Rules and Regulations

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OFFICE OF SPECIAL COUNSEL

5 CFR Parts 1800, 1810, 1820, 1830, 1840

Implementation of the Whistleblower Protection Act

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: On November 14, 1989, the U.S. Office of Special Counsel (OSC) published interim rules of practice and procedure in Volume 54, **Federal Register**, No. 218, pp. 47341–47345. The interim rules implemented The Whistleblower Protection Act of 1989, Pub. L. No. 101–12, 103 Stat. 16, effective July 9, 1989, which established the Office of Special Counsel (formerly the Office of the Special Counsel of the U.S. Merit Systems Protection Board) as an independent agency, and made other specified changes in agency regulations. Accordingly, the OSC is adopting these interim rules as final with minor revisions.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr. at 202/653–7307.

SUPPLEMENTARY INFORMATION: On November 14, 1989, the U.S. Office of Special Counsel published interim regulations to implement the Whistleblower Protection Act of 1989 (Pub. L. 101–12) and to make other specified changes in agency regulations. The public was invited to comment on the interim regulations. No comments were received. Minor revisions have been made in the wording of certain regulations in the Final Rule, *i.e.*, as to the language used in §§ 1800.2 and 1820.1, to conform more closely to the provisions of the statute, and to seek telephone numbers from complainants so they may be contacted by this agency at a time and place at which they may speak in private in order to protect their confidentiality and to prevent retaliation against them for their disclosures to this agency.

List of Subjects

5 CFR Part 1800

Equal employment opportunity, Government employees, Reporting and recordkeeping requirements, Whistleblowing.

5 CFR Part 1810

Authority delegations (Government agencies), Equal employment opportunity, Government employees, Investigations.

5 CFR Part 1820

Freedom of information.

5 CFR Part 1830

Privacy, Reporting and recordkeeping requirements.

5 CFR Part 1840

Administrative practice and procedure, Government employees.

Dated: November 7, 1990.

Mary F. Wieseman,

Special Counsel.

1. For the reasons set out in the preamble, chapter VIII of title 5, Code of Federal Regulations, is amended as set forth below:

CHAPTER VIII—OFFICE OF SPECIAL COUNSEL

The portion of the interim rule establishing chapter VIII in title 5 of the Code of Federal Regulations, published on November 14, 1989, at 54 FR 47341, is adopted as final without change.

PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

The portion of the interim rule adding part 1800, published on November 14, 1989, at 54 FR 47341, is adopted as final with the following change:

1. The authority citation for part 1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

2. Section 1800.1 is amended by revising paragraphs (b) introductory text, and (b)(1) to read as follows:

§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

* * * * *

(b) Complaints, allegations, and information may be submitted in any written form, but should include:

(1) The name, mailing address, and telephone number(s) of the complainant(s), and a time when the person(s) making the disclosure(s) can be safely contacted, unless the matter is submitted anonymously;

* * * * *

3. Section 1800.2 is amended by revising paragraphs (b) introductory text, and (b)(1), to read as follows:

§ 1800.2 Filing disclosures of information.

* * * * *

(b) Information may be submitted in any written form, but should include:

(1) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by this agency, unless the matter is submitted anonymously;

* * * * *

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

The portion of the interim rule adding part 1810, published at November 14, 1989, at 54 FR 47342, and corrected on December 7, 1989, at 54 FR 50749, is adopted as final without change.

PART 1820—PUBLIC INFORMATION

The portion of the interim rule adding Part 1820, published on November 14, 1989, at 54 FR 47342, is adopted as final with the following change:

1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552(a)(3), 552(a)(4), 1212(g), 1219.

2. Section 1820.1(a) is revised to read as follows:

§ 1800.1 Public list and reports.

(a) Pursuant to 5 U.S.C. 1219, the Special Counsel maintains and makes available to the public a list of:

(1) Noncriminal matters referred to heads of agencies under 5 U.S.C. 1213 (c) and (g)(1), and reports received as a result of such referrals;

(2) Matters referred by the Special Counsel to heads of agencies under 5 U.S.C. 1215(c)(2); and

(3) Matters referred to heads of agencies under 5 U.S.C. 1214(e), together with certifications from the heads of agencies under such subsection.

* * * * *

PART 1830—PRIVACY

The portion of the interim rule adding part 1830, published on November 14, 1989, at 54 FR 47344, is adopted as final without change.

PART 1840—SUBPOENAS

The portion of the interim rule adding part 1840, published on November 14, 1989, at 54 FR 47345, is adopted as final without change.

[FR Doc. 90-27092 Filed 11-15-90; 8:45 am]

BILLING CODE 7400-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[FV-90-206-FR]

Expenses and Assessment Rate for Walnuts Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for 1990–91 marketing year under Marketing Order No. 984 for walnuts produced in California. Funds to administer this program are derived from assessment on handlers. This action is needed in order for the Walnut Marketing Board (Board), the agency responsible for the administration of the order to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATE: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524-S, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 984 (7 CFR part 984), as amended, regulating the handling of walnuts grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of walnuts grown in California who are subject to regulation under the walnut marketing order and approximately 5,000 producers of walnuts in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all assessible walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The Board consists of handlers, producers, and a non-industry member. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 14, 1990, and unanimously recommended 1990–91 marketing order expenditures of $1,703,505 and an assessment rate of $0.0088 per kernelweight pound of walnuts. Assessment income for the 1990–91 marketing year is estimated at $1,711,370 based on a merchantable supply of 194,474,000 kernelweight pounds of walnuts. Comparative actual expenditures in 1989–90 were $1,321,415 and the assessment rate of $0.0085 per kernelweight pound of walnuts. Estimated assessment income in 1989–90 was $1,539,707 based on a merchantable supply of 181,142,000 kernelweight pounds of walnuts.

Major budget categories for the 1990–91 marketing year are $855,000 for the domestic market research and development program, $346,382 for walnut production research, $126,840 for administrative and office salaries, and $40,000 for walnut crop estimates. Comparable actual expenditures for the 1989–90 marketing year were $664,368, $298,122, $121,654, and $37,000, respectively. The domestic market research and development program increase from $664,368 to $855,000 is due to the Board's recommendation to further expand and improve existing markets and create new markets for California walnuts.

The increase from $298,122 to $346,382 for walnut production research is due to seven new additional research projects that were recommended by the Board. The majority of these studies concern various methods to control codling moths which cause walnut tree damage. The increase in the administrative and office salaries category reflects a 4.7 percent raise in administrative and office salaries which was recommended by the Board.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the

Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 984.342 and is based on Board recommendations and other information. A proposed rule on the expenses and assessment rate was published in the October 15, 1990, issue of the Federal Register (55 FR 41694). Comments on the proposed rule were invited from interested persons until October 25, 1990. No comments were received.

After consideration of the information and recommendation submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication of the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Sections. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 984—WALNUTS GROWN IN CALIFORNIA

2. A new § 984.342 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 984.342 Expenses and assessment rate.

Expenses of $1,703,505 by the Walnut Marketing Board are authorized, and an assessment rate of $0.0088 per kernelweight pound of merchantable walnuts is established for the 1990–91 marketing year ending on July 31, 1991. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: November 13, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-27051 Filed 11-15-90; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 312, 329, and 381

[Docket No. 89-006F]

RIN 0583-AB10

Product Detentions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations by deleting the requirement of issuing a Preliminary Notice of Detention to the owner, agent, or custodian of detained meat or poultry articles and by requiring only the issuance of a Notice of Detention. This rule also revises the references to the detention tags and notices to reflect current FSIS form numbers. This action eliminates an unnecessary recordkeeping requirement for FSIS and expedites the product detention process.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard T. Van Blargan, Director, Evaluation and Enforcement Division, Compliance Program, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5643.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule will expedite the product detention process by relieving FSIS of an unnecessary paperwork step and updates detained tag and notice form numbers.

Background

Section 402 of the Federal Meat Inspection Act (21 U.S.C. 672) provides, in part, that "Whenever any carcass, part of a carcass, meat or meat food product * * * or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution, in commerce or otherwise subject to title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of title I of this Act or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 403 of this Act (21 U.S.C. 673) or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative." Section 19 of the Poultry Products Inspection Act (21 U.S.C. 467A) contains similar provisions for poultry and poultry products.

Part 329 and part 381, subpart U, of the Federal meat and poultry products inspection regulations (9 CFR parts 329 and 381, subpart U) prescribe, among other things, the procedures for detaining meat and poultry products. Upon finding product to be detained, an authorized representative of the Secretary (hereinafter referred to as an FSIS representative) detains the product by affixing an official U.S. Detained Tag (Form MP-483) to such product. At this time, the FSIS representative provides oral notification and a Preliminary Notice of Detention (Form MP-479) to the owner of the detained product, whenever possible, or to the owner's agent or the immediate custodian of the detained product. If the detention is to continue after 48 hours, the regulations further require that a Notice of Detention (Form MP-484) be provided to the owner or the owner's agent or the custodian of the detained product. Unless seizure action is initiated against the product, the FSIS representative must terminate the detention within 20 days of detaining the product. Detentions are terminated when it has been determined that proper disposition of the detained product has been made. Disposition includes returning the product to an official establishment for reinspection, proper product denaturing or identification prior to further movement or use for animal food, or destroying the product for human food purposes. When terminating a detention, the FSIS representative provides a Notice of Termination of Detention (Form MP-487) to the person receiving the Preliminary Notice of Detention. Until termination of the detention is made, the detained product cannot be moved from the premises where it was located when so detained, except that the FSIS representative may approve movement of the product to another location for refrigeration, freezing, or storage. During any such movement, the product must be maintained under continuous detention.

Proposed Rule

On March 2, 1990, FSIS published a proposed rule (55 FR 7499) to amend the Federal meat and poultry products inspection regulations by eliminating the issuance of a Preliminary Notice of Detention and requiring issuance of only a Notice of Detention at the time product is detained. In most instances, the owners, agents, and other custodians of detained products took immediate action when products were detained and the preliminary notice was issued. By the time the Notice of Detention reached the owner, agent, or custodian, disposition of the product had normally already occurred. As previously stated, the Notice of Detention was issued if the detention was to continue after 48 hours.

FSIS did not receive any comments in response to the proposal.

Final Rule

Therefore, FSIS is amending §§ 329.3 and 381.212 of the Federal meat and poultry products inspection regulations (9 CFR 329.3 and 381.212) by eliminating the issuance of Form MP-479, Preliminary Notice of Detention.

The rule also updates the detention form numbers referenced in the Federal meat and poultry products inspection regulations (9 CFR 312.9, 329.2, 329.3, 329.5, 381.211, 381.212, and 381.214). All detention forms were renumbered under a new form numbering system instituted by the Agency in 1985. However, the regulations were not changed to reflect this fact. The Notice of Detention is FSIS Form 8080-1, the Notice of Termination of Detention is FSIS Form 8400-1, and the U.S. Detained tag is FSIS Form 8400-2. In addition, amendments to §§ 329.3, 329.5, 381.211, and 381.212 now require an authorized representative of the Secretary to furnish copies of completed "Notice of Detention" and "Notice of Termination of Detention" to the immediate custodian and to the owner, or the owner's agent, if the owner is not the custodian. Sections 329.5 and 381.212 are further modified to require that an authorized representative of the Secretary give oral notification of detention termination to the custodian prior to furnishing a completed "Notice of Termination of Detention" to persons notified when the product is detained. Finally, the rule divides §§ 329.3, 329.5, 381.211, and 381.212 into subparagraphs for clarity.

List of subjects

9 CFR part 312

Marks and devices, Meat inspection.

9 CFR part 329

Detention, Meat inspection.

9 CFR part 381

Detention, Poultry products inspection.

For the reasons set out in the preamble, FSIS is amending parts 312, 329, and 381 of the Code of Federal Regulations, title 9, as set forth below.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 312.9 is revised to read as follows:

§ 312.9 Official detention marks and devices.

The official mark for articles and livestock detained under part 329 of this subchapter shall be the designation "U.S. Detained" and the official device for applying such mark shall be the official "U.S. Detained" tag (FSIS Form 8400-2) as prescribed in § 329.2 of this subchapter.

PART 329—DETENTION; SEIZURE AND CONDEMNATION; CRIMINAL OFFENSES

3. The authority citation for Part 329 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

4. Section 329.2 is revised to read as follows:

§ 329.2 Method of detention; form of detention tag.

An authorized representative of the Secretary shall detain any article or livestock to be detained under this part, by affixing an official "U.S. Detained" tag (FSIS Form 8400-2) to such article or livestock.

5. Section 329.3 is revised to read as follows:

§ 329.3 Notification of detention to the owner of the article or livestock detained, or the owner's agent, and person having custody.

(a) When any article or livestock is detained under this part, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the article or livestock detained, and

(2) Promptly furnish a copy of a completed "Notice of Detention" (FSIS Form 8080-1) to the immediate custodian of the detained article or livestock.

(b) If the owner of the detained article or livestock, or the owner's agent, is not the immediate custodian at the time of detention and if the owner, or owner's agent, can be ascertained and notified, an authorized representative of the Secretary shall furnish a copy of the completed "Notice of Detention" to the owner or the owner's agent. Such copy shall be served, as soon as possible, by delivering the notification to the owner, or the owner's agent, or by certifying and mailing the notification to the owner, or the owner's agent, at his or her last known residence or principal office or place of business.

6. Section 329.5 is amended by redesignating the first sentence as paragraph (a) and the remainder of the text as paragraphs (b) and (c). Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 329.5 Movement of article or livestock detained; removal of official marks.

(a) * * *

(b) Upon terminating the detention of such article or livestock, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the released article or livestock, and

(2) Furnish copies of a completed "Notice of Termination of Detention" (FSIS Form 8400-1) to the persons notified when the article or livestock was detained. The notice shall be served by either delivering the notice to such persons or by certifying and mailing the notice to such persons at their last known residences or principal offices or places of business.

(c) All official marks may be required by such representative to be removed from such article or livestock before it is released unless it appears to the satisfaction of the representative that the article or livestock is eligible to retain such marks.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

7. The authority citation for part 381 continues to read as follows:

Authority: 21 U.S.C. 463, 468; 7 CFR 2.17 (g) and (i), 2.55.

8. Section 381.211 is revised to read as follows:

§ 381.211 Method of detention; form of detention tag.

An authorized representative of the Secretary shall detain any poultry or other article to be detained under this subpart, by affixing an official "U.S. Detained" tag (FSIS Form 8400–2) to such article.

9. Section 381.212 is revised to read as follows:

§ 381.212 Notification of detention to the owner of the poultry or other article, or the owner's agent, and person having custody.

(a) When any poultry or other article is detained under this Subpart, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the poultry or other article detained, and

(2) Promptly furnish a copy of a completed "Notice of Detention" (FSIS Form 8080–1) to the immediate custodian of the detained poultry or other article.

(b) If the owner of the detained poultry or other article, or the owner's agent, is not the immediate custodian at the time of detention and if the owner, or owner's agent, can be ascertained and notified, an authorized representative of the Secretary shall furnish a copy of the completed "Notice of Detention" to the owner, or the owner's agent. Such copy shall be served, as soon as possible, by delivering the notification to the owner, or the owner's agent, or by certifying and mailing the notification to the owner, or the owner's agent, at his or her last known residence or principal office or place of business.

10. Section 381.214 is amended by redesignating the first sentence as paragraph (a) and the remainder of the text as paragraphs (b) and (c). Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 381.214 Movement of poultry or other article detained; removal of official marks.

(a) * * *

(b) Upon terminating the detention of such article, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the released article, and

(2) Furnish copies of a completed "Notice of Termination of Detention" (FSIS Form 8400–1) to the persons notified when the article was detained. The notice shall be served by either delivering the notice to such persons or by certifying and mailing the notice to such persons at their last known residences or principal offices or places of business.

(c) All official marks may be required by such representative to be removed from such article before it is released unless it appears to the satisfaction of the representative that the article is eligible to retain such marks.

Done at Washington, DC, on October 19, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90–26966 Filed 11–15–90; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0700.]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending the portion of Regulation Y, 12 CFR part 225, implementing the Change in Bank Control Act (the "CIBC Act") to remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the voting shares of a state member bank or bank holding company file additional notices under the CIBC Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company. This amendment is intended to reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), Mark J. Tenhundfeld, Attorney (202/452-3612), or Elizabeth Thede, Attorney (202/452-3274), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), or Beverly L. Evans, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2573). For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

A. *Background.* Under the CIBC Act, 12 U.S.C. § 1817(j), persons acting directly or indirectly or through or in concert with one or more other persons to acquire control of any state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition. The transaction may proceed at the end of the 60-day period unless the Board disapproves the transaction or extends the notice period. Alternatively, an acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

Regulation Y identifies certain transactions that are presumed to constitute the acquisition of control and require the filing of prior notice with the Board. In particular, § 225.41(b)(2) of Regulation Y establishes a regulatory presumption requiring the filing of a notice under the CIBC Act if, after an acquisition, any person or group of persons acting in concert will own, control, or hold with power to vote 10 percent or more of a class of voting securities of a bank or bank holding company and if either: (i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (5 U.S.C. § 781), or (ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction. 12 CFR 225.41(b)(2).

Under this regulation, a person must make CIBC Act filings for each acquisition of additional voting shares of the bank or bank holding company until the person acquires 25 percent or more of the shares of the bank or bank holding company. The Board's regulations provide that a shareholder that continuously controls 25 percent or more of a class of voting securities and that has received regulatory approval for that acquisition is generally not required to file further notices under the CIBC Act to acquire additional voting shares. 12 CFR 225.42(a).

Many of the notices currently filed with the Board under the CIBC Act involve situations where a shareholder that has already been subject to the regulatory review process under the CIBC Act seeks to acquire a small number of additional shares with a minimal expenditure of funds. In other instances, a person that has already received regulatory clearance to own less than 25 percent of the shares of a bank or bank holding company may be required by the Board's current regulations to file a notice in connection with a redemption by the bank or bank holding company of shares of another shareholder, even though the percentage ownership of the individual increases only minimally and the individual expends no funds and acquires no additional shares.

On July 2, 1990 (55 FR 28,216 (July 10, 1990)), the Board sought public comment on a proposal to amend subpart E of Regulation Y, which implements the CIBC Act, to eliminate the filing requirement under the CIBC Act for most acquisitions of shares of a state member bank or bank holding company where the shareholder has already received regulatory clearance to control 10 percent or more of the voting shares of the bank or bank holding company and, after the proposed acquisition, the shareholder would control less than 25 percent of the voting shares of the bank or bank holding company. The Board received 40 comments from interested individuals and organizations regarding this proposal. The principal issues raised by the comments are discussed below.

Comments in support of the proposed amendment. All but three of the commenters favored adoption of the Board's proposal. Most of these comments concluded that the current regulation requires filings that are unnecessary in connection with *de minimis* acquisitions. A number of commenters stated that the proposed amendment would reduce the regulatory burden on banks and bank holding companies without impairing the Board's ability to evaluate persons that have acquired control of a state member bank or bank holding company.

Comments in opposition to the proposed amendment. Three commenters opposed the proposed amendment. One of these commenters stated that the acquisition of additional shares above 10 percent could increase the ability of an individual to control a bank or bank holding company and, therefore, the ability of such an individual to disrupt the target institution. Another commenter suggested that the Board's review of a notice to acquire 10 percent of the voting shares of an institution could be less critical than would be its review of a notice to acquire 24 percent. In this commenter's view, the holder of 24 percent of an institution's voting shares would have greater ability and incentive to control the institution, thereby making a closer review of the financial resources and character of the shareholder more important than if the shareholder intended to acquire only 10 percent of the shares for investment purposes. The remaining commenter opposed to the proposal argued that each acquisition of voting shares should remain subject to regulatory review in order to assure that there has been no adverse change in circumstances since the time the person was permitted to acquire 10 percent of the company's shares. This commenter also suggested that the proposed amendment will place small financial institutions whose stock is not registered under the Securities Exchange Act of 1934 at a disadvantage because these institutions rely on the public notice provided under the CIBC Act to monitor acquisitions of the company's shares in the 10 to 25 percent range.

Modifications to Address Comments. The Board has reviewed the public comments and, in light of the entire record, has determined to amend its regulation as proposed, with the modifications discussed below. In the Board's experience, the requirement for additional filings by a person that has already been subject to regulatory review and seeks to control less than 25 percent of the voting shares of the same bank or bank holding company imposes significant burdens on the acquiring person without identifying significant financial, managerial, competitive, or other problems.

Under this amendment, in considering proposals to acquire between 10 and 25 percent of the voting shares of a bank or bank holding company, the Board will review the financial, managerial, competitive and other statutory factors under the CIBC Act to determine whether any of these factors warrant a requirement that the notificants file additional notices for subsequent acquisitions under 25 percent of the shares of the bank or bank holding company. The Board also retains supervisory authority over bank holding companies and state member banks that the Board believes is adequate to address situations where a change in circumstances would make additional acquisitions by a current owner unsafe or unsound for the bank or bank holding company. Moreover, the Board continues to require the filing of a notice under the CIBC Act when a person (or persons acting in concert) intends to acquire 25 percent or more of the voting shares of a bank or bank holding company. The amended regulation is similar to the approach taken by the Comptroller of the Currency and the Federal Deposit Insurance Corporation, both of which permit a shareholder that has already received clearance under the CIBC Act for an acquisition above 10 percent of the voting shares of a bank to make additional acquisitions of voting shares without further filings under the CIBC Act.

The Board has made several modifications to its original proposal to address concerns raised by commenters. First, the Board has clarified in the final rule that the exception proposed in the amendment is available to persons whose acquisition of shares has been reviewed in connection with a transaction approved under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) ("BHC Act") or section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) ("FDI Act"). This modification is consistent with the Board's current regulations that provide an exception from the CIBC Act notice requirements for transactions that are subject to review under section 3 of the BHC Act or section 18(c) of the FDI Act. In this regard, in connection with its review of proposals under section 3 of the BHC Act or under 18(c) of the FDI Act, the Board currently applies the standards of the CIBC Act to persons that will control 10 percent or more of the voting shares of the acquiring bank or bank holding company, including conducting a name check of the shareholder where appropriate. Because this review is conducted as part of the review under the BHC Act or the FDI Act, the Board believes that it is appropriate to permit a person subject to this review the same exemption as is available to persons whose initial acquisition is reviewed under the CIBC Act. A person that acquired between 10 and 25 percent of the voting securities of a company in connection with an application under section 3 of the BHC Act or section 18(c) of the FDI Act still must file a notice under the CIBC Act if the person seeks to acquire additional voting shares sufficient to raise the person's aggregate shareholdings to 25 percent or more of any class of securities of the bank or bank holding company, or if the person is notified at the time the application is approved by the Board or Reserve Bank that additional filings are otherwise required.

Another commenter suggested that the proposed amendment apply to additional acquisitions by person that acquired ownership of between 10 and 25 percent of a bank holding company prior to the effective date of this amendment. The Board intends that this amendment will apply to all persons that have received approval under the CIBC Act or, as explained above, through section 3 of the BHC Act or section 18(c) of the FDI Act, to hold between 10 and 25 percent of the voting shares of a bank or bank holding company, regardless of when the approval was granted, unless further acquisitions by these persons have been limited by the Board or appropriate Reserve Bank. The final regulation adopts this interpretation by *not* including a provision that the amendment applies only to persons that have obtained regulatory clearance after the effective date of this amendment.

Another commenter suggested that a person should be allowed to acquire up to 100 percent of the shares of a bank or bank holding company without filing any additional notice under the CIBC Act where the person is the largest shareholder and has received approval to acquire 10 percent or more of the bank or bank holding company. The Board continues to believe that it is appropriate to require a single additional notice under the CIBC Act by such a person (or persons acting in concert) prior to the person's acquisition of 25 percent or more of the bank or bank holding company. At the time such an acquisition is proposed, the Board will evaluate whether the acquiror has sufficient financial and managerial resources to acquire up to 100 percent of a class of voting securities of the bank or bank holding company, and whether other relevant statutory factors are consistent with a decision not to disapprove the acquisition of all of the shares of the bank or bank holding company by the acquiror.

Another commenter requested clarification as to how the proposed amendment would treat additional acquisitions by persons acting in concert. Specifically, the commenter sought clarification of whether persons that have filed a joint notice under the CIBC Act to acquire less than 25 percent of the voting shares of a bank or bank holding company would be permitted by the proposed amendment to make additional acquisitions without further filings under the CIBC Act so long as the aggregate of all such acquisitions by the persons acting in concert remained below 25 percent. The Board intends that persons filing a joint notice will be covered by this amendment so long as the persons collectively do not acquire 25 percent or more of the voting shares of the bank or bank holding company. The Board notes, however, that any person that is a member of a group acting in concert and has not received approval to acquire, in his or her individual capacity, 10 percent or more of the voting shares of the bank or bank holding company continues to be required to file a notice under the CIBC Act prior to acquiring 10 percent or more of the company's voting shares individually.

One of the commenters opposing the Board's proposed amendment recommended that, as an alternative to the proposed amendment, the Board should require a notice when a specific increment of stock is acquired (for instance, five percent) or, in the alternative, when a certain amount of time (for instance, 12 months) has expired since the date of last approval. Similarly, another of the commenters opposing the Board's proposed amendment recommended that the Board revise the proposed amendment to authorize only a 5 percent increase in the ownership of shares beyond what the Board has authorized a person to hold.

The Board notes that, under its amendment, the Federal Reserve System retains the authority to require filings under the CIBC Act for additional acquisitions where the Board or Reserve Bank believes that the financial and managerial resources or other circumstances of a proposed acquiror indicate that monitoring of additional acquisitions in a specific case is appropriate. In these cases, the Board or the Reserve Bank will notify a bank, bank holding company, or acquiring shareholder at the time the initial notice (or application under section 3 of the BHC Act or section 18(c) of the FDI Act) is approved that additional notices under the CIBC Act would be required for subsequent acquisitions of shares resulting in the ownership or control of between 10 and 25 percent of the voting securities of the bank or bank holding company.[1] In light of this, and for the reasons discussed above, the Board believes that it is unnecessary to require in all instances additional notices under the CIBC Act for acquisitions of between 10 and 25 percent of the voting shares of a bank or bank holding company by persons that have received approval under the CIBC Act to acquire 10 percent or more of the bank or bank holding company.

[1] Failure to file additional notices after having been informed that such notices are required will be treated as a violation of the Board's regulation and, as such, may result in the Board or the Reserve Bank initiating enforcement proceedings.

Regulatory Flexibility Act Analysis

This amendment to the Board's Regulation Y will decrease the burden on small companies by narrowing the circumstances under which shareholders of small banks and bank holding companies must file notices under the CIBC Act. No additional regulatory burden will be placed on such companies. Moreover, the amendment will not impose any additional regulatory burden on banks or bank holding companies of any size that are targets of a proposed change in control. Thus, the proposal is not expected to have any adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act Analysis

This amendment reduces the number of instances in which notices must be filed with the Federal Reserve System under the CIBC Act. Accordingly, the regulation will lessen the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set out in this document, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), the Board amends 12 CFR part 225 as follows:

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.42, paragraph (a) is redesignated as paragraph (a)(1), the heading to paragraph (a)(1) is revised, and new paragraph (a)(2) is added to read as follows:

§ 225.42 Transactions not requiring prior notice.

* * * * *

(a)(1) *Increase of previously authorized acquisitions above 25 percent.* * * *

(2) *Increase of previously authorized acquisitions between 10 percent and 25*

percent. Unless the Board or Reserve Bank otherwise provides by order, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities either after filing the notice required under § 225.41(b)(2) of this subpart to acquire voting securities of the bank or bank holding company or in connection with an application approved under section 3 of the Bank Holding Company Act or section 18(c) of the Federal Deposit Insurance Act, if the aggregate amount of voting securities held following the acquisition is less than 25 percent of any class of voting securities of the institution.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 9, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-26984 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-95-AD; Amendment 39-6809]

Airworthiness Directives; Boeing Model 737-200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires a visual inspection for H-11 bolts and replacement, if necessary, with A286 stainless steel bolts. This amendment is prompted by reports of H-11 steel bolts used instead of A286 stainless steel bolts to attach the outboard flap forward support fitting to the wing structure. This condition, if not corrected, could lead to fracture of the fastener in the fitting attachment, which could result in a loss of the outboard flaps.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 737 series airplanes, which requires a visual inspection for H-11 bolts and replacement, if necessary, with A286 stainless steel bolts, was published in the **Federal Register** on August 14, 1990 (55 FR 33101).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator requested that a provision be added which would allow for delayed bolt replacement until the next fuel tank entry. This member stated that this request is similar to a request for alternate means of compliance to AD T89-18-51, which was approved by the Seattle Aircraft Certification Office. This commenter also stated that Boeing issued guidance material (Boeing Telex M-7272-5344, dated September 8, 1989) which describes how long bolt replacement could be deferred, depending on the number of incorrect bolts found. This member believes that similar relief should be provided for the proposed rule as well. The FAA does not concur. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required inspection and necessary replacement during normal maintenance schedules. In light of these factors, as well as the service history pertaining to the failure rates of H-11 bolts, the FAA has determined that 12 months represents the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Although for certain isolated cases, the FAA has approved requests to delay bolt replacement until the next fuel tank entry, it is the FAA's intention to continue to address this issue on a case-by-case basis through alternate means of compliance procedures provided for by paragraph B. of this AD. As for the Boeing telex referenced by the commenter, the FAA notes that the guidance material contained in that telex is applicable to a different problem with the attachment hardware of the flap track support assembly. (Specifically, that telex deals with a production problem where understrength hardware was known to have been installed.)

Another ATA member indicated that a torque check of an H-11 bolt may prove misleading if corrosion is present and requested that another bolt check procedure be developed instead of that proposed. The FAA does not concur that a different procedure is necessary. The FAA has determined that the bolts are located in an area that is well protected from the environment and corrosion should not be a significant factor in the torque check.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,438 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry will be affected by this AD, that it will take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,270,920.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules