litigation Division in Washington, DC. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B (FOIA).

Section 4.35—Consideration of Requests

Proposed § 4.35 sets out the issues and factors that the OCC will consider in acting on requests. The OCC intends this new section to alert requesters to the reasons the OCC could use to deny a request and to assist requesters in determining whether and how to file a request. Paragraph (a) lists the bases for denial and states that the OCC will weigh the requirements prescribed in § 4.33. Paragraph (a) also provides that the OCC may require a requester to submit additional information, states that the OCC may independently seek information from other persons or sources, and prescribes the OCC’s normal processing time.

Paragraph (b) specifies the additional considerations that apply to requests for testimony.

Paragraph (c) states that the OCC also may respond to certain requests by authorizing others in possession of the requested records to release the records.

Section 4.36—Parties With Access to OCC Information; Restriction on Dissemination

Proposed § 4.36 prohibits persons and entities from disseminating non-public OCC information without OCC approval. The OCC intends this section to preserve the confidentiality of non-public OCC information.

Paragraph (a), which embodies current § 4.18(a), prohibits current and former OCC employees from disseminating non-public OCC information. This paragraph also adds a new provision, which states the OCC’s policy of objecting to subpoenas for non-public OCC information when subpoenas are used in lieu of the request procedures of this subpart.

Paragraph (b), which embodies some of current § 4.18(c), prohibits persons who are not current or former OCC employees from disseminating non-public OCC information. This paragraph applies to any person in possession of non-public OCC information, including banks and related individuals and

entities. It states the OCC’s policy of seeking the return of non-public OCC information from banks or related individuals and entities when necessary. This proposal does not retain the portion of current paragraph § 4.18(c) that states that examination reports are the property of the OCC. That provision will be included in revisions of part 7 (proposed § 7.4000, which addresses books and records of national banks).

Commenters are specifically asked to address whether “consultants,” meaning outside professionals who perform services for a bank, should be included in the list of bank-connected persons who are eligible to receive OCC examination reports, or portions thereof, without first obtaining the express approval of the OCC or whether a bank could seek OCC approval for release to particular categories of professional advisors, for all or specified portions of the bank’s examination report. Under current § 4.18(c), attorneys, auditors, and independent auditors are included in the list of persons eligible to receive reports. Commenters are also asked to address: (1) Whether release to other professional advisors, if permitted, should be limited to certain types of advisors, and/or certain portions of the examination report, and (2) the nature of the confidentiality undertaking that would be required before any material could be provided.

Paragraph (c), which embodies current § 4.18(b), preserves the OCC’s current policies and procedures for sharing information with other government agencies. This proposal deletes the last sentence of current paragraph 4.18(b), which prohibits persons and other entities from disclosing OCC non-public information, because it would be redundant in light of the general prohibition on dissemination of information stated in § 4.36(b)(1).

Paragraph (d) makes clear that non-public OCC information does not lose its non-public status when released to a person or entity. The paragraph states that the possession of non-public OCC information by any entity or individual is not a waiver of the OCC’s right to control further use or dissemination of information.

Section 4.37—Limitation on Dissemination of Released Information

Proposed § 4.37 permits the OCC to condition release of non-public OCC information on the issuance of a protective order and the sealing of transcripts. The OCC intends this new section to enable the OCC to prevent the further dissemination of the

information. A model stipulation and protective order is printed at appendix A to this subpart. The section also specifies that the OCC may authorize the use of the same records or testimony in another case.

Section 4.38—Procedures for Sharing and Using OCC Records in Litigation

Proposed section 4.38(a) requires parties to a case to share released records among litigants. This requirement eliminates the need for requesters to file duplicative requests.

Paragraph (b) requires all requesters to retrieve released non-public OCC information from court files and requires all parties to destroy non-public OCC information covered by a protective order. The OCC intends these new provisions to ensure the confidentiality of the information.

Paragraph (c) informs requesting litigants that the OCC will authenticate its documents for use as evidence.

Section 4.39—Fees for Services

Proposed § 4.39 sets out the fee schedules that apply when the OCC provides records or authorizes testimony from current or former employees.

Paragraph (a) addresses fees for document searches, copying, and certifications, and adopts the standards of subpart B, § 4.17, concerning document releases under the FOIA. This paragraph also specifies that the OCC may contract with commercial copiers and requires requesters to pay the costs of that copying.

Paragraph (b) addresses testimony and adopts the standards of 28 U.S.C. 1821. This paragraph also specifies that, when current OCC employees testify, the requester must pay the witness fees to the OCC.

Subpart D—Contracting Outreach Program

The OCC proposes to relocate its rules regarding the contracting outreach program from current subpart C to a new subpart D, and to renumber them. These changes do not amend or affect in any way the substance of the rules.

Part 10

The OCC proposes to eliminate forms and instructions from its rules regarding municipal securities dealers. The

Municipal Securities Rulemaking Board (MSRB) created the forms found in part 10, Forms MSD-4 and MSD-5, to provide for uniform municipal securities dealer filings among the Federal financial institution supervisory agencies. While part 10 continues to require certain persons to file Forms MSD-4 and MSD-5, the OCC considers it unnecessary to incorporate these detailed forms and instructions into OCC regulations. The OCC also is concerned that a lag between MSRB revision of a form and appearance of the revised form in OCC regulations may cause confusion for bank filers. Moreover, national banks that act as municipal securities dealers do not copy and enlarge the forms from the OCC's regulations in practice, contrary to the OCC's expectations at the time it included the forms in its regulations. Instead, the majority of national bank municipal securities dealers obtain forms directly from the OCC. Therefore, the OCC finds it unnecessary to publish the forms in its regulation. The proposal, however, adds a provision indicating that the OCC's Chief National Bank Examiner's Office will provide copies of Forms MSD-4 and MSD-5, with instructions, to any bank that requests them. The OCC also proposes to make technical amendments to the rules. These changes clarify the rules, eliminate unnecessary provisions, and help to ensure that banks are using current forms for their filings.

Part 11

The OCC proposes to make technical amendments to its rules regarding disclosure under various provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78l, 78m, 78n, 78p, and 78w). The proposal updates the reference to the name of the division that receives filings, and specifies the division that receives requests for copies of filings, among other minor changes. These changes simply update and clarify the regulation.

Part 18

The OCC proposes to amend its rules regarding annual financial disclosures by national banks to conform the OCC's rules to language adopted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),

Pub.L. 101-73, 103 Stat. 187, that describes persons subject to administrative enforcement action by the Federal banking agencies. Specifically, section 901(b) of FIRREA amended 12 U.S.C. 1811 *et seq.*, by substituting the term "institution-affiliated party" for the terms "director," "officer," "employee," "agent," and "other person participating in the conduct of the affairs of a bank." The term "institution-affiliated party" is defined at 12 U.S.C. 1813(u). The proposal makes similar amendments to the provision that indicates the parties subject to administrative action for violations of part 18. The OCC also proposes to make technical amendments to the regulation. These changes update and clarify the regulation, and conform the regulation to statutory language.

31 CFR Part 1

The OCC proposes to amend appendix J of subpart A and appendix J of subpart C. Subpart A contains the Department of the Treasury's FOIA rules, and subpart C contains the Department of the Treasury's Privacy Act rules. The various appendices to subparts A and C contain standardized information about components of the Department of the Treasury, including officials and addresses relevant to the implementation of the FOIA and the Privacy Act. Appendix J in subpart A and appendix J in subpart B, entitled "Office of the Comptroller of the Currency," contain information about the OCC.

The Department of the Treasury, at 31 CFR 1.1(d) and 1.20, has authorized the head of each of its components to substitute the officials designated and change the addresses specified in the appendices corresponding to that component. Pursuant to this grant of authority, the OCC proposes to amend the OCC administrative information in appendix J of subpart A and appendix J of subpart C. These changes update regulatory information specific to the OCC.

Derivation Table for 12 CFR Part 4

This table directs readers to the provisions of the current 12 CFR part 4, if any, on which the revised 12 CFR part 4 is based.

Revised provision	Current provision	Comments
Subpart A:		
§ 4.1	§ 4.1	Significantly modified.
§§ 4.2-4.5	§ 4.1a	Significantly modified.
Subpart B:		
§ 4.11	§ 4.1	Significantly modified.
§ 4.12(a)	§ 4.16(a)	Modified.

Revised provision	Current provision	Comments
(b)	§ 4.16(b)	Modified.
(c) .....	.....	Added (see 5 U.S.C. 552(c)(1)).
(d)	§ 4.16(c)	Modified.
(e)	§ 4.16(d)	Modified.
§ 4.13	§ 4.14(a)	Significantly modified.
§ 4.14(a)(1)–(4)	§ 4.15(a)(1)–(4)	Modified.
(a)(5)	§ 4.15(b)	Modified.
(a)(6)	§ 4.14(b)	Modified.
(a)(7)	§ 4.13	Modified.
(b)	§ 4.15(c)	Modified.
(c) .....	.....	Added.
§ 4.15(a)	§ 4.16(a)	Modified.
(b)	§ 4.17(b), (c), and (d)(1)	Significantly modified.
(c)	§§ 4.17(d)(2), (d)(3), and (g), and 4.17a(b).	Significantly modified.
(d)	§§ 4.17(e) and 4.17a(c)	Modified.
(e)(1) .....	.....	Added (see 5 U.S.C. 552(a)(4)(B)).
(e)(2)	§ 4.17(f)	Modified.
(f)	§ 4.17a(d)	Modified.
(g)	§ 4.17a(a)	Modified.
§ 4.16	§ 4.18(d)	Modified.
§ 4.17	§ 4.17(h)	Modified.
Subpart C:		
§ 4.31 .....	.....	Added.
§ 4.32 .....	.....	Added.
§ 4.33	§ 4.19	Significantly modified.
§ 4.34 .....	.....	Added.
§ 4.35	§ 4.19	Significantly modified.
§ 4.36(a)	§§ 4.18(a) and 4.19	Significantly modified.
(b)	§§ 4.18(c) and 7.6025(c)	Significantly modified.
(c)	§ 4.18(b)	Modified.
(d) .....	.....	Added.
§ 4.37 .....	.....	Added.
§ 4.38 .....	.....	Added.
§ 4.39 .....	.....	Added.
Subpart D:		
§§ 4.61–4.66	§§ 4.61–4.74	Renumbered.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation is primarily clarifying in nature and has no material impact on national banks, regardless of size.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557-AA67), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557-AA67), Office

of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collections of information in this proposed rule are found in 12 CFR 4.33 and 4.35 through 4.38. The OCC needs this information to provide a more efficient mechanism for expeditiously processing requests for non-public information and for testimony. The likely respondents are businesses and individuals. The estimated annual burden per respondent varies from two to ten burden hours, depending on individual circumstances, with an average of 2.6 hours.

Estimated number of respondents: 110

Estimated annual frequency of responses: 2.3

Estimated total annual reporting burden: 646 hours

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Confidential business information, Freedom of information, National banks, Organization and functions (Government agencies), Reporting and recordkeeping

requirements, Women and minority businesses.

12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 18

National banks, Reporting and recordkeeping requirements.

31 CFR Part 1

Confidential business information, Courts, Freedom of information, Government employees, Privacy.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12, and subtitle A of title 31, of the Code of Federal Regulations are proposed to be amended as follows:

Comptroller of the Currency

12 CFR Chapter I

1. Part 4 is revised to read as follows:

PART 4—DESCRIPTION OF OFFICE, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

Subpart A—Description of Office

- Sec.
- 4.1 Purpose.
- 4.2 Office of the Comptroller of the Currency.
- 4.3 Comptroller of the Currency.
- 4.4 Washington office.
- 4.5 District and field offices.

Subpart B—Availability of Information Under the Freedom of Information Act

- 4.11 Purpose and scope.
- 4.12 Information available under the FOIA.
- 4.13 Publication in the **Federal Register**.
- 4.14 Public inspection and copying.
- 4.15 Specific requests for records.
- 4.16 Predisclosure notice for confidential commercial information.
- 4.17 Fees for services.

Subpart C—Release of Non-Public OCC Information

- 4.31 Purpose and scope.
- 4.32 Definitions.
- 4.33 Requirements for a request of records or testimony.
- 4.34 Where to submit a request.
- 4.35 Consideration of requests.
- 4.36 Persons and entities with access to OCC information; restriction on dissemination.
- 4.37 Limitation on dissemination of released information.
- 4.38 Procedures for sharing and using OCC records in litigation.
- 4.39 Fees for services.

Appendix A to Subpart C—Model Stipulation for Protective Order and Model Protective Order

Subpart D—Minority-, Women-, and Individuals With Disabilities—Owned Business Contracting Outreach Program; Contracting for Goods and Services

- 4.61 Purpose.
- 4.62 Definitions.
- 4.63 Policy.
- 4.64 Promotion.
- 4.65 Certification.
- 4.66 Oversight and monitoring.

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600. Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482, 1821(o), 1821(t); 18 U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under 12 U.S.C. 1833e.

Subpart A—Description of Office

§ 4.1 Purpose.

This subpart describes the general purpose and structure of the Office of the Comptroller of the Currency (OCC), and provides the OCC's principal addresses.

§ 4.2 Office of the Comptroller of the Currency.

The OCC regulates national banks and Federal branches and agencies of foreign banks generally through its power to examine banks, to approve or deny applications for new charters or for changes in corporate or banking structure, to approve or deny activities, to take supervisory actions against banks, and to issue rules and regulations.

§ 4.3 Comptroller of the Currency.

The Comptroller of the Currency (Comptroller), as head of the OCC, is

responsible for all OCC programs and functions. The Comptroller is appointed by the President, by and with the advice and consent of the Senate, for a term of five years. The Comptroller serves as a member of the board of the Federal Deposit Insurance Corporation, a member of the Federal Financial Institutions Examination Council, and a member of the board of the Neighborhood Reinvestment Corporation. The Comptroller is advised and assisted by a policy group and by other OCC employees, who perform the duties and functions that the Comptroller directs.

§ 4.4 Washington office.

The Washington office of the OCC is the main office and headquarters of the OCC. The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks, including the largest national banks and other national banks requiring special supervision. The Washington office is located at 250 E Street, SW, Washington, DC 20219.

§ 4.5 District and field offices.

(a) *District offices.* Each district office of the OCC is responsible for the direct supervision of the national banks and Federal branches and agencies of foreign banks in its district, with the exception of the national banks supervised by the Washington office. The six district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

District	Office address	Geographical composition
Northeastern	Office of the Comptroller of the Currency, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands.
Southeastern	Office of the Comptroller of the Currency, Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303.	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia.
Central	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin.
Midwestern	Office of the Comptroller of the Currency, 2345 Grand Ave., Suite 700, Kansas City, MO 64108.	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Southwestern	Office of the Comptroller of the Currency, 1600 Lincoln Plaza, 500 N. Akard Street, Dallas, TX 75201.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Western	Office of the Comptroller of the Currency, 50 Fremont Street, Suite 3900, San Francisco, CA 94105.	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington, Wyoming, Utah.

(b) *Field offices and duty stations.* Field offices and duty stations support bank supervisory responsibilities of the district offices.

Subpart B—Availability of Information Under the Freedom of Information Act

§ 4.11 Purpose and scope.

(a) *Purpose.* This subpart sets forth the standards, policies, and procedures that the OCC applies in administering the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(b) *Scope.* (1) This subpart delineates the range of information that the FOIA requires the OCC to disclose to the public (§ 4.12). This subpart also describes the three methods by which the OCC discloses information under the FOIA and, where applicable, sets forth the procedures that a person must follow to obtain that information. The three methods are:

- (i) Publication in the **Federal Register** (§ 4.13);
- (ii) Public inspection and copying (§ 4.14); and
- (iii) Specific requests for records (§ 4.15).

(2) This subpart also sets forth predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p.235), when the OCC receives a request under § 4.15 for disclosure of records that arguably are exempt from disclosure as confidential commercial information (§ 4.16). Finally, this subpart describes the fees that the OCC assesses for the services it renders in providing information under the FOIA (§ 4.17).

(3) This subpart does not apply to a request for records pursuant to the Privacy Act (5 U.S.C. 552a). A person requesting records from the OCC pursuant to the Privacy Act should refer to 31 CFR part 1, subpart C and appendix J of subpart C.

§ 4.12 Information available under the FOIA.

(a) *General.* In accordance with the FOIA, OCC records are available to the public, except the exempt records described in paragraph (b) of this section.

(b) *Exemptions from availability.* The following records, or portions thereof, are exempt from disclosure under the FOIA:

(1) A record that is specifically authorized, under criteria established by an Executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that Executive order;

(2) A record relating solely to the internal personnel rules and practices of an agency;

(3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(4) A record that is privileged or contains trade secrets and commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person (see § 4.16 for notice requirements regarding disclosure of confidential commercial information);

(5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees;

(6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:

- (i) Interfere with enforcement proceedings;
- (ii) Deprive a person of the right to a fair trial or an impartial adjudication;
- (iii) Constitute an unwarranted invasion of personal privacy;
- (iv) Disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;
- (v) Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
- (vi) Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or
- (vii) Endanger the life or physical safety of any individual;

(8) A record contained in or related to an examination, operating, or condition

report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and

(9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

(c) *Special exclusion.* Whenever a request pursuant to § 4.15 involves records described in paragraph (b)(7)(i) of this section, the OCC may treat the records as not subject to the requirements of this subpart if, but only for as long as, the following conditions exist:

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) The OCC has reason to believe that:

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records may interfere with enforcement proceedings.

(d) *Discretionary disclosure of exempt records.* Even if a record is exempt under paragraph (b) of this section, the OCC may elect, on a case-by-case basis, not to apply the exemption to the requested record. The OCC's election not to apply an exemption to a requested record under this paragraph (d) has no precedential significance as to the application or nonapplication of the exemption to any other requested record, regardless of who requests the record or when the OCC receives the request.

(e) *Segregability.* The OCC provides copies of reasonably segregable portions of a record to any person properly requesting the record pursuant to § 4.15, after redacting any portion that is exempt under paragraph (b) of this section.

§ 4.13 Publication in the Federal Register.

The OCC generally publishes in the **Federal Register** certain documents for the guidance of the public, including the following:

- (a) Proposed and final rules; and
- (b) Certain notices and policy statements of concern to the general public.

§ 4.14 Public inspection and copying.

(a) *Available information.* Subject to the exemptions listed in § 4.12(b), the OCC makes the following information readily available for public inspection and copying:

(1) Any final order, agreement, or other enforceable document made in the adjudication of a case, including a final order published pursuant to 12 U.S.C. 1818(u);

(2) Any final opinion made in the adjudication of a case;

(3) Any statement of general policy or interpretation of general applicability not published in the **Federal Register**;

(4) Any administrative staff manual or instruction to staff that may affect a member of the public;

(5) A current index identifying the information referred to in paragraphs (a)(1) through (a)(4) of this section issued, adopted, or promulgated after July 4, 1967;

(6) A list of available OCC publications; and

(7) A list of available OCC forms, and specific forms and instructions.

(b) *Redaction of identifying details.* To the extent necessary to prevent an invasion of personal privacy, the OCC may redact identifying details from any information described in paragraph (a) of this section before making the information available for public inspection and copying.

(c) *Address.* The information described in paragraph (a) of this section is available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

§ 4.15 Specific requests for records.

(a) *Available information.* Subject to the exemptions described in § 4.12(b), any OCC record is available to any person upon specific request in accordance with this section.

(b) *Where to submit request or appeal*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a person requesting a record or filing an administrative appeal under this section must submit the request or appeal to the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) *Exceptions*—(i) *District office records.* A person requesting the public portion of any filing or application described in part 5 of this chapter must submit the request to the OCC's Deputy Comptroller of the appropriate district office at the address listed in § 4.5(a).

(ii) *Records at the Federal Deposit Insurance Corporation.* A person requesting any of the following records, other than blank forms, must submit the request to the Federal Deposit Insurance Corporation, 550-17th Street, N.W., Washington, DC 20429:

(A) Consolidated Report of Condition and Income;

(B) Annual Report of Trust Assets;

(C) Uniform Bank Performance Report; and

(D) Special Report.

(iii) *Records of another agency.* When the OCC receives a request for records in its possession that another Federal agency either generated or provided to the OCC, the OCC promptly informs the requester and immediately forwards the request to that agency for processing in accordance with that agency's regulations.

(c) *Request for records*—(1) *Content of request for records.* A person requesting records under this section must state, in writing:

(i) The requester's full name, address, and telephone number;

(ii) A reasonable description of the records sought (including sufficient detail to enable OCC employees who are familiar with the subject matter of the request to locate the records with a reasonable amount of effort);

(iii) A statement agreeing to pay all fees that the OCC assesses under § 4.17;

(iv) A description of how the requester intends to use the records, if a requester seeks placement in a lower fee category (i.e., a fee category other than "commercial use requester") under § 4.17; and

(v) Whether the requester prefers the OCC to deliver a copy of the records or to allow the requester to inspect the records at the appropriate OCC office.

(2) *Initial determination.* (i) The OCC's Director of Communications or that person's designee initially determines whether to grant a request for records that are covered under paragraph (b)(1) of this section.

(ii) The Deputy Comptroller for the appropriate district office or that person's designee initially determines whether to grant a request for records that are covered under paragraph (b)(2)(i) of this section.

(3) *If request is granted.* If the OCC grants a request for records, in whole or in part, the OCC promptly discloses the records in one of two ways, depending on the requester's stated preference:

(i) The OCC may deliver a copy of the records to the requester. If the OCC delivers a copy of the records to the requester, the OCC duplicates the records at reasonable and proper times that do not interfere with their use by the OCC or preclude other persons from making inspections; or

(ii) The OCC may allow the requester to inspect the records at reasonable and proper times that do not interfere with their use by the OCC or preclude other persons from making inspections. If the OCC allows the requester to inspect the records, the OCC may place a reasonable limit on the number of records that a person may inspect during a day.

(4) *If request is denied.* If the OCC denies a request for records, in whole or

in part, the OCC notifies the requester by mail. The notification is dated and contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to an administrative appeal in accordance with paragraph (d) of this section.

(d) *Administrative appeal of a denial*—(1) *Procedure.* A requester must submit an administrative appeal of denial of a request for records in writing within 35 days of the date of the initial determination. The appeal must include the circumstances and arguments supporting disclosure of the requested records.

(2) *Appellate determination.* The Comptroller or the Comptroller's designee determines whether to grant an appeal of a denial of a request for OCC records.

(3) *If appeal is granted.* If the OCC grants an appeal, in whole or in part, the OCC treats the request as if it were originally granted, in whole or in part, by the OCC in accordance with paragraph (c)(3) of this section.

(4) *If appeal is denied.* If the OCC denies an appeal, in whole or in part, the OCC notifies the requester by mail. The notification contains a brief statement of the reasons for the denial, sets forth the name and title or position of the official making the decision, and advises the requester of the right to judicial review of the denial under 5 U.S.C. 552(a)(4)(B).

(e) *Judicial review*—(1) *General.* If the OCC denies an appeal pursuant to paragraph (d) of this section, or if the OCC fails to make a determination within the time limits specified in paragraph (f) of this section, the requester may commence an action to compel disclosure of records, pursuant to 5 U.S.C. 552(a)(4)(B), in the United States district court in:

(i) The district where the requester resides;

(ii) The district where the requester's principal place of business is located;

(iii) The district where the records are located; or

(iv) The District of Columbia.

(2) *Service of process.* In commencing an action described in paragraph (e)(1) of this section, the requester, in addition to complying with the Federal Rules of Civil Procedure for service upon the United States or agencies thereof, must serve process on the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(f) *Time limits*—(1) *Request.* The OCC makes an initial determination to grant or deny a request for records within ten

business days after the date of receipt of the request, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

(2) *Appeal*. The OCC makes a determination to grant or deny an administrative appeal within 20 business days after the date of receipt of the appeal, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

(3) *Extension of time*. The time limits set forth in paragraphs (f)(1) and (2) of this section may be extended as follows:

(i) *In unusual circumstances*. The OCC may extend the time limits in unusual circumstances for a maximum of ten business days. If the OCC extends the time limits, the OCC provides written notice to the person making the request or appeal, containing the reason for the extension and the date on which the OCC expects to make a determination. Unusual circumstances exist when the OCC requires additional time to:

(A) Search for and collect the requested records from field facilities or other buildings that are separate from the office processing the request or appeal;

(B) Search for, collect, and appropriately examine a voluminous amount of requested records;

(C) Consult with another agency that has a substantial interest in the determination of the request; or

(D) Allow two or more components of the OCC that have substantial interest in the determination of the request to consult with each other;

(ii) *By agreement*. A requester may agree to extend the time limits for any amount of time; or

(iii) *By judicial action*. If a requester commences an action pursuant to paragraph (e) of this section for failure to comply with the time limits set forth in this paragraph (f), the court with jurisdiction may, pursuant to 5 U.S.C. 552(a)(6)(C), allow the OCC additional time to complete the review of the records requested.

(g) *Date of receipt of request or appeal*—(1) *Request*. The date of receipt of a request for records is the date that the appropriate OCC office, as indicated in paragraphs (b)(1) and (b)(2)(i) of this section, receives a request that satisfies the requirements of paragraph (c)(1) of this section, except as provided in § 4.17(d).

(2) *Appeal*. The date of receipt of an appeal is the date that the OCC office identified in paragraph (b)(1) of this section receives a request that satisfies the requirements of paragraph (d)(1) of this section, except as provided in § 4.17(d).

§ 4.16 Predisclosure notice for confidential commercial information.

(a) *Definitions*. For purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records that arguably contain material exempt from release under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4); § 4.12(b)(4)), because disclosure reasonably could cause substantial competitive harm to the submitter.

(2) *Submitter* means any person or entity that provides confidential commercial information to the OCC. This term includes, but is not limited to, corporations, State governments, foreign governments, and banks and their employees, officers, directors, and principal shareholders.

(b) *Notice to submitter*—(1) *When provided*. In accordance with Executive Order 12600 (3 CFR, 1987 Comp., p.235), when the OCC receives a request under § 4.15 for disclosure of confidential commercial information, the OCC provides a submitter with prompt written notice of the receipt of that request, except as provided in paragraph (b)(2) of this section, in the following circumstances:

(i) With respect to confidential commercial information submitted to the OCC prior to January 1, 1988, where:

(A) The records are less than ten years old and the submitter designated the information as confidential commercial information;

(B) The OCC reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter; or

(C) The information is subject to a prior express OCC commitment of confidentiality; or

(ii) With respect to confidential commercial information submitted to the OCC on or after January 1, 1988, where:

(A) The submitter in good faith designated the information as confidential commercial information;

(B) The OCC designated the class of information to which the requested information belongs as confidential commercial information; or

(C) The OCC reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(2) *Exceptions*. The OCC does not provide notice under paragraph (b)(1) of this section if the OCC determines that:

(i) It will not disclose the information;

(ii) The information already has been disclosed officially to the public;

(iii) The OCC is required by law (other than 5 U.S.C. 552) to disclose the information;

(iv) The OCC acquired the information in the course of a lawful investigation of a possible violation of criminal law;

(v) The submitter did not designate the requested information as confidential commercial information under paragraph (b)(1)(ii)(A) of this section, if the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or

(vi) The OCC determines that the submitter's designation under paragraph (b)(1)(ii)(A) of this section appears obviously frivolous; however, the OCC provides the submitter with written notice of any final administrative determination to disclose the information, at least ten business days prior to the date that the OCC intends to disclose the information.

(3) *Content of notice*. The OCC either describes in the notice the exact nature of the confidential commercial information requested or includes with the notice copies of the records or portions of records containing that information.

(4) *Expiration of notice period*. The OCC provides notice under this paragraph (b) with respect to information that the submitter designated under paragraph (b)(1)(ii)(A) of this section only for a period of ten years after the date of the submitter's designation, unless the submitter requests and justifies to the OCC's satisfaction a specific notice period of greater duration.

(5) *Certification of confidentiality*. If possible, the submitter should support the claim of confidentiality with a statement or certification (by an officer or authorized representative, for an entity), that the requested information is confidential commercial information that the submitter has not disclosed to the public.

(c) *Notice to requester*. If the OCC provides notice to a submitter under paragraph (b) of this section, the OCC notifies the person requesting confidential commercial information (requester) that it has provided notice to the submitter. The OCC also advises the requester that there is a delay in its decision of whether to grant or deny access to the information sought, that this delay may be considered a denial of access to the information, and that the requester may proceed with an administrative appeal or seek judicial review. However, the requester may agree to a voluntary extension of time to allow the OCC to review the submitter's

objection to disclosure (see § 4.15(f)(3)(ii)).

(d) *Opportunity to object to disclosure.* Within ten days after receiving notice under paragraph (b) of this section, the submitter may provide the OCC with a detailed statement of objection to disclosure of the information. That statement must specify the grounds for withholding any of the information under any exemption of the FOIA. Any statement that the submitter provides under this paragraph (d) may be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The OCC considers carefully a submitter's objection and specific grounds for nondisclosure prior to determining whether to disclose the requested information. If the OCC decides to disclose information over the objection of the submitter, the OCC provides to the submitter, with a copy to the requester, a written notice that includes:

- (1) A statement of the OCC's reasons for not sustaining the submitter's objections to disclosure;
- (2) A description of the information to be disclosed;
- (3) The anticipated disclosure date (specifically, ten business days after the OCC mails the written notice required under this paragraph (e)); and
- (4) A statement that the submitter must notify the OCC immediately if the submitter intends to seek injunctive relief.

(f) *Notice of requester's lawsuit.* Whenever the OCC receives service of process indicating that a requester has brought suit seeking to compel the OCC to disclose information covered by paragraph (b)(1) of this section, the OCC promptly notifies the submitter.

§ 4.17 Fees for services.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Actual costs* means those expenditures that the OCC incurs in providing services (including searching for, reviewing, and duplicating records) in response to a request for records under § 4.15.

(2) *Search* means the process of locating a record in response to a request, including page-by-page or line-by-line identification of material within a record. The OCC may perform a search manually or by electronic means.

(3) *Review* means the process of examining a record located in response to a request to determine which portions of that record should be released. It also includes processing a record for disclosure.

(4) *Duplication* means the process of copying a record in response to a

request. A copy may take the form of a paper copy, microform, audiovisual materials, or machine readable material (e.g., magnetic tape or disk), among others.

(5) *Commercial use requester* means a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution requester* means a person who seeks records on behalf of a public or private educational institution, including a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research.

(7) *Noncommercial scientific institution requester* means a person who is not a "commercial use requester," as that term is defined in paragraph (a)(5) of this section, and who seeks records on behalf of an institution operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Requester who is a representative of the news media* means a person who seeks records for the purpose of gathering news (i.e., information about current events or of current interest to the public) on behalf of, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity organized and operated to publish or broadcast news to the public.

(b) *Fees*—(1) *General.* The hourly and per page rate that the OCC generally charges requesters is set forth in the "Notice of Comptroller of the Currency Fees" (Notice) described in § 8.8 of this chapter. Any interested person may request a copy of the Notice from the OCC by mail or may obtain a copy at the location described in § 4.14(c). The OCC may contract with a commercial service to search for, duplicate, or disseminate records, provided that the OCC determines that the fee assessed upon a requester is no greater than if the OCC performed the tasks itself. In no case may the OCC contract out responsibilities that the FOIA provides that the OCC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce a fee.

(2) *Fee categories.* The OCC assesses a fee based on the fee category in which the OCC places the requester. If the request states how the requester intends to use the requested records (see

§ 4.15(c)(1)(iv)), the OCC may place the requester in a lower fee category; otherwise, the OCC categorizes the requester as a "commercial use requester." If the OCC reasonably doubts the requester's stated intended use, or if that use is not clear from the request, the OCC may place the requester in the "commercial use" category or may seek additional clarification. The fee categories are as follows:

(i) *Commercial use requesters.* The OCC assesses a fee for a requester in this category for the actual cost of search, review, and duplication. A requester in this category does not receive any free search, review, or duplication services.

(ii) *Educational institution requesters, noncommercial scientific institution requesters, and requesters who are representatives of the news media.* The OCC assesses a fee for a requester in this category for the actual cost of duplication. A requester in this category receives 100 free pages.

(iii) *All other requesters.* The OCC assesses a fee for a requester who does not fit into either of the above categories for the actual cost of search and duplication. A requester in this category receives 100 free pages and two hours of free search time.

(3) *Special services.* The OCC may comply with a request for special services. The OCC may recover the actual cost of providing any special services.

(4) *Waiving or reducing a fee.* The OCC may waive or reduce a fee under this section whenever, in its opinion, disclosure of records is in the public interest because the disclosure:

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requester.

(5) *Fee for unsuccessful search.* The OCC may assess a fee for time spent searching for records, even if the OCC does not locate the records requested.

(c) *Payment of fees.*—(1) *General.* The OCC generally assesses a fee when it delivers the records in response to the request, if any. A requester must send payment within 30 calendar days of the billing date to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) *Fee likely to exceed \$25.* If the OCC estimates that a fee is likely to exceed \$25, the OCC notifies the requester of the estimated fee, unless the requester has indicated in advance a willingness to pay a fee as high as that anticipated. If so notified by the OCC,

the requester may confer with OCC employees to revise the request to reflect a lower fee.

(3) *Fee likely to exceed \$250.* If the OCC estimates that a fee is likely to exceed \$250, the OCC notifies the requester of the estimated fee. In this circumstance, the OCC may require, as a condition to processing the request, that the requester:

- (i) Provide satisfactory assurance of full payment, if the requester has a history of prompt payment; or
- (ii) Pay the estimated fee in full, if the requester does not have a history of prompt payment.

(4) *Failure to pay a fee.* If the requester fails to pay a fee within 30 days of the date of the billing, the OCC may require, as a condition to processing any further request, that the requester pay any unpaid fee, plus interest (as provided in paragraph (c)(5) of this section), and any estimated fee in full for that further request.

(5) *Interest on unpaid fee.* The OCC may assess interest charges on an unpaid fee beginning on the 31st day following the billing date. The OCC charges interest at the rate prescribed in 31 U.S.C. 3717.

(d) *Tolling of time limits.* Under the circumstances described in paragraphs (c)(2), (3), and (4) of this section, the time limits set forth in § 4.15(f) (i.e., ten business days from the receipt of a request for records and 20 business days from the receipt of an administrative appeal, plus any permissible extension) begin only after the OCC receives a revised request (if any), under paragraph (c)(2) of this section, an assurance of payment under paragraph (c)(3)(i) of this section, or the required payments under paragraph (c)(3)(i) or (c)(4) of this section.

(e) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of a fee, the OCC may aggregate the requests and assess a fee accordingly.

Subpart C—Release of Non-Public OCC Information

§ 4.31 Purpose and scope.

(a) *Purpose.* The purposes of this subpart are to:

(1) Afford an orderly mechanism for the OCC to process expeditiously requests for non-public OCC information, and, when appropriate, for the OCC to assert evidentiary privileges in litigation;

(2) Balance the public's interest in obtaining access to relevant and

necessary information with the countervailing public interest of maintaining the effectiveness of the OCC supervisory process and the confidentiality of OCC supervisory information;

(3) Ensure that the OCC's information is used in a manner that supports the public interest and the interests of the OCC;

(4) Ensure that OCC resources are used in the most efficient manner consistent with the OCC's statutory mission;

(5) Prevent undue burden on the OCC;

(6) Limit the expenditure of government resources for private purposes; and

(7) Maintain the OCC's impartiality among private litigants.

(b) *Scope.* (1) This subpart applies to requests for, and dissemination of, non-public OCC information, including requests for records or testimony arising out of civil lawsuits and administrative proceedings to which the OCC is not a party. Lawsuits and administrative proceedings to which the OCC is not a party include proceedings in which a Federal agency is a party in opposition to the private requester.

(2) This subpart does not apply to:

(i) A request for a record or testimony in a proceeding in which the OCC is a party;

(ii) A request for a record that is required to be disclosed under the Freedom of Information Act (FOIA) (5 U.S.C. 552), as described in § 4.12; or

(iii) A request for a record or testimony by:

(A) An agency with authority to investigate violations of criminal law; or

(B) A Federal agency for use in civil or administrative enforcement proceedings.

§ 4.32 Definitions.

(a) *Compelling need* means that the requester has demonstrated, with as much detail as is necessary under the circumstances, that the requested information could contribute substantially to the resolution of one or more specifically identified issues in the case and that the relevant material contained in the testimony is not available from any other source. Sources, without limitation, include the books and records of other persons or entities and non-public OCC records that have been, or might be, released.

(b) *Complete request* means a request containing sufficient information to allow the OCC to make an informed decision.

(c) *Showing that the information has high relevance* means demonstrating, with as much detail as is necessary

under the circumstances, that the requested information could contribute substantially to the resolution of one or more specifically identified issues in the case.

(d) *Non-public OCC information* means information that the OCC is not required to release under the FOIA (5 U.S.C. 552) or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u) and includes:

(1) A record created or obtained by the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a bank holding company, or an affiliate;

(2) A record compiled by the OCC in connection with the OCC's enforcement responsibilities;

(3) A report of examination, supervisory correspondence, an investigatory file compiled by the OCC in connection with an investigation, and any internal agency memorandum, whether the information is in the possession of the OCC or some other individual or entity;

(4) Confidential OCC information obtained by a third party or otherwise incorporated in the records of a third party, including another government agency;

(5) Testimony from, or an interview with, a current or former OCC employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties or due to that person's official status; and

(6) Confidential information relating to no longer operating national banks, their subsidiaries and affiliates, as well as confidential information relating to operating national banks, their subsidiaries and affiliates.

(e) *Testimony* means an interview or sworn testimony on the record.

§ 4.33 Requirements for a request of records or testimony.

(a) *Generally.*—(1) *Form of request.* A person seeking non-public OCC information must submit a request in writing to the OCC. The requester must explain, in as detailed a description as is necessary under the circumstances, the bases for the request and how the requested non-public OCC information relates to the issues in the lawsuit or matter.

(2) *Expedited requests.* A requester seeking a response in less than 60 days must explain why the request was not submitted earlier and why the OCC should expedite the request.

(3) *Requests arising from adversarial matters.* Where the requested

information is to be used in connection with an adversarial matter:

(i) The OCC generally will require that the lawsuit or administrative action has been filed before it will consider the request;

(ii) The request must include:

(A) A copy of the complaint or other pleading setting forth the assertions in the case;

(B) The caption and docket number of the case;

(C) The name, address, and phone number of counsel to each party in the case; and

(D) A description of any prior judicial decisions or pending motions in the case that may bear on the asserted relevance of the requested information;

(iii) The request must address any potential privileges the OCC may assert to withhold the information by:

(A) Showing that the information has high relevance to the purpose for which it is sought;

(B) Showing that other evidence reasonably suited to the requester's needs is not available from any other source;

(C) Showing that the need for the information clearly outweighs any public interest considerations in maintaining the confidentiality of the OCC information and outweighs the burden on the OCC to produce the information;

(D) Explaining how the issues in the case and the status of the case warrant that the OCC waive privilege; and

(E) Identifying any other issue that may bear on the question of waiver of privilege by the OCC.

(b) *Requests for records.* If the request is for a record, the requester must adequately describe the record or records sought by type and date.

(c) *Requests for testimony.*—(1) *Generally.* A requester seeking testimony:

(i) Must show a compelling need for the requested information; and

(ii) Should request OCC testimony with sufficient time to obtain the testimony in deposition form.

(2) *Trial or hearing testimony.* A requester seeking testimony at a trial or hearing must show that a deposition would not suffice.

§ 4.34 Where to submit a request.

(a) *A request for non-public OCC information:* A person requesting information under this subpart, requesting authentication of a record under § 4.38(c), or submitting a notification of the issuance of a subpoena or compulsory process under § 4.36, must send the request or notification to: Office of the Comptroller

of the Currency, 250 E Street, SW, Washington, DC 20219, Attention: Director, Litigation Division.

(b) *Combined requests for non-public and other OCC information:* A person requesting public OCC information and non-public OCC information under this subpart may submit a combined request for both to the address in paragraph (a) of this section. If a requester decides to submit a combined request under this section, the OCC will process the combined request under this subpart and not under subpart B of this part (FOIA).

§ 4.35 Consideration of requests.

(a) *In general*—(1) *OCC discretion.* The OCC decides whether to release non-public OCC information based on its weighing of all appropriate factors including, but not limited to, the requestor's fulfilling of the requirements enumerated in § 4.33. Each decision is at the sole discretion of the Comptroller or the Comptroller's delegate and is a final agency decision.

(2) *Bases for denial.* The OCC may deny a request for non-public OCC information for reasons that include, but are not limited to, the following:

(i) The requester was unsuccessful in showing that the information has high relevance to the purpose for which it is sought;

(ii) The requester seeks testimony and the requestor did not show a compelling need for the information;

(iii) The request arises from an adversarial matter and other evidence reasonably suited to the requester's need is available from another source;

(iv) The request for information should not be granted based on reasons stated in the Federal Rules of Civil Procedure, including Rule 26(b) (28 U.S.C. appendix);

(v) A lawsuit or administrative action has not yet been filed and the request was made in connection with potential litigation; or

(vi) The production of the information would be contrary to the public interest or overly burdensome to the OCC.

(3) *Additional information.* A requester must submit a complete request. The OCC may require the requester to provide additional information to complete a request. Consistent with the purposes stated in § 4.31, the OCC may inquire into the circumstances of any case underlying the request and rely on sources of information other than the requester, including other parties.

(4) *Time required by the OCC to decide.* The OCC generally will process requests in the order in which they are received. The OCC will notify the

requester in writing of the final decision. Absent exigent or unusual circumstances, the OCC will respond to a request within 60 days from the date that the OCC receives a request that it deems a complete request. Consistent with § 4.33(a)(2), the OCC weighs a request to respond to a request for information in less than 60 days against the unfairness to other requesters whose pending requests may be delayed and the burden imposed on the OCC by the expedited processing.

(b) *Testimony.* (1) The OCC generally will not authorize a current OCC employee to provide expert or opinion evidence for a private party.

(2) The OCC may restrict the scope of any authorized testimony and may act to ensure that the scope of testimony given by the OCC employee adheres to the scope authorized by the OCC.

(3) Once a request for testimony has been submitted, and before the requested testimony occurs, a party to the relevant case, who did not join in the request and who wishes to question the witness beyond the scope of testimony sought by the request, must timely submit the party's own request for OCC information pursuant to this subpart.

(4) The OCC may offer the requester the employee's written declaration in lieu of testimony.

(c) *Release of non-public OCC information by others.* In appropriate cases, the OCC may respond to a request for information by authorizing a party to the case who is in possession of non-public OCC information to release the information to the requester. An OCC authorization to release records does not preclude the party in possession from asserting its own privilege, arguing that the records are not relevant, or asserting any other argument for which it has standing to protect the records from release.

§ 4.36 Persons and entities with access to OCC information; restriction on dissemination.

(a) *OCC employees or former employees*—(1) *Generally.* Except as authorized by this subpart or otherwise by the OCC, no OCC employee or former employee may, in any manner, disclose or permit the disclosure of any non-public OCC information, whether by giving the information or a copy thereof to any person, by allowing any person to inspect, examine, or copy the information or copy thereof, or otherwise, to anyone other than an employee of the Comptroller who is entitled to the information for the performance of OCC duties.

(2) *Duty of person served.* Any OCC employee or former employee subpoenaed or otherwise requested to provide information covered by this subpart must immediately notify the OCC's Litigation Division. The OCC will attempt to have the compulsory process withdrawn and may register appropriate objections when an employee or former employee receives a subpoena, the subpoena requires the employee or former employee to appear or produce OCC information, and no authorization pursuant to this subpart has been given by the OCC to appear or provide information. If necessary, the employee or former employee shall appear as required and respectfully decline to produce the information sought citing this subpart C and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(b) *Non-OCC employees or entities.* (1) No person or other entity may, without OCC approval, in any manner, disclose information covered by this subpart, whether by giving the information or a copy thereof to any person, by allowing any person to inspect, examine, or copy the information or a copy thereof, or otherwise.

(2) Except pursuant to a final decision rendered in accordance with § 4.35(a)(1), a national bank or holding company, or any director, officer, or employee thereof, may not, under any circumstances, make public or disclose in any manner non-public OCC information, including information contained in, or related to, OCC reports of examination, to any person or organization not officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor.

(3) Any person who discloses or uses non-public OCC information except as expressly permitted by the Comptroller of the Currency may be subject to the penalties provided in 18 U.S.C. 641.

(4) The OCC may require any person in possession of OCC records to return the records to the OCC.

(c) *Disclosure to government agencies.* When not prohibited by law, the Comptroller may make available to the Board of Governors of the Federal Reserve System, to the Federal Deposit Insurance Corporation, and, in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, a copy of a report of examination or other non-public OCC information for their use, when necessary, in the performance of their official duties. All reports, documents, and papers made available pursuant to this subpart are OCC property.

(d) *Intention of OCC not to waive rights.* The possession by any of the entities or individuals described in paragraphs (a), (b), and (c) of this section of non-public OCC information does not constitute a waiver by the OCC of its right to control, or impose limitations on, the subsequent use and dissemination of the information.

§ 4.37 Limitation on dissemination of released information.

(a) *Records.* The OCC may condition a decision to release non-public OCC information on entry of a protective order by the court or administrative tribunal presiding in the particular case or, in non-adversarial matters, on a written agreement of confidentiality. In a case in which a protective order has already been entered, the OCC may condition approval for release of non-public OCC information upon the inclusion of additional or amended provisions in the protective order. The OCC may authorize a party who obtained records for use in one case to provide them to another party in another case.

(b) *Testimony.* The OCC may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court, and the jury. Upon request or on its own initiative, the OCC may allow use of a transcript in other litigation. The OCC may require the requester, at the requester's expense, to furnish the OCC with a copy of the transcript. The OCC employee whose deposition was transcribed does not waive his or her right to review the transcript and to note errors.

§ 4.38 Procedures for sharing and using OCC records in litigation.

(a) *Responsibility of litigants to share released records.* The requester must promptly notify other parties to a case of the release of non-public OCC information obtained pursuant to this subpart, and, upon entry of a protective order, must provide copies of OCC information, including OCC information obtained pursuant to § 4.15, to the other parties.

(b) *Retrieval and destruction of released records.* At the conclusion of an action:

(1) The requester must retrieve any non-public OCC information from the court's file as soon as the court no longer requires the information;

(2) Each party must destroy the non-public OCC information covered by the protective order; and

(3) Each party must certify to the OCC that the non-public OCC information covered by the protective order has been destroyed.

(c) *Authentication for use as evidence.* Upon request, the OCC authenticates released records to facilitate their use as evidence. Requesters who require authenticated records or certificates of nonexistence of records should, as early as possible, request certificates from the OCC's Litigation Division pursuant to § 4.34(a).

§ 4.39 Fees for services.

(a) *Fees for records search, copying, and certification.* The requester must pay a fee to the OCC or to an OCC contracted commercial copier for any records search, copying, or certification in accordance with the standards specified in § 4.17. The OCC may require a requester to remit payment prior to providing the requested information.

(b) *Witness fees and mileage.* A person whose request for testimony of a current OCC employee is approved must, upon completion of the testimonial appearance, tender promptly to the OCC payment for the witness fees and mileage. The litigant must compute these amounts in accordance with 28 U.S.C. 1821. A litigant whose request for testimony of a former OCC employee is approved must tender promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

Appendix A to Subpart C—Model Stipulation for Protective Order and Model Protective Order

I. Model Stipulation

Case Caption

Model Stipulation for Protective Order

Whereas, counsel for _____ have applied to the Comptroller of the Currency (hereinafter "Comptroller") pursuant to 12 C.F.R. Part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 C.F.R. 4.12, and Part 4, Subpart C; and

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records as denoted in Appendix "A" to this Stipulation [records to be specified by type and date] available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Therefore, it is hereby stipulated by and between the parties hereto, through their

respective attorneys that they will be bound by the following protective order which may be entered by the Court without further notice.

Dated this _____ day of _____, 19____.

Attorney for Plaintiff

Attorney for Defendant

II. Model Protective Order

Case Caption

Model Protective Order

Whereas, counsel for _____ have applied to the Comptroller of the Currency (hereinafter "Comptroller") pursuant to 12 C.F.R. Part 4, Subpart C, for permission to have made available, in connection with the captioned action, certain records; and

Whereas, such records are deemed by the Comptroller to be confidential and privileged, pursuant to 12 U.S.C. 481; 5 U.S.C. 552(b)(8); 18 U.S.C. 641, 1906; and 12 C.F.R. 4.12, and Part 4, Subpart C;

Whereas, following consideration by the Comptroller of the application of the above described party, the Comptroller has determined that the particular circumstances of the captioned action warrant making certain possibly relevant records available to the parties in this action, provided that appropriate protection of their confidentiality can be secured;

Now, therefore, it is ordered That:

1. The records, as denoted in Appendix "A" to the Stipulation for this Protective Order, upon being furnished [or released for use] by the Comptroller, shall be disclosed only to the parties to this action, their counsel, and the court [and the jury].

2. The parties to this action and their counsel shall keep such records and any information contained in such records confidential and shall in no way divulge the same to any person or entity, save and except to such experts, consultants and non-party witnesses to whom the records and their contents shall be disclosed, solely for the purpose of properly preparing for and trying the action.

3. No person to whom information and records covered by this Order are disclosed shall make any copies or otherwise use such information or records or their contents for any purpose whatsoever, except in connection with this action.

4. Any party or other person who wishes to use the records or their contents in any other action shall make a separate application to the Comptroller pursuant to 12 C.F.R. part 4, subpart C.

5. Should any records covered by this Order be filed with the Court or utilized as exhibits at depositions in the captioned action, or should information or records or their contents covered by this Order be disclosed in the transcripts of depositions or the trial in the captioned action, such records, exhibits and transcripts shall be filed in sealed envelopes or other sealed containers marked with the title of this action, identifying each document and article therein and bearing a statement substantially in the following form:

Confidential

Pursuant to the Order of the Court dated _____ this envelope containing the above-identified papers filed by (the name of the party) is not to be opened nor the contents thereof displayed or revealed except to the parties to this action or their counsel or by further Order of the Court.

6. For Jury Trial: Any party offering any of the records into evidence shall offer only those pages, or portions thereof, that are relevant and material to the issues to be decided in the action and shall block out any portion of any page that contains information not relevant or material. Furthermore, the name of any person or entity contained on any page of the records who is not a party to this action, or whose name is not otherwise relevant or material to the action, shall be blocked out prior to the admission of such page into evidence. Any disagreement regarding what portion of any page that should be blocked out in this manner shall be resolved by the Court *in camera*, and the Court shall decide its admissibility into evidence.

7. At the conclusion of this action, all parties shall certify to the Comptroller that the records covered by this Order have been destroyed. Furthermore, counsel for _____, pursuant to 12 C.F.R. 4.38(b), shall retrieve any records covered by this Order that may have been filed with the Court.

So Ordered

Judge

Dated: _____

Subpart D—Minority-, Women-, and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

§ 4.61 Purpose.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Sec. 1216(c), Public Law 101-73, 103 Stat. 183, 529 (12 U.S.C. 1833e(c)) and consistent with the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), this subpart establishes the OCC Minority-, Women-, and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). The Outreach Program is intended to ensure that firms owned and operated by minorities, women, and individuals with disabilities have the opportunity to participate, to the maximum extent possible, in all contracting activities of the OCC.

§ 4.62 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women (MWOB)* means firms at least 51 percent unconditionally-owned by one or more members of a minority group or by one

or more women who are citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any African American, Native American (means American Indian, Eskimo, Aleut and Native Hawaiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

(c) *Individual with disabilities-owned (small and large) businesses and entities owned by individuals with disabilities (IDOB)* means firms at least 51 percent unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members who are individuals with disabilities and who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(d) *Individual with disabilities* means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this part, it does not include an individual who is currently engaging in the illegal use of drugs nor an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job as defined by the IDOB.

(e) *Unconditional ownership* means ownership that is not subject to conditions or similar arrangements

which cause the benefits of the Outreach Program to accrue to persons other than the participating MWOB or IDOB.

§ 4.63 Policy.

The OCC policy is to ensure that MWOBs and IDOBs have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC. The OCC awards contracts consistent with the principles of full and open competition and best value acquisition, and with the concept of contracting for agency needs at the lowest practicable cost. The OCC ensures that MWOBs and IDOBs have the opportunity to participate fully in all contracting activities that the OCC enters into for goods and services, whether generated by the headquarters office in Washington, DC, or any other office of the OCC. Contracting opportunities may include small purchase awards, contracts above the small purchase threshold, and delivery orders issued against other governmental agency contracts.

§ 4.64 Promotion.

(a) *Scope.* The OCC, under the direction of the Deputy Comptroller for Resource Management, engages in promotion and outreach activities designed to identify MWOBs and IDOBs capable of providing goods and services needed by the OCC, to facilitate interaction between the OCC and the MWOBs and IDOBs community, and to indicate the OCC's commitment to doing business with that community. The Outreach Program is designed to facilitate OCC's participation in business promotion events sponsored by other government agencies and attended by minorities, women and individuals with disabilities. Once the OCC has identified a prospective participant, it will assist the minority- or women-owned business or individual with disabilities-owned business in understanding the OCC's needs and contracting process.

(b) *Outreach activities.* OCC's Outreach Program includes the following:

(1) Obtaining various lists and directories of MWOBs and IDOBs maintained by government agencies;

(2) Contacting appropriate firms for participation in the OCC's Outreach Program;

(3) Participating in business promotion events comprised of or attended by MWOBs and IDOBs to explain OCC contracting opportunities and to obtain names of potential MWOBs and IDOBs;

(4) Ensuring that the OCC contracting staff understands and actively promotes this Outreach Program; and

(5) Registering MWOBs and IDOBs in the Department of the Treasury's database to facilitate their participation in the competitive procurement process for OCC contracts. This database is used by OCC procurement staff to identify firms to be solicited for OCC procurements.

§ 4.65 Certification.

(a) *Objective.* To preserve the integrity and foster the Outreach Program's objectives, each prospective MWOB or IDOB must demonstrate that it meets the ownership and control requirements for participation in the Outreach Program.

(b) *Process-MWOB.* A prospective MWOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid MWOB certification received from another government agency whose definition of MWOB is substantially similar to that specified in § 4.62(a);

(2) Self-certifying MWOB ownership status by filing with the OCC a completed and signed certification form as prescribed by the Federal Acquisition Regulation, 48 CFR 53.301-129; or

(3) Submitting a valid MWOB certification received from the Small Business Administration.

(c) *Process-IDOB.* A prospective IDOB may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid IDOB certification received from another government agency whose definition of IDOB is substantially similar to that specified in § 4.62(c); or

(2) Self-certifying IDOB ownership status by filing with the OCC a completed and signed certification as prescribed in the Federal Acquisition Regulation, 48 CFR 53.301-129, and adding an additional certifying statement to read as follows:

I certify that I am an individual with disabilities as defined in 12 CFR 4.62(d), and that my firm, (Name of Firm) qualifies as an individual with disabilities-owned business as defined in 12 CFR 4.62(c).

§ 4.66 Oversight and monitoring.

The Deputy Comptroller for Resource Management shall appoint an Outreach Program Manager, who shall appoint an Outreach Program Specialist. The Outreach Program Manager is primarily responsible for program advocacy, oversight and monitoring.

PART 10—MUNICIPAL SECURITIES DEALERS

2. The authority citation for part 10 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78o-4(c)(5), and 78q-78w.

§ 10.1 [Amended]

3. In § 10.1, the introductory text is amended by revising the term "Comptroller of the Currency" to read "Office of the Comptroller of the Currency (OCC)".

§ 10.2 [Amended]

4. In § 10.2, paragraph (b) is amended by revising the term "Rulemaking board" to read "Rulemaking Board".

5. In § 10.3, paragraph (a) is revised, paragraphs (b) and (c) are amended by revising the term "Comptroller of the Currency" to read "OCC", and a new paragraph (d) is added to read as follows:

§ 10.3 Filing of documents.

(a) All documents required to be filed with the OCC in accordance with this part are to be filed at the Chief National Bank Examiner's Office, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

* * * * *

(d) Forms MSD-4 and MSD-5, with instructions, may be obtained from the Chief National Bank Examiner's Office at the address listed in paragraph (a) of this section.

§ 10.4 [Amended]

6. In § 10.4, paragraphs (a)(1), (a)(2)(ii), (b)(2)(ii), (c)(1), and (d)(2) are amended by revising the term "Comptroller of the Currency" to read "OCC", and paragraph (b)(2)(i) is amended by revising the term "board" to read "Board".

6a. The undesignated centerheading preceding § 10.41 is removed.

§ 10.41 [Removed]

7. Section 10.41 is removed.

§ 10.42 [Removed]

8. Section 10.42 is removed.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

9. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

§ 11.1 [Amended]

10. In § 11.1, paragraph (a) is amended in the first sentence by revising the term "Comptroller" to read "Office of the Comptroller of the

Currency (OCC)", and in the second sentence by revising the term "Comptroller" to read "OCC".

§ 11.2 [Amended]

11. In § 11.2, paragraph (a) is amended by revising the term "Comptroller" to read "OCC", and paragraph (c) is amended by revising the term "Comptroller" to read "OCC".

12. Section 11.3 is revised to read as follows:

§ 11.3 Filing requirements and inspection of documents.

(a) All papers required to be filed with the OCC pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Material may be filed by delivery to the OCC through the mail or otherwise. The date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements.

(b) Copies of registration statements, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this part (exclusive of exhibits) are available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at the address listed in paragraph (a) of this section.

13. In § 11.4, paragraph (a) is revised to read as follows:

§ 11.4 Filing fees.

(a) The OCC may require filing fees to accompany certain filings made under this part before it will accept the filing. The OCC provides an applicable fee schedule for such filings in the "Notice of Comptroller of the Currency Fees" described in § 8.8 of this chapter.

* * * * *

PART 18—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY NATIONAL BANKS

14. The authority citation for part 18 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, and 1818.

§ 18.1 [Amended]

15. In § 18.1, paragraph (a) is amended by revising the term "Office's supervisory efforts" to read "supervisory efforts of the Office of the Comptroller of the Currency (OCC)".

16. In § 18.4, paragraph (a)(1)(ii) is amended by revising the term "Non accrual Loans and Leases" to read "Nonaccrual Loans, Leases, and Other Assets", and paragraphs (b) and (d) are

amended by revising the term "Office" to read "OCC" each place it appears.

17. In § 18.5, paragraph (a) is revised to read as follows:

§ 18.5 Alternative annual disclosure statements.

* * * * *

(a) In the case of a national bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), by its annual report to security holders for meetings at which directors are to be elected;

* * * * *

18. Section 18.9 is amended by revising the term "Office of the Comptroller of the Currency" to read "OCC".

19. Section 18.10 is revised to read as follows:

§ 18.10 Prohibited conduct and penalties.

(a) No national bank or institution-affiliated party shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of material or required information in the annual disclosure statement; or

(2) Represent that the OCC, or any employee thereof, has passed upon the accuracy or completeness of the annual disclosure statement.

(b) For purposes of this part, institution-affiliated party means:

(1) Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, a national bank;

(2) Any other person who has filed or is required to file a change-in-control notice with the OCC under 12 U.S.C. 1817(j);

(3) Any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the OCC (by regulation or case-by-case) who participates in the conduct of the affairs of a national bank; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:

- (i) Any violation of any law or regulation;
(ii) Any breach of fiduciary duty; or
(iii) Any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the national bank.

(c) Conduct that violates paragraph (a) of this section also may constitute an unsafe or unsound banking practice or

otherwise serve as a basis for enforcement action by the OCC including, but not limited to, the assessment of civil money penalties against the bank or any institution-affiliated party who violates this part.

Office of the Secretary of the Treasury

31 CFR Subtitle A

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

21. Under the authority of 12 U.S.C. 93a and 31 CFR 1.1(d), appendix J of subpart A of 31 CFR part 1 is amended by revising paragraphs 2. through 5. to read as follows:

Appendix J—Office of the Comptroller of the Currency

* * * * *

2. Public reading room. The Office of the Comptroller of the Currency will make materials available for review on an ad hoc basis when necessary. Contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

3. Requests for records. Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Freedom of Information Officer or the official so designated. Requests may be mailed or delivered in person to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(h) with respect to records of the Officer of the Comptroller of the Currency will be made by the Comptroller or the Comptroller's designee. Appeals may be mailed or delivered in person to: Disclosure Officer, Communications Division, Officer of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

5. Delivery of process. Service of process will be received by the Chief Counsel and shall be delivered to such officer at the following location: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

22. Under the authority of 12 U.S.C. 93a and 31 CFR 1.20, appendix J of subpart C of 31 CFR part 1 is amended by revising paragraphs 2. through 6. to read as follows:

Appendix J—Office of the Comptroller of the Currency

* * * * *

2. Requests for notification and access to records and accountings of disclosures.

Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or the Comptroller's designee. Appeals shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

5. *Statements of disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the OCC's Director of Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Office of the Chief Counsel of the Comptroller of the Currency or the delegate of such official and shall be delivered to the following location: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

* * * * *

Dated: March 9, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95-7099 Filed 3-24-95; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ASO-8]

Proposed Amendment to Class E Airspace; Millington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Memphis NAS/Millington Municipal, TN. A VOR/DME RWY 18 Standard Instrument Approach Procedure (SIAP) has been developed for Charles W. Baker Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP. This amendment would also make a technical correction to the location of the Memphis NAS/Millington Municipal Airport. The correct location of the Memphis NAS/Millington Municipal Airport is Millington, TN.

DATES: Comments must be received on or before May 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95-ASO-8, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped

postcard on which the following statement is made: "Comments to Airspace Docket No. 95-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Memphis NAS/Millington Municipal, TN. A VOR/DME RWY 18 SIAP has been developed for Charles W. Baker Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport: If approved, the operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP. This amendment would also make a technical correction to the location of the Memphis NAS/Millington Municipal Airport. The correct location of the Memphis NAS/Millington Municipal Airport is Millington, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in CFR 71.1. The Class E airspace designation listed