

# Rules and Regulations

Federal Register

Vol. 69, No. 214

Friday, November 5, 2004

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## DEPARTMENT OF AGRICULTURE

### 7 CFR Chapter XXX

#### Office of the Chief Financial Officer; Policy Statement for Direct Final Rulemaking

**AGENCY:** Office of the Chief Financial Officer, USDA.

**ACTION:** Policy statement.

**SUMMARY:** The Office of the Chief Financial Officer (OCFO) is implementing a new "direct final" rulemaking procedure to expedite any noncontroversial changes to its regulations.

**DATES:** Effective November 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Matthew Faulkner, Office of the Chief Financial Officer, Credit, Travel and Grants Policy Division, United States Department of Agriculture, (202) 720-1307.

#### SUPPLEMENTARY INFORMATION:

##### The Direct Final Rule Process

Rules that OCFO determines to be noncontroversial and unlikely to result in adverse comments will be published in the **Federal Register** as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated. Unless any adverse comments are received within 60 days, the direct final rule will take effect 90 days after it is published in the **Federal Register**.

If OCFO receives written adverse comments or notice of intent to submit such comments within 60 days of the publication of a direct final rule, OCFO will publish in the **Federal Register** a document stating that adverse comments were received and withdrawing the direct final rule prior to its effective date.

Any comment expressing support for the rule as published will not be considered adverse. Additionally, any

comment suggesting that requirements in the rule should or should not be employed by OCFO in other programs or situations outside the scope of the direct final rule will not be considered adverse.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure notifies the public of OCFO intent to adopt a new rule and gives interested persons an opportunity to participate in the rulemaking process through the submission of comments for consideration. If neither written adverse comments nor written notice of intent to submit such comments are received, OCFO will publish a document in the **Federal Register** stating that no adverse comments were received and confirming the direct final rule's effective date.

#### Determining When To Use Direct Final Rulemaking

OCFO promulgates USDA-wide policies pertaining to Federal financial assistance. Many of these policies implement broader Federal policies established by the Office of Management and Budget (OMB), frequently through OMB circulars. OMB typically uses a notifier and comment process in adopting the OMB circulars. OCFO has limited discretion in implementing these policies through rulemakings governing USDA financial assistance. Typically, such OMB policies are implemented verbatim.

OCFO may use the direct final rulemaking process to revise USDA regulations to implement revisions to OMB Circulars. For instance, if OMB revises the dollar thresholds in an OMB Circular, OCFO would use a direct final rulemaking to incorporate the revisions into USDA-implementing regulations.

Not all OCFO rules are good candidates for the direct final rulemaking. OCFO intends to use the direct final rulemaking procedure only for rules considered to be noncontroversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular

action will be based on OCFO experience with similar actions.

**Patricia E. Healy,**  
*Acting Chief Financial Officer.*

**Ann M. Veneman,**  
*Secretary of Agriculture.*

[FR Doc. 04-23254 Filed 11-4-04; 8:45 am]

BILLING CODE 3410-90-P

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 215, 235, and 252

[DHS 2007-0002]

RIN 1650-AA00

#### Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System (US-VISIT); Extension of Comment Period

**AGENCY:** Border and Transportation Security Directorate, DHS.

**ACTION:** Interim rule; extension of comment period.

**SUMMARY:** On August 31, 2004, the Department of Homeland Security (DHS) published in the **Federal Register** at 69 FR 53318, an interim rule which extended the US-VISIT program to include persons traveling without visas under the Visa Waiver Program, expanded US-VISIT to the 50 most highly trafficked land border ports of entry, and made several other minor changes to the US-VISIT program. The comment period for this regulation was set to expire on November 1, 2004. However, DHS has extended the comment period for this interim rule for an additional 30 days. This document informs the public that the comment period has been extended until December 1, 2004.

**DATES:** Written comments must be submitted on or before December 1, 2004.

**ADDRESSES:** You may submit comments identified by RIN 1615-AA00 to the Docket Management Facility at the EPA. To avoid duplication, please use only one of the following methods:

(1) *Web Site:* <http://www.epa.gov/edocket>. Follow the instructions for submitting comments at that Web site.

(2) *Mail:* Written comments may be submitted to Michael Hardin, Senior

Policy Advisor, US-VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209.

(3) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(4) *E-mail:* Send comments to [USVISITREGS@DHS.GOV](mailto:USVISITREGS@DHS.GOV).

Submitted comments may be inspected at 1616 North Ft. Myer Drive, Arlington, VA 22209, between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays. Arrangements to inspect submitted comments should be made in advance by calling (202) 298-5200. You may also find this docket on the Internet at <http://www.epa.gov/edocket>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Michael Hardin, US-VISIT, Border and Transportation Security, Department of Homeland Security, 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209, telephone (202) 298-5200.

**Elizabeth L. Branch,**

*Associate General Counsel for Rules and Legislation, Office of the General Counsel, Department of Homeland Security.*

[FR Doc. 04-24811 Filed 11-4-04; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 5

[Docket No. 04-23]

RIN 1557-AC81

### Rules, Policies, and Procedures for Corporate Activities; Annual Report on Operating Subsidiaries

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

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending 12 CFR part 5 to require a national bank to file an Annual Report on Operating Subsidiaries (Annual Report) with the OCC. The Annual Report will identify the national bank's operating subsidiaries that do business directly with consumers and that are not functionally regulated. The Annual Report will include certain information about each operating subsidiary, such as the name of the operating subsidiary, its location and contact information, and

the operating subsidiary's lines of business. The OCC will make this information available to the public on its Web site at <http://www.occ.gov> in order to assist consumers in identifying entities that are national bank operating subsidiaries.

**DATES:** *Effective Date:* December 6, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874-5090; Patrick T. Tierney, Attorney, Legislative and Regulatory Activities, (202) 874-5090; or Stephen A. Lybarger, Director of Licensing Activities, (202) 874-5060, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 25, 2004, the OCC published a notice of proposed rulemaking (NPRM) (69 FR 15260) in the **Federal Register** to require each national bank to file an Annual Report on Operating Subsidiaries (Annual Report) with the OCC. The Annual Report identifies the bank's operating subsidiaries that do business directly with consumers and are not functionally regulated<sup>1</sup> as defined in section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)). The NPRM required a national bank to provide information including the name of each operating subsidiary, its location and contact information, and the operating subsidiary's lines of business. The NPRM also discussed how the OCC would make the information available to the public on its Web site.

#### Overview of Comments Received

The NPRM comment period closed on April 26, 2004, and we received 15 comments. Commenters included national banks, state agencies, banking trade associations, a realtor trade association, and community groups. The

<sup>1</sup> A subsidiary is a "functionally regulated" subsidiary if under section 5(c)(5) of the Bank Holding Company Act of 1956, as amended, it is a broker or dealer that is registered under the Securities Exchange Act of 1934; a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; an investment company that is registered under the Investment Company Act of 1940; an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities. See 12 U.S.C. 1844(c)(5)(B)(i)-(v).

majority of the commenters expressing a view generally supported the NPRM.<sup>2</sup> Several commenters offered specific suggestions for refining the information contained in the Annual Report. A summary of the comments and a description of the final rule follow.

#### Summary of Comments and OCC Response

##### *Filing Requirement (§ 5.34(e)(6)(i))*

The NPRM required each national bank to prepare and file with the OCC an Annual Report for each of its operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)) and that do business directly with consumers in the United States. The NPRM stated that an operating subsidiary "does business directly with consumers" if it provides products or services to individuals to be used primarily for personal, family, or household purposes.

Several commenters suggested revisions to, or sought clarification of, the proposed filing requirement. For example, one commenter suggested that the final rule should not apply to an operating subsidiary that provides products or services to commercial entities and only incidentally to consumers. We agree with the commenter that a business transaction with a consumer that is not otherwise part of the bank's ordinary course of business should not trigger this reporting requirement. Therefore, the final rule provides that a national bank operating subsidiary does business with consumers in the United States if, *in the ordinary course of its business*, it provides products or services to individuals to be used primarily for personal, family, or household purposes. Thus, for example, an operating subsidiary is not covered by this reporting requirement when it is engaged in the business of leasing

<sup>2</sup> Three commenters asserted objections to the OCC's previous rules relating to visitorial powers and preemption. See 69 FR 1895 (visitorial powers) and 69 FR 1904 (preemption) (Jan. 13, 2004). These comments are beyond the scope of the current rulemaking, and, accordingly we do not address them here. One commenter noted that many states have laws that require operating subsidiaries to provide consumers with information about where to direct questions and complaints, including the appropriate state supervisory authority. This commenter asserted that the proposal would preempt these types of state disclosure requirements. We note that this final rule is an administrative reporting requirement and has no independent preemptive effect on state or local disclosure requirements. Questions about the applicability of such requirements are governed by the OCC's final preemption rule and Federal judicial preemption precedents.