

agency provide public notice and an opportunity for comment does not apply to "rules of agency organization, procedure, or practice."⁶ This exemption applies to a rule that does not itself affect the substantive rights of those affected, even though the rule "may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 326–27 (D.C. Cir. 1994).

The interim rule has no effect on the substantive rights of national banks subject to application or filing requirements. The electronic filing amendments pertain only to the form in which a bank may make a submission to the OCC. Moreover, electronic filing is permissive, not mandatory. Similarly, the amendment to the "exceptional circumstances" provision only clarifies the types of circumstances that may warrant the use of special procedures. The requirement that the OCC provide notice to an applicant in such a case is unchanged. For these reasons, we conclude that this interim rule is not subject to the notice and comment requirements of the APA.

The interim rule is effective immediately upon publication in the **Federal Register**. An agency may dispense with the delayed effective date requirement of the APA for "good cause."⁷ As we have described, we expect that the interim rule, which imposes no new requirements, will help produce efficiencies for national banks by enabling them to save time and money in the preparation and processing of certain required filings. For these reasons, we conclude that there is good cause to dispense with the 30-day delayed effective date prescribed by the APA.

Finally, subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The interim rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions. For this reason, section 4802(b)(1) does not apply to this rulemaking.

Comment Solicitation

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule.

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Pub. L. 106–102 requires each Federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

- (1) Whether we have organized the material to suit your needs;
- (2) Whether the requirements of the rule are clear; or
- (3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).⁸ Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in 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 the interim rule will not result in expenditures by State, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 5 of chapter I of the Code of Federal Regulations is revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*

2. In § 5.2, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 5.2 Rules of general applicability.

* * * * *

(b) *Exceptions.* The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Additional information.* The "Comptroller's Licensing Manual"

⁶ 5 U.S.C. 553(b)(A).

⁷ *Id.* at 553(d)(3).

⁸ *See id.* at 553(d).