

the General Counsel. Accordingly, the Commission has concluded that direct service on the General Counsel will eliminate any delay and increase the efficiency of its adjudicatory processes.

Because these amendments are administrative in nature and deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). In addition, good cause exists to dispense with the usual 30-day delay because the amendments are of a corrective and administrative nature dealing with a matter of agency conduct, a change in the manner in which proceedings shall be served on the NRC Staff.

Accordingly, these amendments are effective upon publication in the Federal Register.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is considered a minor non-substantive amendment; it has no economic impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter I.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended,

the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114 (f); Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143 (f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.205 (j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100 (s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Section 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.1203, paragraph (e) is revised to read as follows:

§ 2.1203 Docket; filing; service.

* * * * *

(e) A request for a hearing or a petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205 (f) and (k). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

3. In § 2.1205, paragraphs (f)(2), (g), (k)(1)(i), and (k)(1)(ii) are revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

* * * * *

(f) * * *

(2) The NRC Staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(g) Within ten (10) days of service of a request for a hearing filed under paragraph (d) of this section, the applicant may file an answer. The NRC staff, if it chooses or if it is ordered to participate as a party under § 2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

* * * * *

(k) * * *

(1) * * *

(i) By delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

Dated at Rockville, Maryland, this 24th day of May, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

[FR Doc. 99-13652 Filed 5-28-99; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 99-07]

RIN 1557-AB65

Organization and Functions, Availability and Release of Information, Contracting Outreach Program

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its disclosure regulation. Among other things, the amendment clarifies that the OCC may make non-public OCC information available to a supervised entity and to other persons, as the Comptroller, in his sole discretion, may

deem necessary or appropriate, without a request for records or testimony.

DATES: The final rule is effective on June 1, 1999

FOR FURTHER INFORMATION CONTACT: Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874-5090; or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC is amending subpart C of 12 CFR Part 4 which governs the release of non-public OCC information. Part 4 currently requires a person seeking non-public OCC information to submit a request in writing to the OCC. The current rule does not include a procedure for the release of non-public OCC information to supervised entities and other persons without a specific request for the information.

The OCC has authority to prescribe rules governing the release of agency records and information under its grant of statutory authority to promulgate substantive regulations to carry out the responsibilities of the office, 12 U.S.C. 93a, as well as under statutes that contemplate the sharing of information with other agencies and persons. See, e.g., 12 U.S.C. 481; 12 U.S.C. 1867; 12 U.S.C. 1820(d)(6).

On November 10, 1998, the OCC requested comment on an interim rule amending part 4. 63 FR 62927. The OCC made three independent changes to part 4 in the interim rule. First, the interim rule added a new section that clarifies the OCC's existing authority to make non-public OCC information available to a supervised entity and to other persons, that in the sole discretion of the Comptroller may be necessary or appropriate, without a specific request by a third party. The term "supervised entity" is defined in the interim rule to include a national bank, a subsidiary of a national bank, or a federal branch or agency of a foreign bank licensed by the OCC.

Second, the OCC amended the definition of non-public OCC information. Section 4.32 defines non-public OCC information as information, confidential or otherwise, that the OCC is not required to release under the Freedom of Information Act (FOIA) (5 U.S.C. 552) or that the OCC has not yet published or made available under 12 U.S.C. 1818(u), the statute requiring publication of certain enforcement orders. Section 4.32 provides an illustrative list of the types of

information that qualify as non-public OCC information, including OCC records contained in, or related to, examination and operating or condition reports concerning national banks and their subsidiaries and affiliates. The interim rule amended the definition of non-public OCC information to include a Suspicious Activity Report (SAR) filed by the OCC or a supervised entity under 12 CFR 21.11. While the OCC has always taken the position that SARs are non-public information, the OCC proposed this change to enhance the ability of banks and the OCC to protect SARs from being disclosed when SARs are sought by private litigants.

Third, the OCC emphasized in the interim rule that non-public OCC information remains the property of the OCC even after it is disclosed and may not be disclosed to others except as authorized by the OCC. The interim rule clarified that current and former OCC employees and agents are prohibited from disclosing or permitting the disclosure of any non-public OCC information to anyone other than an employee or agent of the OCC who needs the information for the performance of OCC duties. Current and former OCC employees and agents who are subpoenaed or otherwise requested to provide OCC information must notify the OCC immediately under procedures set forth in § 4.37(a)(2).

Finally, the OCC made conforming changes to the purpose and scope provisions at § 4.31 of Subpart C to reflect the substantive changes to the other sections amended.

Description of Comments Received

The OCC received two comments on the interim rule: one from a national bank and another from a bank trade association. The bank trade association supported the interim rule as published. The bank objected to the rule on several grounds. After careful consideration of the comments received, the OCC is adopting the interim rule with some clarifying changes.

The Disclosure of Non-Public OCC Information Without a Request

One commenter raised concerns that the new section authorizing disclosure of confidential information (§ 4.36) violates provisions of the Right to Financial Privacy Act (RFPA) (12 U.S.C. 3401-22) and the Community Reinvestment Act (CRA) (12 U.S.C. 2906).

Section 4.36 does not authorize the OCC to disclose information in a manner that would violate the requirements of other federal laws, including the RFPA or CRA. Rather, this

section is intended solely to clarify that the OCC has the discretionary authority to make disclosures, in the exercise of its supervisory responsibilities, that are not prohibited by other applicable statutes without waiting for a specific request. This amendment does not reflect a change in the OCC's long-standing policy and practice to respect the confidentiality of supervisory information. Thus, the OCC will continue to release non-public OCC information without a request only in rare cases after consideration of all circumstances. The exercise of discretion to disclose information under this new section will be limited to a few senior OCC officials, in line with an appropriate delegation of authority.

To address the commenter's concern, however, the OCC is adding a new paragraph to § 4.36 on the OCC's policy regarding the release of non-public OCC information. This paragraph restates the OCC policy that non-public OCC information is confidential and privileged and that the OCC, accordingly, will not normally disclose this information to third parties.

This approach also ensures greater consistency with the Federal Reserve Board's (FRB) regulation regarding discretionary disclosures. The FRB disclosure regulation authorizes the FRB to share confidential supervisory information with supervised financial institutions and, from time to time, to authorize other disclosures of confidential information as necessary. 12 CFR 261.20. The FRB regulation also states that it is the FRB's policy that confidential supervisory information is confidential and privileged and that the FRB, accordingly, will not normally disclose this information to the public. 12 CFR 261.22(a). In addition, the OCC may continue to impose conditions and limitations on the disclosure of information through the entry of a protective order or a written agreement of confidentiality, as provided for under the old rule.

As noted in the interim rule, in some circumstances, the safety and soundness or financial stability of national banks may be affected unless the OCC discloses non-public information to supervised entities or certain other persons without a request. For example, the OCC's ability to help national banks attain Year 2000 readiness depends, in part, on the OCC's ability to share information concerning third parties with supervised entities and other persons. In this case, "other persons" may include self-regulatory organizations or state banks with whom the OCC seeks to share information.

Definition of Non-Public OCC Information (SARs)

The interim rule also amended the definition of non-public OCC information in § 4.32 to include a SAR filed by the OCC, a national bank, or a Federal branch or agency of a foreign bank licensed or chartered by the OCC under 12 CFR 21.11. One commenter, viewing this change in the context of the amendment previously described, raised concerns that this change could chill the cooperation between banks and the OCC and may subject banks to greater liability should the OCC begin to publicly disclose SARs. This is not the case. The OCC added SARs to the list of non-public OCC information to protect the confidentiality of SARs further, particularly in litigation, not to make them more easily disclosable. The amendment clarifies that SARs, which are sensitive and confidential documents, are not subject to disclosure requests under FOIA and are subject to the procedures for the release of non-public OCC information under part 4. The OCC is committed to protecting the confidentiality of SARs, and the amendment does not alter this long-standing policy. Accordingly, the OCC adopts this provision without modification.

Effective Date

Section 553 of the Administrative Procedure Act permits an agency, for good cause, to issue a rule to be effective in less than 30 days from its publication date. 5 U.S.C. 553(d). Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103-325, authorizes a banking agency to issue a rule to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

The OCC finds good cause for making this final rule effective upon publication in the **Federal Register**. Like the interim rule, this final rule allows the OCC to disclose non-public OCC information to supervised entities and other persons in certain enforcement contexts requiring immediate action where a request for the information may not be forthcoming or may be delayed. The OCC's ability to help national banks attain Year 2000 readiness in the short time remaining also depends, in part, on the OCC's ability to provide information rapidly concerning third parties to supervised entities and other persons without a

request. The OCC's ability to carry out its mission to ensure national banks' safety and soundness, in certain circumstances, may be impaired unless it can make disclosures, as authorized by this final rule, promptly after acquiring the information in question. For these reasons, the OCC concludes that a delayed effective date is impracticable and would be contrary to the public interest. 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, the OCC concluded, for good cause, that it is not required to publish a notice of proposed rulemaking. Accordingly, it issued the interim rule without prior notice and comment to be effective immediately. Since the RFA does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking, the OCC also concludes that the RFA does not require an initial regulatory flexibility analysis of this final rule. Nonetheless, since this final rule imposes no new requirements on any national bank, the OCC finds that this final rule does not have a significant economic impact on a substantial number of small entities or create any additional burden on small entities.

OCC Executive Order 12866 Statement

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

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMA) of 1995, Public Law 104-4, applies only when an agency is required to promulgate a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. The OCC did not publish a general notice of proposed rulemaking when it, for good cause, issued the interim rule with an immediate effective date. Accordingly, the UMA does not require an unfunded mandates act analysis of this final rule.

Nonetheless, since this final rule prescribes no mandate of any kind, the OCC finds that the final rule will not result in expenditure by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 4

Freedom of information, National banks, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

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

Accordingly, the interim rule amending 12 CFR part 4 which was published at 63 FR 62927 on November 10, 1998, is adopted as a final rule with the following changes:

§ 4.31 [Amended]

1. In § 4.31(b)(3) the term “§ 4.36(c)” is removed and the term “§ 4.37(c)” is added in its place.

2. Section 4.32 is amended by revising paragraph (b)(1)(vii) to read as follows:

§ 4.32 Definitions.

* * * * *

(b) * * *

(1) * * *

(vii) A Suspicious Activity Report filed by the OCC, a national bank, or a Federal branch or agency of a foreign bank licensed or chartered by the OCC under 12 CFR 21.11; and

* * * * *

§ 4.34 [Amended]

3. In § 4.34, in paragraph (a), the term “§ 4.38(d)” is removed and the term “§ 4.39(d)” is added in its place and the term “§ 4.36” is removed and the term “§ 4.37” is added in its place, in paragraph (c) introductory text the term “§ 4.36(c)” is removed and the term “§ 4.37(c)” is added in its place, and in paragraphs (c)(1) and (c)(2) the term “Washington, DC office” is removed and the term “Washington office” is added in its place.

4. In § 4.36, paragraph (a) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added, and the heading of paragraph (c) is revised to read as follows:

§ 4.36 Disclosure of non-public OCC information.

(a) *Discretionary disclosure of non-public OCC information.* The OCC may make non-public OCC information available to a supervised entity and to other persons, that in the sole discretion of the Comptroller may be necessary or

appropriate, without a request for records or testimony.

(b) *OCC policy.* It is the OCC's policy regarding non-public OCC information that such information is confidential and privileged. Accordingly, the OCC will not normally disclose this information to third parties.

(c) *Conditions and limitations.* * * *

* * * * *

5. In § 4.37, paragraph (a)(1) is revised and in paragraphs (a)(2)(i) and (ii) the term "Washington, DC office" is removed and the term "Washington office" is added in its place, to read as follows:

§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.

(a) * * *

(1) Generally. Except as authorized by this subpart or otherwise by the OCC, no current or former OCC employee or agent may, in any manner, disclose or permit the disclosure of any non-public OCC information to anyone other than an employee or agent of the Comptroller for use in the performance of OCC duties.

* * * * *

Appendix A to Subpart C—[Amended]

6. In Appendix A to Subpart C, section II, paragraph 7, the term "12 CFR 4.38(b)" is removed and the term "12 CFR 4.39(c)" is added in its place.

Dated: May 20, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99-13725 Filed 5-28-99; 8:45 am]

BILLING CODE 4810-33-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is revising its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR Part 5, Appendix A (Guideline No. 1). Guideline No. 1 details the information that an application for contract market designation should include in order to demonstrate that the contract market meets the economic requirements for designation. Previously, the

Commission promulgated fast-track review procedures to reduce its review time to review designation applications. To streamline the application process further, the Commission is revising Guidelines No. 1, reducing any unnecessary burdens associated with the designation application itself.

Specifically, the Commission is organizing Guideline No. 1 into several specific application forms, making use of a chart format for applications for designation of futures and options contracts to the extent possible. Moreover, the Commission is clarifying that a portion of the application may make use of third-party generated materials. In addition, the Commission is clarifying the review standards for several of the designation requirements. The Commission also is adding a new appendix Part 5 specifying the information that a foreign board of trade should submit to the Commission when seeking no-action relief to offer and to sell, to persons located in the United States, a futures contract on a foreign securities index traded on that foreign board of trade.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT:

Paul M. Architzel, Chief Counsel, Richard H. Shilts, Director, Market Analysis Section, or Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW, Washington, DC 20581. Telephone (202) 418-5260. E-mail:

[PArchitzel@cftc.gov], [RShilts@cftc.gov] or [KBrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The requirement that contract markets meet specified conditions has been a fundamental tool of federal regulation of commodity futures exchanges since the Futures Trading Act of 1921, Pub. L. No. 67-66, 42 Stat. 187 (1921 Act).¹ Currently, the statutory requirements for contract market designation are found in Sections 5 and 5a of the Commodity Exchange Act (Act) and, additionally, for indexes of securities, in Section 2(a)(1)(B) of the Act. Designated contract markets must provide for the prevention of dissemination of false information (Section 5(3) of the Act); must provide for the prevention of price manipulation (Section 5(4) of the Act); must provide for delivery periods which will prevent

¹ A more complete description of the contract market approval process under the 1921 Act is provided in the proposed rulemaking, 63 FR 38537, n. 1 (July 17, 1998).

market congestion (Section 5a(a)(4) of the Act); and must permit delivery on the contract of such grades, at such points and at such quality and locational differentials as will tend to prevent or to diminish market manipulation (Section 5a(a)(10) of the Act).² Included among these provisions is the general requirement of Section 5(7) of the Act that trading in a proposed contract not be contrary to the public interest. The contract market must meet these requirements both initially and on a continuing basis.³

The Commission, as an aid to the exchanges, has provided guidance in meeting these statutory requirements. In 1975, the newly formed Commission, in one of its earliest actions, issued its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975) ("Guideline No. 1").

Subsequently, the Commission revised this Guideline, publishing it as Appendix A to Part 5 of the Code of Federal Regulations, 47 FR 49832 (November 3, 1982). Guideline No. 1 was again revised in 1992, 57 FR 3518 (January 30, 1992). The 1992 revisions streamlined the designation application for both futures and option contract markets. In addition, the 1992 revisions introduced the use of a new checklist-style format for applications for designation of option contracts.⁴

In 1997, the Commission began a far-reaching program of regulatory reform. Its first initiative was to establish fast-track procedures for Commission review and approval of applications for contract market designation. See, Commission Rule 5.1, 62 FR 10434 (March 7, 1997). The fast-track procedure creates a streamlined and speedy alternative review process for Commission consideration of designation applications, reducing unnecessary regulatory burdens on exchanges while also preserving the opportunity for public participation and

² A further listing of contract market approval requirements under the Act is provided in the proposed rulemaking, 63 FR 38537, n. 2.

³ Generally, the burden of demonstrating compliance rests with the contract market. Section 6 of the Act provides, in part, that:

Any board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

⁴ For a more complete discussion of the revisions made to Guideline No. 1 in 1982 and 1992, see 63 FR 38537-38538.