

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

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Parent: Department of Commerce

Components:

Bureau of the Census
Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992)
Economic Development Administration
International Trade Administration
Minority Business Development Agency (formerly listed as Minority Business Development Administration)
National Institute of Standards and Technology (effective March 6, 2008)
National Oceanic and Atmospheric Administration
National Technical Information Service (effective March 6, 2008)
National Telecommunications and Information Administration
Technology Administration (effective January 28, 1992; expiring June 4, 2008)
United States Patent and Trademark Office (formerly Patent and Trademark Office)

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■ 3. Effective June 4, 2008, appendix B to part 2641 is further amended by removing the Technology Administration from the listing for the Department of Commerce.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 16

[Docket ID OCC-2008-0003]

RIN 1557-AD04

Securities Offering Disclosure Rules

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 securities offering disclosure rules to eliminate the general requirement that a national bank in organization include audited financial statements as part of a public offering of its securities. The OCC has determined that, due to the very limited nature of the activities of a bank in the organizational phase, this requirement typically adds little information that is of benefit to potential investors or of significance in our review of an application for a national bank charter. However, the final rule enables the OCC to request audited financial statements in circumstances where doing so would be

in the best interest of investors or would further the safe and sound operation of the national bank.

DATES: Effective Date: April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874-4487; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090; Ted Dowd, Senior Attorney, Securities and Corporate Practices, Division, (202) 874-5210; Beverly Evans, Director, Licensing Activities, (202) 874-5060.

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 2007, the OCC published a notice of proposed rulemaking (NPRM) to streamline the process for applying for a new national bank charter by eliminating, in most cases, the requirement that a national bank in organization submit audited financial statements as part of a public offering of its securities.¹ The NPRM further provided that the OCC would be able to require such statements if their inclusion would be in the best interests of investors or would further the safe and sound operation of a national bank.

By reference to rules issued by, and forms required by, the Securities and Exchange Commission (SEC), the OCC's securities offering disclosure regulations currently require national bank charter applicants to provide audited financial statements in connection with registration statements filed with the OCC for a public offering of securities.² However, as we discussed in the preamble to the NPRM, the requirement for a national bank in organization to submit audited financial statements is not warranted in most cases.³ Obtaining audited financial statements can be time-consuming and costly for the organizing group without resulting in corresponding benefits. The statements usually reflect little more than the bank account of the organizing group and its organizational expenses incurred and there is no clear need for this information to be subject to an independent audit. The OCC also typically does not rely on audited financial statements in deciding applications for *de novo* national bank

charters. The OCC's process for chartering *de novo* national banks is comprehensive and includes extensive, ongoing review of the proposed bank's management, financial resources, and business plan. This process provides the OCC the opportunity to carefully consider, on the basis of detailed information, whether the organizing group has the expertise and resources to operate a viable national bank. Audited financial statements typically do not add materially to the information already available to the OCC through the application process.

The OCC received no comments on the NPRM and, accordingly, we are adopting the regulatory changes as proposed.

II. Description of the Final Rule

The final rule is substantively identical to the proposal, with minor wording changes to improve technical descriptions. Specifically, part 16 is amended to provide a waiver from the requirement to use audited financial statements as part of a registration statement for the offering of securities for a national bank in organization.

Under the final rule, the OCC will retain the authority to require audited financial statements if the OCC determines that factors particular to the proposal indicate that such statements would be in the interest of investors or would further the safe and sound operation of a national bank. For example, the OCC may require audited financial statements where review of the registration statement, or any other aspect of the application to charter a national bank, uncovers incomplete or inaccurate information about the proposed bank's finances or capital, or other material inaccuracies or misstatements.

This final rule is part of the OCC's ongoing effort to reduce unnecessary regulatory burden on national banks, including applicants for national bank charters. These efforts include an internal review of OCC regulations, which soon will be issued in final form.⁴ In addition, the OCC together with the other Federal banking, thrift, and credit union regulators recently concluded an interagency review of regulations pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPA), the results of which are described in detail in a report submitted to the Congress late last year.⁵

¹ 72 FR 59,039 (October 18, 2007).

² 12 CFR 16.15 (OCC rule referencing SEC rules governing form and content of securities registration statements). See Regulation S-X, 17 CFR 210.3-01(a) (SEC requirement to file consolidated financial statements); Regulation S-B, 17 CFR 228.310(a) (SEC regulations governing financial statements by small business issuers); Rule 1-02(h), Regulation S-X, 17 CFR 210.1-02(h) (SEC definition of developmental stage company).

³ 72 FR at 59,040.

⁴ See proposed rule at 74 FR 36,550 (July 3, 2007).

⁵ Section 2222 of the EGRPA directed the OCC, together with the Board of Governors of the Federal

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III. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

This change would reduce the costs and expenses associated with the formation of a national bank and will not have a significant economic impact. Therefore, pursuant to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this rule is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this rule will not have an annual effect on the economy of \$100 million or more. The OCC further concludes that this proposal does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this final rule have been submitted to, and pre-approved by, OMB for review and approval under OMB control number 1557-0120 (Securities Offering Disclosure Rules). Following publication of this final rule, OMB's pre-approval will become final.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (2 U.S.C. 1532) (Unfunded

Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. 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 \$100 million or more in any one year. Accordingly, this final rule is not subject to Section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

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

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 et seq. and 93a.

■ 2. Add § 16.15(e) to read as follows:

§ 16.15 Form and content.

* * * * *

(e) Notwithstanding paragraph (a) of this section, a national bank in organization pursuant to § 5.20 of this chapter shall not be required to include audited financial statements as part of its registration statement for the offer and sale of its securities, unless the OCC determines that factors particular to the proposal indicate that inclusion of such statements would be in the interest of investors or would further the safe and sound operation of a national bank.

Dated: February 28, 2008.

John C. Dugan,

Comptroller of the Currency.

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Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration to review their rules, to identify those that were outdated, unnecessary, or unduly burdensome, and to eliminate them if appropriate. See 12 U.S.C. 3311. For the text of the agencies' Report to Congress, see 72 FR 62,036 (November 1, 2007).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2007-0091; Airspace Docket No. 07-AWP-5]

Modification of Class E Airspace; Hollister, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Hollister, CA. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Hollister Municipal Airport, Hollister, CA. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Hollister Municipal Airport, Hollister, CA.

DATES: *Effective Date:* 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT:

Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA, 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

History

On November 29, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Hollister, CA, (72 FR 67587). This action would improve the safety of IFR aircraft executing this new RNAV GPS SIAP approach procedure at Hollister Municipal Airport, Hollister, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.