

communications "relevant to the merits" of a proceeding. The final rule's definition of ex parte communications substitutes the words "relevant to the merits" of an adjudicatory proceeding for the words "concerning the merits" of an adjudicatory proceeding, which appear in the current rule.

Comment Received

The OCC received one comment on its proposal. The comment supported the proposal and suggested that the OCC explain the so-called "Chinese wall" that prevents those staff members involved in the prosecutorial function from communicating with those who advise the Comptroller on a particular matter. The final rule specifically sets out the APA's separation of functions provision, which prohibits agency prosecutorial personnel in one case from participating in the Comptroller's decision on that or a factually related case.

The final rule prohibits prosecutorial staff from communicating about the merits of a case with those staff members who advise the Comptroller regarding a final decision in the case. Therefore, the OCC believes that it is unnecessary, in a rulemaking, to set out the OCC's internal procedures for maintaining the statutorily required communication barrier. In conformance with the APA and this rule, OCC investigative and prosecutorial staff do not make communications to decisional employees that are relevant to the merits of an adjudicatory proceeding without putting the communications on the record and without giving reasonable prior notice to all parties.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule makes a minor amendment to a rule of practice already in place and affects agency procedure exclusively. Thus, it will not result in additional burden for regulated institutions. The purpose of the proposal is to conform the provisions of the regulation to those imposed by statute.

Executive Order 12866

The OCC has determined that this rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) (signed into law on March 22, 1995) 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. As discussed in the preamble, this final rule is limited in application to the internal procedures of the OCC. The OCC has therefore determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of more than \$100 million. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78u-2, 78u-3, and 78w; and 31 U.S.C. 330.

2. In § 19.9, paragraphs (a)(1) and (b) are revised and a new paragraph (e) is added to read as follows:

§ 19.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the OCC (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Comptroller, or a decisional employee.

* * * * *

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Comptroller until the date that the Comptroller issues his or her final decision pursuant to § 19.40(c):

(1) No interested person outside the OCC shall make or knowingly cause to be made an ex parte communication to the Comptroller, the administrative law judge, or a decisional employee; and

(2) The Comptroller, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the OCC any ex parte communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of ex parte matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the OCC in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 19.40, except as witness or counsel in public proceedings.

Dated: June 2, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-SW-13-AD; Amendment 39-9252; AD 95-12-02]

Airworthiness Directives; Hiller Aircraft Corporation Model UH-12A, UH-12B, UH-12C, UH-12D, and UH-12E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hiller Aircraft Corporation (Hiller) Model UH-12A, UH-12B, UH-