

facilitating export opportunities for the Mexican pork industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

**PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 94.15 [Amended]**

2. In § 94.15, paragraph (b), the introductory text and paragraph (b)(2) are amended by adding the words "Chihuahua or" immediately before the word "Sonora".

Done in Washington, DC, this 2nd day of November 1995.

Lonnie J. King,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-28127 Filed 11-14-95; 8:45 am]

BILLING CODE 3410-34-P

**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. 95-27]

RIN 1557-AA67

**Organization and Functions, 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:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is revising its rules that describe the agency's organization and functions and govern the availability and release of information in order to facilitate the OCC's interaction with the banking industry and the public. The OCC is also making technical and clarifying amendments to its rules governing municipal securities dealers, disclosures under the Securities Exchange Act, and the disclosure of financial and other information by national banks. Finally, under authority delegated by the Department of the Treasury, the OCC is making minor changes to certain Treasury rules regarding disclosure of records. This final rule 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.

**EFFECTIVE DATE:** January 1, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090 (except with respect to 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 12 CFR part 4, subpart C).

**SUPPLEMENTARY INFORMATION:**

The Proposal

On March 27, 1995, the OCC published a notice of proposed

rulemaking (60 FR 15705) to revise 12 CFR part 4—the OCC's regulations that describe the agency's organization and functions, govern the availability and release of information, and implement the outreach program for potential OCC contractors.

The proposal sought to further the goals of the Regulation Review Program by updating, clarifying, reorganizing, and streamlining the regulations where appropriate to promote better and more efficient interaction between the OCC and the banking industry and the public at large. The proposal also made technical and clarifying amendments to 12 CFR part 10 (municipal securities dealers), part 11 (Securities Exchange Act disclosure rules), part 18 (disclosure of financial and other information by national banks), and 31 CFR part 1 (disclosure of records).

**The Final Rule**

The final rule implements the proposal with a few additional changes, which are made generally in response to comments received. The OCC received a total of five comment letters: two from banks, one from a bank trade organization, one from a bank consulting firm, and one from a community group. The community group directed its comments to several aspects of the OCC's corporate application process set forth in 12 CFR part 5. That same community group had previously submitted substantially similar comments on the notice of proposed rulemaking proposal to revise part 5 (59 FR 61304, Nov. 29, 1994). Because many of the issues that the community group's comments raise relate to part 5, the OCC is considering them in the context of the part 5 rulemaking. The remaining four comment letters focused exclusively on proposed subparts A, B, and C of 12 CFR part 4, which, respectively, describe the agency's organization and functions, govern the disclosure of information under the Freedom of Information Act (FOIA), and govern the release of non-public OCC information.

The following sections summarize the amendments to part 4 and briefly describe the changes made to parts 10, 11, and 18, and 31 CFR part 1.

*Part 4, Subpart A—Organization and Functions*

*Purpose (§ 4.1).*

Proposed § 4.1 explained the purpose of subpart A—namely, to describe the OCC's organization and functions and provide the OCC's principal addresses. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

*Office of the Comptroller of the Currency (§ 4.2).*

Proposed § 4.2 described the functions of the OCC. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

*Comptroller of the Currency (§ 4.3).*

Proposed § 4.3 described the responsibilities of the Comptroller of the Currency. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

Neither the proposal nor the final rule contains the detailed job descriptions of OCC positions subordinate to the Comptroller of the Currency that formerly appeared in part 4. As explained in the preamble of the proposal, the OCC will continue to publish 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 contains the Comptroller's Report of Operations, which describes in detail the functions of the major departments and divisions of the OCC. Persons may also contact the OCC's Communications Division for information concerning the OCC's organizational structure.

*Washington Office (§ 4.4).*

Proposed § 4.4 described the functions and responsibilities of the OCC's Washington office, and provided its address. The OCC received one comment on this section, suggesting that the regulation be revised to clarify which national banks are directly supervised by the Washington office and why. This commenter and other readers are referred to the Comptroller's Report of Operations found in the *Quarterly Journal*, which discusses national banks supervised by the Washington office (through the Multinational Banking Department and the Special Supervision Division) to the extent that the information is not confidential. The *Quarterly Journal* provides more current information than the OCC's codified regulations. Accordingly, the OCC adopts this section as proposed.

*District and Field Offices (§ 4.5).*

Proposed § 4.5 described the functions and responsibilities of the OCC's district and field offices, and provided the office address and geographical composition of each OCC district. The OCC received no comments on this section, which is adopted as proposed.

*Part 4, Subpart B—Availability of Information Under the Freedom of Information Act.*

*Purpose and scope (§ 4.11).*

Proposed § 4.11 explained the purpose of subpart B—namely, to set forth the standards, policies, and procedures that the OCC applies in administering the FOIA to facilitate the OCC's interaction with the banking industry and the public. The proposal also delineated the scope of subpart B by briefly describing the sections in the subpart. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

*Information available under the FOIA (§ 4.12).*

Proposed § 4.12 explained that OCC records are available to the public in accordance with the FOIA, except records that the FOIA exempts from disclosure. The proposal set forth the nine FOIA exemptions. Additionally, the proposal incorporated a "special exclusion" provision found in the FOIA that authorizes an agency to treat records as excluded from FOIA's coverage in certain circumstances where disclosure of the existence of the records may interfere with criminal law enforcement proceedings. One commenter expressed concerns about the propriety of the FOIA special exclusion, and suggested that the OCC adopt a means of nondisclosure that does not involve a misrepresentation.

To date, the OCC has not relied on the FOIA special exclusion. Under current OCC practice, whenever the OCC receives a request for records in circumstances where disclosure of the existence of those types of records may interfere with criminal law enforcement proceedings, the OCC indicates that it will neither confirm nor deny the existence of those records, regardless of whether those records exist. Because the OCC believes that its current practice is sufficient to prevent the disclosure of the existence of these types of records, the OCC has determined that it is not necessary to include the FOIA special exclusion in its regulations, and has omitted the proposed language on the special exclusion.

The proposal also stated that, on a case-by-case basis, even if a record is exempt from disclosure under the FOIA, the OCC may decide in its discretion not to apply the exemption to the requested record. One commenter suggested that the OCC add to this discretionary disclosure provision a cross-reference to proposed section 4.16 (predisclosure notice for confidential commercial information) to clarify that the OCC will

not override the predisclosure notice requirements of that section. The OCC has added appropriate language in response to this comment.

*Publication in the Federal Register (§ 4.13).*

Proposed § 4.13 clarified that the OCC publishes in the Federal Register proposed and final rules, and certain notices and policy statements of concern to the general public. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

*Public inspection and copying (§ 4.14).*

Proposed § 4.14 clarified that the OCC makes certain information readily available from the Communications Division for public inspection and copying, including: (1) Final orders, agreements, or other enforceable documents issued in the adjudication of an OCC enforcement case; (2) final opinions issued in the adjudication of an OCC enforcement case; (3) statements of general policy or interpretations of general applicability not published in the Federal Register; (4) administrative staff manuals or instructions to staff that may affect a member of the public; (5) a current index identifying each document described in items (1)–(4) that the OCC issued, adopted, or promulgated after July 4, 1967 (a date set under 5 U.S.C. 552(a)(2)); (6) a list of OCC publications available; and (7) a list of forms available from the OCC, and specific forms and instructions.

The OCC received no comments on this section. However, the OCC is clarifying item (7) with a footnote indicating that some forms that national banks use, such as the Consolidated Report of Condition and Income (FFIEC 031–034), may not be available from the OCC. The OCC will provide information on where persons may obtain these forms and instructions upon request. Moreover, for the sake of completeness, the OCC is adding three items to the list of records available from the Communications Division under this section, numbering them as follows: (8) public Community Reinvestment Act performance evaluations; (9) public securities-related filings required under 12 CFR part 11 or 16; and (10) public comment letters regarding a proposed rule.

Finally, the OCC is adding item (11): public files (as defined at 12 CFR 5.9) with respect to pending applications described in part 5 of its regulations. Under the proposed rule (and the former rule), public files were available only by specific written request under the procedures set forth in proposed § 4.15 (former § 4.17a). The OCC has added

item (11) to § 4.14 to indicate that public files will be readily available for public inspection and copying from Licensing Manager at the appropriate district office at the address listed in § 4.5(a).

*Specific requests for records (§ 4.15).*

Proposed § 4.15 clarified that any OCC record not exempt from disclosure is available to any person upon specific request. The proposal set forth the standards, policies, and procedures that apply to a request for records or an administrative appeal of a denial of a request for records. The OCC received no comments on this section. However, the OCC has decided to make public files with respect to corporate applications available under the less formal provisions of § 4.14 rather than this section (see discussion of § 4.14, above). Accordingly, the OCC has removed references to the availability of public files from this section.

*Predisclosure notice for confidential commercial information (§ 4.16).*

Proposed § 4.16 explained the 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 for records that arguably are exempt from disclosure under exemption 4 of the FOIA as confidential commercial information. 5 U.S.C. 552(b)(4). See proposed § 4.12(b)(4). One commenter suggested that the OCC extend the predisclosure notice requirements of this section to requests for disclosure of information for which the submitter has requested confidentiality pursuant to FOIA exemption 6 (unwarranted invasion of personal privacy) or expects confidentiality under FOIA exemption 8 (bank examination reports and related records). The OCC is not aware of, and the commenter did not identify, any problems that warrant extending these specific procedures beyond the scope of Executive Order 12600. Accordingly, this section is adopted as proposed with minor stylistic edits.

It is important to emphasize the OCC's continuing commitment to maintaining the confidentiality of bank-related information that is protected under FOIA exemption 4, 6, or 8. The OCC does not disclose under subpart B information that falls under those FOIA exemptions. Rather, the OCC releases such non-public information only under the procedures set forth in subpart C. The discussion of subpart C below addresses the OCC's notice procedures regarding requests for non-public information.

*Fees for services (§ 4.17).*

The proposal set forth the fees that the OCC assesses for the services it renders

in providing information under the FOIA. The OCC received no comments on this section, which is adopted as proposed with minor stylistic edits.

*Part 4, Subpart C—Release of Non-public OCC Information*

This subpart contains the OCC's procedures for the release of non-public OCC information and states the restrictions on the dissemination of non-public OCC information.<sup>1</sup> The OCC received four comments that addressed subpart C. These comments were generally supportive of the proposal. The section-by-section discussion below summarizes these comments and the changes the OCC has incorporated in the final rule.

*Purpose and scope (§ 4.31).*

Proposed § 4.31 identified the purposes of subpart C, including the prevention of undue burden on the OCC. One commenter urged that, if one purpose of the rule is to prevent undue burden on the OCC, another purpose of the rule should likewise be to prevent undue burden on the banking industry or the public. The OCC agrees with the commenter that its rules with respect to the release of non-public OCC information should seek to minimize burden to all participants in the process. The final rule reflects this change and includes minor conforming changes as well.

The proposal prescribed 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. The OCC received no comments on the scope of subpart C.

The proposal stated that a request by an agency with authority to investigate violations of criminal law or a request by a Federal agency for use in civil or administrative enforcement proceedings was not governed by subpart C. The final rule modifies the proposal by stating that requests for non-public OCC information by the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank regulatory agencies are governed solely by § 4.36(c). As described below, § 4.36(c) generally provides that, when not prohibited by law, the Comptroller may make, in the Comptroller's sole discretion, non-public OCC information

available to these agencies. The final rule is, therefore, almost identical to the former rule, § 4.18(b), which also gave the Comptroller sole discretion to make non-public OCC information available to certain agencies. The final rule differs from the former provision only in the addition of two categories of agencies: (1) state agencies with authority to investigate violations of criminal law; and (2) state bank regulatory agencies.

Under the final rule, these state agencies, the Board of Governors, the FDIC, and government agencies of the United States and foreign governments need not follow the specific procedures set forth in subpart C when seeking non-public OCC information. The OCC anticipates that these agencies will, however, consult the subpart C procedures for guidance regarding, for example, confidentiality undertakings and the type of information the OCC will need in order to determine whether to release the information requested.

*Definitions (§ 4.32).*

The proposal provided definitions for the following terms: "compelling need," "complete request," "non-public OCC information," "showing that the information has high relevance," and "testimony." The OCC received three comments on these definitions. Two commenters urged the OCC to make the standards for the release of information more stringent by changing the proposed rule's definitions of "compelling need" and "showing that the information has high relevance." One commenter urged the OCC to make the standards less stringent by redefining these terms.

The OCC has determined that the standards, as they were proposed, best reflect the current state of the law and achieve the OCC's objective of accommodating the interests of requesters subject to the need to ensure open communications in the bank examination and supervision process by preserving appropriate confidentiality. Therefore, the OCC adopts the definitions as they were proposed with a few changes in wording that clarify or streamline the provisions. For example, the definition of "compelling need" is revised to reflect that this standard applies only to requests for testimony and to substitute the word "relevant" for the phrase defining relevance that appeared in the proposal. The final rule uses the term "relevant" in place of the term "highly relevant," but the substance of its definition remains the same.

The proposal did not retain the provision in former § 4.18(b) that stated that examination reports are the property of the OCC. See 60 Fed. Reg.

<sup>1</sup> The OCC's authority to prescribe this subpart derives from 5 U.S.C. 301 and 552 and recent judicial interpretations of the bank examination privilege. This authority was discussed in detail in the proposal. See 60 FR 15705, 15708.

15705, 15709. The OCC received no comments on this point but has decided that the statement is useful information that should be retained. Therefore, the statement is incorporated as part of the definition of "non-public OCC information."

*Requirements for a request of records or testimony (§ 4.33).*

Proposed § 4.33 specified the submissions that requesters must provide to the OCC when seeking non-public OCC information. The OCC received no comments on this section, which the OCC adopts as proposed with minor changes.

*Where to submit a request (§ 4.34).*

Proposed § 4.34 specified 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. The proposal also added a provision that permits a person who is requesting public OCC information and 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).

The OCC received no comments on this section. For clarity, the OCC adds to the final rule a provision detailing where certain government agencies should submit a request.

*Consideration of requests (§ 4.35).*

Proposed § 4.35 stated that the decision to release non-public OCC information is at the sole discretion of the Comptroller and listed the issues and factors that the OCC will consider in acting on requests for non-public OCC information. The proposal also stated that the OCC may require a requester to submit additional information, or seek information from other sources, and may respond to certain requests by authorizing others in possession of the requested information to release the information.

One commenter urged the OCC to modify the proposal to indicate that, when a third-party litigant seeks non-public OCC information and when other evidence reasonably suited that litigant's need is available from another source, a strong presumption exists in favor of finding that the public interest in maintaining the confidentiality of the information outweighs the need for it. The OCC agrees with this concern, but believes that the availability from other sources of information reasonably suited to the requester's need is already

adequately addressed in § 4.35(a)(2)(iii) as a basis for denial of a request.

Three commenters urged the OCC to add provisions that would ensure that a national bank receives notice whenever a requester seeks non-public OCC information about that bank so that the bank may have an opportunity to comment. One of those commenters urged the OCC to use the procedures for publicly available information as proposed at § 4.16(b). Another commenter urged the OCC to require any third-party litigant that requests non-public OCC information to notify, as a prerequisite for OCC consideration of the request, all other parties to the litigation and the bank that is the subject of the information sought.

The OCC recognizes that a national bank has a strong interest in the release of non-public OCC information that relates to the bank and that the bank is most often in the best position to explain why the information falls within the definition of non-public OCC information. For these reasons the OCC adds a new provision to the final rule, § 4.35(a)(6), that states that, following receipt of a request for non-public OCC information, the OCC generally notifies the national bank that is the subject of the request, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue. The OCC is not here applying subpart B's submitter notification procedures, § 4.16(b), because the scope of the OCC's release of information under subpart C is more limited than its release of information under subpart B. Information disclosed under subpart B enters the public domain and therefore loses its confidentiality. Information released under subpart C remains the property of the OCC and may be provided only to limited categories of requesters or upon the prior approval of the OCC. It thus retains its confidential character. The more detailed procedures set forth in subpart B are, accordingly, unnecessary.

The final rule adds to the statement that release of non-public OCC information is at the sole discretion of the Comptroller an explicit statement clarifying that OCC action on a request for non-public OCC information exhausts administrative remedies for discovery of the information. The final rule also includes several minor changes to the wording of § 4.35.

*Persons and entities with access to OCC information; prohibition on dissemination (§ 4.36).*

The title to proposed § 4.36 "Parties with access to OCC information; restriction on dissemination" is changed

in the final rule by replacing the word "restriction" with "prohibition," and by replacing the word "Parties" with the words "Persons and entities," which better reflect the content of the section.

(a) *OCC employees or former employees.* Proposed § 4.36(a), incorporated and clarified the provisions of former §§ 4.18(a) and 4.19 that prohibited OCC employees and former employees from disseminating non-public OCC information without prior OCC approval. The proposal also stated the OCC's policy of objecting to subpoenas for non-public OCC information, such as employee testimony, when subpoenas are used in lieu of the request procedures of this subpart. The OCC received no comments on § 4.36(a).

The proposal stated that the OCC will attempt to have compulsory process withdrawn and may register appropriate objections when an employee or former employee receives a subpoena. The final rule clarifies that the OCC may intervene in a judicial or administrative proceeding either to have compulsory process withdrawn or to make appropriate objections.

The proposal instructed OCC employees and former employees that they must notify the Director of the OCC's Litigation Division when they receive a subpoena for non-public OCC information. The final rule clarifies that the appropriate District Counsel, or the Director of the Enforcement and Compliance Division as appropriate, handles subpoenas arising out of criminal actions. In all other cases, employees and former employees should notify the Director of the Litigation Division. Because time is usually of the essence in these cases, immediate notification of the appropriate OCC personnel is essential, and the OCC has added these provisions to ensure that notices are directed precisely. The final rule also makes several technical changes.

(b) *Non-OCC employees or entities.* In § 4.36(b), the proposal incorporated and clarified the provisions of former § 4.18 (b) and (c) that prohibited persons who are not current or former OCC employees from disseminating non-public OCC information. Proposed § 4.36(b) did not address situations in which a Federal court has ordered discovery of non-public OCC information. The final rule incorporates an express exception for this situation that permits the subpoenaed person or entity to make the information available according to the Federal court's order if the requester has complied with the request procedures of this subpart.

The final rule adds a requirement that a person or entity served with a subpoena or request to provide non-public OCC information notify the OCC so that the OCC can intervene in judicial proceedings when appropriate. The final rule requires persons and entities to notify the OCC upon receipt of service. In addition, the final rule requires persons and entities requested to disclose non-public OCC information to inform the requester of these rules and, in particular, of the submission requirements. The final rule also requires persons and entities to notify, at the appropriate time, the court or tribunal that issued process of the substance of these rules.

This provision is consistent with the holding of the United States Court of Appeals for the Sixth Circuit in *In re Bankers Trust Company*, 61 F.3d 465 (6th Cir. 1995). The Sixth Circuit held that the Board of Governors of the Federal Reserve System's (FRB's) regulation that requires a party "to continually decline to disclose information or testimony" following receipt of a subpoena, order, or other judicial process exceeds the FRB's delegated authority. *Id.* at 470.

The OCC's final rule does not require a party to continue to refuse to disclose a document or otherwise supplant a court's jurisdiction over discovery. Rather, as countenanced by the Sixth Circuit in *Bankers Trust*, this rule ensures that the OCC has "the opportunity to intervene to protect any interests, arguments, or concerns" it has in the production of "confidential supervisory information" by requiring that the OCC be given notice of a request and, through the request procedures, by providing the OCC with facts sufficient to respond to process. *Id.* at 470, n. 6.

Proposed § 4.36(b) permitted national banks to disclose non-public OCC information to persons officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor. The OCC requested specific comment on whether "consultants" should be included in the list of bank-connected persons who are eligible to receive OCC examination reports without first obtaining the express approval of the OCC.

Two commenters addressed § 4.36 and both urged the OCC to include "consultants" in the list of individuals eligible to receive examination reports without prior OCC approval. The commenters noted that many national banks use consultants and that access to examination reports helps a consultant to assist bank management in responding to problems and needs. The commenters asserted that whether to

release an exam report to a consultant should fall within the bank's discretion.

To ensure the confidentiality of exam reports released to consultants, one commenter urged the OCC to attach a form confidentiality agreement to each exam report. Another commenter urged the OCC to attach a statement to each exam report that explains the report's confidential nature and the sanctions for disseminating the report.

The OCC agrees that the ability of a national bank to benefit from the services of a consultant will often be maximized if a bank may provide the consultant with an exam report. However, the OCC also has an interest in protecting the confidentiality of the examination process and is concerned that adding "consultants" to the § 4.36(b) list without condition could result in prohibited dissemination of non-public OCC information. Accordingly, the final rule is modified to state that a national bank or holding company or a director, officer, or employee thereof may only release non-public OCC information to a consultant if the consultant: (1) is under a written contract to provide services to the bank; and (2) has a written agreement with the bank in which the consultant (i) states its awareness of, and agreement to abide by, the prohibition on the dissemination of non-public OCC information contained in § 4.36(b)(1) of this subpart, and (ii) agrees not to use the non-public OCC information for any purpose other than as provided under its agreement to provide services to the bank. (Persons not listed in § 4.36(b) may still seek non-public information pursuant to the request procedures in § 4.35.) The final rule also clarifies that the prohibition on dissemination of non-public OCC information that is contained in § 4.36(b)(1) applies to all persons and entities, including consultants, who have access to non-public OCC information under § 4.36(b)(2).

One commenter suggested that a national bank should be permitted to allow exam report access to consultants who are considering accepting an engagement from the bank. The OCC believes that a prospective consultant does not have the type of relationship with the bank that is appropriate to ensure the confidentiality of the non-public OCC information and therefore has not incorporated this suggestion in the final rule.

(c) *Disclosure to government agencies.* Proposed § 4.36(c) incorporated the provisions of former § 4.18(b) that governed the disclosure of non-public OCC information to the Board of Governors, the FDIC, and certain government agencies of the United

States and foreign governments. The proposal thereby preserved the OCC's policies and procedures for sharing information with these agencies and did not supersede information sharing agreements. The OCC received no comments on § 4.36(c).

The final rule also preserves the OCC's information sharing policies and procedures. However, the final rule modifies § 4.36(c) to state more accurately that, in addition to requests by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and certain government agencies of the United States and foreign governments, requests by state agencies with authority to investigate violations of criminal law and state bank regulatory agencies are governed solely by § 4.36(c).

The final rule also clarifies that "testimony" is one type of non-public OCC information that the Comptroller may make available to these agencies. Though "testimony" was implicit in the proposal because it is included within the definition of "non-public OCC information," the proposal did not expressly mention the term.

Proposed § 4.36(c) stated that all non-public OCC information made available pursuant to this subpart is OCC property. The final rule modifies this provision by stating expressly that the OCC may condition the use of non-public OCC information made available under this paragraph (disclosure to government agencies) on appropriate confidentiality protections. This provision parallels § 4.37, which applies to all requests for non-public OCC information.

(d) *Intention of OCC not to waive rights.* Proposed § 4.36(d) stated that non-public OCC information does not lose its non-public status when released to a person or entity. The OCC received no comments on this provision, which is adopted as proposed.

*Restrictions on dissemination of released information (§ 4.37).*

The title to proposed § 4.37 "Limitation of dissemination of released information" is changed in the final rule by replacing the word "Limitation" with "Restrictions," which better reflects the content of the section.

The proposal permitted the OCC to condition release of non-public OCC information on the issuance of a protective order and the sealing of transcripts. The proposal also specified that the OCC may authorize the use of the same records or testimony in another case. The OCC received no comments on this section, and therefore adopts the section as proposed. A model

stipulation and protective order are printed at appendix A to this subpart.

*Notification of parties and procedures for sharing and using OCC records in litigation (§ 4.38).*

The title to proposed § 4.38 “Procedures for sharing and using OCC records in litigation” is changed in the final rule by adding “Notification of parties,” which reflects the content of the section as changed in the final rule.

Proposed § 4.38 required: (1) parties to a case to share released records among litigants; (2) all requesters to retrieve released non-public OCC information from court files; and (3) all parties to destroy non-public OCC information covered by a protective order. The proposal also informed requesters that the OCC will authenticate its documents for use as evidence. The OCC adopts these provisions as proposed.

The OCC adds a provision to the final rule that requires a litigant who submits a request to the OCC for the testimony of an OCC employee or former employee to notify all other parties to the litigation. This provision is necessary to ensure that other parties who wish to depose the same OCC employee or former employee will have opportunity to submit a request for testimony to the OCC prior to the deposition of the employee or former employee, in accordance with § 4.35(b)(3).

*Fees for services (§ 4.39).*

Proposed § 4.39 set fee schedules that apply when the OCC provides records or authorizes testimony from current or former employees. The OCC received no comments on this section, which is adopted, with minor stylistic changes, as proposed.

*Part 4, Subpart D—Contracting Outreach Program*

The proposal relocated the OCC’s rules regarding the minority-, women-, and individuals with disabilities-owned business contracting outreach program from subpart C to subpart D, and renumbered them. The OCC received no comments on this subpart. Accordingly, subpart D is adopted as proposed.

The program’s focus is on outreach as a means to enhance the participation by

these businesses in OCC procurements. Except for procurements made pursuant to government-wide special purpose programs, OCC procurements do not employ racial, ethnic, or gender classifications as bases for contract awards. Given its focus on outreach, the OCC does not believe the program is affected by the recent Supreme Court decision in *Adarand Contractors, Inc. v. Peña*, 63 U.S.L.W. 4523 (U.S. June 12, 1995). However, this program, as well as the government-wide special purpose programs, will be further reviewed in context of the overall review of all Federal affirmative action programs recently initiated pursuant to the President’s direction.

*Part 10—Municipal Securities Dealers*

The proposal eliminated certain forms and instructions from the OCC’s rules regarding municipal securities dealers because it is not necessary to publish them in the regulation. The OCC received no comments on this amendment, which is adopted as proposed.

*Part 11—Securities Exchange Act Disclosure Rules*

The proposal made technical amendments to the OCC’s rules regarding disclosure under various provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78l, 78m, 78n, 78p, and 78w), including updating the reference to the name of the division that receives filings and specifying the division that receives requests for copies of filings. The OCC received no comments on these amendments, which are adopted as proposed.

*Part 18—Disclosure of Financial and Other Information by National Banks*

The proposal made several technical and conforming amendments to the OCC’s rules regarding annual financial disclosures by national banks. The only significant amendment involved conforming 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, describing 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 made amendments to the provision that indicates the parties subject to administrative action for violations of part 18, in order to conform that provision to the language introduced in section 901(b) of FIRREA.

The OCC received no comments on these amendments, which are adopted as proposed.

*31 CFR Part 1—Disclosure of Records*

The proposal made technical amendments to appendix J of subpart A and appendix J of subpart C of part 31 to update regulatory information specific to the OCC. 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 of subpart A and appendix J of 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 proposed to amend the OCC administrative information in appendix J of subpart A and appendix J of subpart C.

The OCC received no comments on these amendments, which are adopted as proposed with minor stylistic edits.

DERIVATION TABLE FOR 12 CFR PART 4

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

Revised provision	Former 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.
(b) .....	§ 4.16(b) .....	Modified.

DERIVATION TABLE FOR 12 CFR PART 4—Continued

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

Revised provision	Former provision	Comments
(c) .....	§ 4.16(c) .....	Modified.
(d) .....	§ 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.
(a)(8) .....	§ 4.17(b)(2)(ii) .....	Modified.
(a)(9) .....	§ 4.15(a)(6)–(9) .....	Modified.
(a)(10) .....	.....	Added.
(a)(11) .....	§ 4.17(b)(2)(i)(A) .....	Significantly 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 final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule 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 final rule is not a significant regulatory action under Executive Order 12866.

**Paperwork Reduction Act**

The collection of information requirements contained in this final rule have received emergency approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under OMB control number 1557–0200. Comments on the collection of information should be sent to the

Office of Management and Budget, Paperwork Reduction Project 1557, Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division 1557–0200, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. The OCC will submit the collection of information requirements contained in this final rule for renewal of OMB approval following publication of this final rule.

The collection of information requirements in this rule are found in 12 CFR 4.33, 4.35, 4.36, 4.37, and 4.38. This information is required to protect non-public OCC information from unnecessary disclosure in order to ensure that national banks and the OCC engage in a candid dialogue during the bank examination process. This collection accomplishes that end primarily by providing the OCC with information to process requests for non-public OCC information to determine if sufficient grounds exist for the OCC to

release requested information. This collection also provides the OCC with notice of requests submitted to national banks for non-public OCC information, which will enable the OCC to intervene in litigation to register objections to disclosure when appropriate.

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number. The likely respondents are national banks, persons in litigation with national banks, and former employees of the OCC.

Estimated average annual burden hours per respondent/recordkeeper: 5  
 Estimated number of respondents and/or recordkeepers: 180

Estimated total annual reporting and recordkeeping burden: 894 hours.

Start-up costs to respondents: None.

**Unfunded Mandates Act of 1995**

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments,

or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

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 amended as follows:

Comptroller of the Currency

12 CFR CHAPTER I

1. Part 4 is revised to read as follows:

**PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM**

**Subpart A—Organization and Functions**

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; prohibition on dissemination.
- 4.37 Restrictions on dissemination of released information.
- 4.38 Notification of parties and 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 (3 CFR, 1987 Comp., p. 235). 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—Organization and Functions**

**§ 4.1 Purpose.**

This subpart describes the organization and functions 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 supervises and regulates national banks and Federal branches

and agencies of foreign banks by examining these institutions to determine compliance with applicable laws and regulations; approving or denying applications for new charters or for changes in corporate or banking structure; approving or denying activities; taking supervisory or enforcement actions; appointing receivers and conservators; and issuing rules and regulations applicable to these institutions, their subsidiaries, and affiliates.

**§ 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 OCC staff, 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 (through its Multinational Banking Department) 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

District	Office address	Geographical composition
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 the 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) to facilitate the OCC's interaction with the banking industry and the public.

(b) *Scope.* (1) This subpart describes the information that the FOIA requires the OCC to disclose to the public (§ 4.12), and the three methods by which the OCC discloses that information under the FOIA (§§ 4.13, 4.14, and 4.15).

(2) This subpart also sets forth prediscovery 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, or 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 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) *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 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. The OCC will provide prediscovery notice to submitters of confidential commercial information in accordance with § 4.16.

(d) *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 publishes certain documents in the Federal Register 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 issued in the adjudication of an OCC enforcement case, including a final order published pursuant to 12 U.S.C. 1818(u);

(2) Any final opinion issued in the adjudication of an OCC enforcement 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 as such;

(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;

(7) A list of forms available from the OCC, and specific forms and instructions;<sup>1</sup>

(8) Any public Community Reinvestment Act performance evaluation;

(9) Any public securities-related filing required under part 11 or 16 of this chapter;

(10) Any public comment letter regarding a proposed rule; and

(11) The public file (as defined in 12 CFR 5.9) with respect to a pending application described in part 5 of this chapter.

(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) *Addresses.* The information described in paragraphs (a)(1) through

(a)(10) 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. The information described in paragraph (a)(11) of this section is available from the Licensing Manager at the appropriate district office at the address listed in § 4.5(a), or in the case of banks supervised by the Multinational Banking Department, from the Licensing Manager, Multinational Banking, 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) *Records at the Federal Deposit Insurance Corporation.* A person requesting any of the following records, other than blank forms (see § 4.14(a)(7)), must submit the request to the Disclosure Group, Federal Deposit Insurance Corporation, 550–17th Street, NW, Washington, DC 20429, (800) 945–2186:

(A) Consolidated Report of Condition and Income (FFIEC 031, 032, 033, 034);

(B) Annual Report of Trust Assets (FFIEC 001);

(C) Uniform Bank Performance Report; and

(D) Special Report.

(ii) *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.* The OCC's Director of Communications or that person's delegate initially determines whether to grant a request for OCC records.

(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 delegate 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,

<sup>1</sup> Some forms and instructions that national banks use, such as the Consolidated Report of Condition and Income (FFIEC 031–034), are not available from the OCC. The OCC will provide information on where persons may obtain these forms and instructions upon request.

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 (28 U.S.C. appendix) for service upon the United States or agencies thereof, must serve process on the Chief Counsel or the Chief Counsel's delegate at the following location: 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 10 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 10 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), a 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.* The date of receipt of a request for records or an appeal is the date that OCC Communications Division receives a request that satisfies the requirements of paragraph (c)(1) or (d)(1) of this section, except as provided in § 4.17(d).

#### § 4.16 Predislosure 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 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(c) or, where appropriate, an appeal under § 4.15(d) 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, if:

(A) The records are less than 10 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; and

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

(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 generally 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 had an opportunity to designate the requested information as confidential commercial information at the time of submission of the information or a reasonable time thereafter and did not do so, 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 is frivolous; in such case, however, the OCC will provide the submitter with written notice of any final administrative determination to disclose the information at least 10 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 10 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 that the requested information is confidential commercial information that the submitter has not disclosed to the public. This statement should be prepared by an officer or authorized representative if the submitter is a corporation or other entity.

(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 if there is a delay in its decision whether to grant or deny access to the information sought, the 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 10 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, which is not less than 10 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 12 CFR 8.8. 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. The OCC does not 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, in its discretion, accommodate 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 the estimated fee. 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.*, 10 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 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) Recognize the public's interest in obtaining access to relevant and necessary information and the countervailing public interest of maintaining the effectiveness of the OCC supervisory process and appropriate 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) Minimize burden on national banks, the public, and 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; or

(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.

(3) A request for a record or testimony made by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, a government agency of the United States or a foreign government, a state agency with authority to investigate violations of criminal law, or a state bank regulatory agency is governed solely by § 4.36(c).

#### § 4.32 Definitions.

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

(b) *Non-public OCC information.* Non-public OCC information:

(1) 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:

(i) 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;

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

(iii) 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;

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

(v) 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 with the OCC or due to that person's official status at the OCC; and

(vi) Confidential information relating to operating and no longer operating national banks as well as their subsidiaries and their affiliates; and

(2) Is the property of the Comptroller. A report of examination is loaned to the

bank or holding company for its confidential use only.

(c) *Relevant* means could contribute substantially to the resolution of one or more specifically identified issues in the case.

(d) *Show a compelling need* means, in support of a request for testimony, demonstrate with as much detail as is necessary under the circumstances, that the requested information is relevant 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.

(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 request.* 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) *Request 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 also:

(A) Show that the information is relevant to the purpose for which it is sought;

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

(C) Show that the need for the information outweighs the public

interest considerations in maintaining the confidentiality of the OCC information and outweighs the burden on the OCC to produce the information;

(D) Explain how the issues in the case and the status of the case warrant that the OCC allow disclosure; and

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

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

(c) *Request 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(d), or submitting a notification of the issuance of a subpoena or compulsory process under § 4.36, shall 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).

(c) *Request by government agencies.* A request made pursuant to § 4.36(c) must be submitted:

(1) In a civil action, to the Director of the OCC's Litigation Division at the Washington, DC office; or

(2) In a criminal action, to the appropriate district counsel or the Director of the OCC's Enforcement and Compliance Division at the Washington, DC, office.

#### § 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 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. OCC action on a request for non-public OCC information exhausts administrative remedies for discovery of the information.

(2) *Bases for denial.* The OCC may deny a request for non-public OCC information for reasons that include the following:

(i) The requester was unsuccessful in showing that the information is relevant to the pending matter;

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

(v) The production of the information would be contrary to the public interest or unduly 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 respond.* 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 provide 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.

(5) *Notice to subject national banks.* Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

(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, shall 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; prohibition 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 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 shall immediately notify the OCC as provided in this paragraph. The OCC may intervene, attempt to have the compulsory process withdrawn, and register appropriate objections when an employee or former employee receives a subpoena and the subpoena requires the employee or former employee to appear or produce OCC information. If necessary, the employee or former employee shall appear as required and respectfully decline to produce the information sought, citing this subpart and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). The OCC employee or former employee shall immediately notify the OCC if

subpoenaed or otherwise asked for non-public OCC information:

(i) In a civil action, by notifying the Director of the OCC's Litigation Division at the Washington, DC office; or

(ii) In a criminal action, by notifying the appropriate district counsel, for district employees and former district employees; or the Director of the OCC's Enforcement and Compliance Division at the Washington, DC office, for Washington employees and former Washington employees.

(b) *Non-OCC employees or entities—*(1) *Generally.* (i) Without OCC approval, no person, national bank, or other entity, including one in lawful possession of non-public OCC information under paragraph (b)(2) of this section, may disclose information covered by this subpart in any manner, except:

(A) After the requester has sought the information from the OCC pursuant to the procedures set forth in this subpart; and

(B) As ordered by a Federal court in a judicial proceeding in which the OCC has had the opportunity to appear and oppose discovery.

(ii) Any person who discloses or uses non-public OCC information except as expressly permitted by the Comptroller of the Currency or as ordered by a Federal court, under paragraph (b)(1)(i) of this section, may be subject to the penalties provided in 18 U.S.C. 641.

(2) *Exception for national banks.* When necessary or appropriate for bank business purposes, a national bank or holding company, or any director, officer, or employee thereof, may disclose non-public OCC information, including information contained in, or related to, OCC reports of examination, to a person or organization officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor. A national bank or holding company or a director, officer, or employee thereof may also release non-public OCC information to a consultant under this paragraph if the consultant is under a written contract to provide services to the bank and the consultant has a written agreement with the bank in which the consultant:

(i) States its awareness of, and agreement to abide by, the prohibition on the dissemination of non-public OCC information contained in paragraph (b)(1) of this section; and

(ii) Agrees not to use the non-public OCC information for any purpose other than as provided under its contract to provide services to the bank.

(3) *Duty of person or entity served.* Any person, national bank, or other

entity served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide non-public OCC information shall:

(i) Immediately notify the Director of the OCC's Litigation Division at the Washington, DC office and inform the Director of all relevant facts, including the documents and information requested, so that the OCC may intervene in the judicial or administrative action if appropriate;

(ii) Inform the requester of the substance of these rules and, in particular, of the obligation to follow the request procedures in §§ 4.33 and 4.34; and

(iii) At the appropriate time, inform the court or tribunal that issued the process of the substance of these rules.

(4) *Actions of the OCC following notice of service.* Following receipt of notice pursuant to paragraph (b)(3) of this section, the OCC may direct the requester to comply with §§ 4.33 and 4.34, intervene in the judicial or administrative action, attempt to have the compulsory process withdrawn, or register other appropriate objections.

(5) *Return of records.* 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, the Federal Deposit Insurance Corporation, and, in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank regulatory agencies, a copy of a report of examination, testimony, or other non-public OCC information for their use, when necessary, in the performance of their official duties. All non-public OCC information made available pursuant to this paragraph is OCC property, and the OCC may condition its use on appropriate confidentiality protections, including the mechanisms identified in § 4.37.

(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 Restrictions 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 Notification of parties and procedures for sharing and using OCC records in litigation.**

(a) *Responsibility of litigants to notify parties of a request for testimony.* Upon submitting a request to the OCC for the testimony of an OCC employee or former employee, the requester shall notify all other parties to the case that a request has been submitted.

(b) *Responsibility of litigants to share released records.* The requester shall 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, shall provide copies of OCC information, including OCC information obtained pursuant to § 4.15, to the other parties.

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

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

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

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

(d) *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 shall pay a fee to the OCC, or to a commercial copier under contract to the OCC, 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 shall, upon completion of the testimonial appearance, tender promptly to the OCC payment for the witness fees and mileage. The litigant shall compute these amounts in accordance with 28 U.S.C. 1821. A litigant whose request for testimony of a former OCC employee is approved shall 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 CFR 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 CFR 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 CFR 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 CFR 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, 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 information or records or their contents in any other action shall make a separate application to the Comptroller pursuant to 12 CFR 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 CFR 4.38(b), shall retrieve any records covered by this Order that may have been filed with the Court.

So Ordered:

Judge  
Date

**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), Pub. L. 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 (*i.e.*, 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 that substantially limits one or more of such person's major life activities, has a condition 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's 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) *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) *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".

7. The undesignated centerheading preceding § 10.41 is removed.

**§ 10.41 [Removed]**

8. Section 10.41 is removed.

**§ 10.42 [Removed]**

9. Section 10.42 is removed.

**PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES**

10. 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]**

11. 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]**

12. 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".

13. 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.

14. 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 12 CFR 8.8.

\* \* \* \* \*

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

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

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

**§ 18.1 [Amended]**

16. 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)".

**§ 18.4 [Amended]**

17. 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 paragraph (b) and the text preceding the statement in paragraph (d) are amended by revising the term "Office" to read "OCC" each place it appears.

18. 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;

\* \* \* \* \*

**§ 18.9 [Amended]**

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

20. 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

**31 CFR Subtitle A**

**PART 1—DISCLOSURE OF RECORDS**

21. 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.

22. 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) whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Director of Communications or that person's delegate. 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 Office of the Comptroller of the Currency will be made by the Comptroller or the Comptroller's delegate. Appeals 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.

5. *Delivery of process.* Service of process shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

23. 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 the delegate of that official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published biennially 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 determinations under 31 CFR 1.27 (a) through (d) whether to grant requests to amend records will be made by the Comptroller's delegate or the head of the organizational unit having immediate custody of the records or the delegate of that 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 delegate. 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 shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

\* \* \* \* \*

Dated: October 31, 1995.  
Eugene A. Ludwig,  
Comptroller of the Currency.  
[FR Doc. 95-28115 Filed 11-14-95; 8:45 am]

BILLING CODE 4810-33-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 93-CE-61-AD; Amendment 39-9386; AD 95-20-07]

**Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA24, PA28R, PA30, PA32R, PA34, and PA39 Series Airplanes; Correction**

**AGENCY:** Federal Aviation Administration, DOT.