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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

Electronic Filings

[Docket No. 03-28]

RIN 1557-AC13

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting, in final form, without change, an interim rule that allows national banks to make any class of licensing filings electronically and clarifies the circumstances under which the OCC may adopt filing procedures different from those otherwise required by part 5. The rule also makes several technical changes related to the Comptroller's Licensing Manual (Manual).

EFFECTIVE DATE: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; or Darrell Sheets, Licensing Data Manager, Licensing, Policy and Systems Division, (202) 874-5060, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC's ongoing objectives include minimizing regulatory burden for the national banks we supervise, consistent with safety and soundness, and achieving greater efficiency in the agency's regulatory processes. National banks' preparation of required licensing applications and filings and the OCC's processing of those submissions are activities where substantial efficiencies, including cost savings, can be achieved through increased use of electronic technology. Moreover, the Government Paperwork Elimination Act (GPEA)¹ requires that Federal agencies consider providing the public with the option of automated transactional processes that use and accept electronic filings and signatures, when practicable. The requirements of GPEA apply to all interactions with the Federal government that involve the electronic submission, maintenance, or disclosure of information.² This includes transactions – such as the electronic filings that are the subject of this final rule – that involve Federal information collections covered by the Paperwork Reduction Act (PRA).³

To further the objectives we have described and to facilitate compliance with GPEA, the OCC designed a new electronic filing system called e-Corp. E-Corp uses a Web-based electronic application to enable national banks to submit electronically certain types of corporate filings to the OCC for approval. Authorized users at each national bank access electronic forms through the OCC's National BankNet Web site (BankNet)⁴ and submit electronically certain

¹ 44 U.S.C. 3504 note.

² See OMB Memorandum M-00-10, "OMB Procedures and Guidance; Implementation of the Government Paperwork Elimination Act," 65 FR 25508, May 2, 2000 (OMB Guidance).

³ 44 U.S.C. 3501 *et seq.*

⁴ BankNet is a secure, extranet website that allows the OCC to deliver data-based services via the Internet to the national banks we supervise.

licensing filings to the OCC using electronic signatures. This final rule facilitates expansion of our electronic filing program.

II. The Interim and Final Rules

On April 14, 2003, the OCC published and requested comment on an interim rule amending 12 CFR part 5, which was published at 68 FR 17890. The comment period ended June 13, 2003, and no comments were received. Thus, the OCC is adopting the interim rule as a final rule with no modifications.

Accordingly, the final rule adopts revisions to § 5.2 to expressly provide that the OCC may permit national banks to make any class of licensing filings electronically. Four applications were available to be filed electronically at the time we published the interim rule: establishment of a branch, relocation of a branch, relocation of a main office within a 30-mile radius (within current city, town or village limits), and relocation of a main office within a 30-mile radius (outside current city, town or village limits). These four applications continue to be available for electronic filing. Five notices were added earlier this year, including notification of change of corporate title; notification of change of main office address; official 90-day advance branch closing and downgrade notice; final branch closing, consolidation, relocation, or downgrade notice; and notification of main office relocation to an existing branch. Additional electronic filings currently are under development. In recognition of the fact that national banks rely on technology to varying extents, electronic filing remains voluntary, as it was under the interim rule. Any bank that wishes to continue filing paper-based applications may do so.

The final rule also refers national banks to the Manual to find information about the filings that are available for electronic submission. The Manual, which is available on the OCC's Internet Web site,⁵ is updated on a continuous basis.

The final rule also adopts amendments to § 5.2(b) of our rules to provide that, after giving appropriate notice to the applicant and, at the OCC's discretion, to others, the OCC may adopt materially different procedures for a particular filing, or a class of filings, in exceptional circumstances or unusual transactions.

Finally, the final rule adopts several technical changes regarding the Manual. In 2002, the OCC replaced the Comptroller's Corporate Manual with the Comptroller's Licensing Manual and made the Manual available on our Internet Web site. The final rule adopts changes regarding the new name of the Manual, provides the OCC's Internet address, and substitutes a new address to use to request a printed version of the Manual.

III. 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).⁶ Because the OCC was not required to publish, and did not publish, a general notice of proposed rulemaking,⁷ the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

⁵ See www.occ.treas.gov/corpapps/corpapplic.htm. This is the Web address for the OCC's homepage, which contains information available to the general public. Printed copies of the Manual are available for a fee from the OCC's Communications Division.

⁶ See 5 U.S.C. 601(2).

⁷ See 5 U.S.C. 553(b)(A)(Administrative Procedure Act (APA) provision exempting from the notice and comment requirement "rules of agency organization, procedure, or practice"); 68 FR at 17891-92 (discussion of applicability of section 553(b)(A) to the interim rule).

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 final 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 final rule does not constitute a “significant regulatory action” for the purposes of Executive Order 12866.

Paperwork Reduction Act

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule adopts changes from the interim rule which, in § 5.2(d), permits the electronic filing of applications that contain collection of information requirements. These requirements are found in sections of 12 CFR part 5, Rules, Policies, and Procedures for Corporate Activities, such as §§ 5.30 (Establishment, acquisition, and relocation of a branch) and 5.40 (Change in location of main office). As part of the Manual, these collections of information

have been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) under OMB Control Number 1557-0014.

Effective Date

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. As we described in the preamble to the interim rule, the interim rule imposed no additional reporting, disclosure, or other new requirements on insured depository institutions. For that reason, we concluded that 12 U.S.C. 4802(b)(1) did not apply to the interim rule. That reasoning also applies to the final rule, which is identical to the interim rule. Accordingly, we conclude that the delayed effective date requirement of 12 U.S.C. 4802(b)(1) does not apply to the final rule.

List of Subjects in Part 5

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

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

Accordingly, the interim rule amending 12 CFR part 5 which was published at 68 FR 17890 on April 14, 2003, is adopted as a final rule without change.

Dated: 12/23/03

John D. Hawke, Jr.
Comptroller of the Currency