

Rules and Regulations

Federal Register

Vol. 59, No. 89

Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206-AG04

Pay Under the General Schedule; Within-Grade Increases

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is revising a regulation relating to interim relief provisions authorized under the Whistleblower Protection Act of 1989. The existing regulations on interim within-grade increases are being modified to provide that an interim within-grade increase must be made effective on the date of the appellate decision ordering interim relief.

DATES: These interim regulations were effective on March 2, 1992. Comments must be submitted on or before July 11, 1994.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606-2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) published final regulations on interim relief under the Whistleblower Protection Act of 1989 (WPA) (5 U.S.C. 7701(b)(2)(A)) in the Federal Register on January 31, 1992 (57 FR 3707). The requirements for interim within-grade increases in 5 CFR 531.414(b) provide that "an interim within-grade increase granted under paragraph (a) of this section shall become effective on the first day of the first pay period

beginning on or after the date of the favorable within-grade increase determination."

However, the U.S. Merit Systems Protection Board (MSPB) issued a decision on December 22, 1993 (*Andrew W. Harrell v. Department of the Army*, AT-531D-93-0559-I-1), which stated that "OPM's provision contradicts the express language of 5 U.S.C. 7701(b)(2)(A), which states that 'the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision' (emphasis added). Accordingly, we find that the agency has failed to provide evidence of complete relief, as ordered, and dismiss the agency's petition for review."

OPM's final regulation on the effective date of an interim within-grade increase was intended to carry out the purpose of the statute without creating an undue administrative burden for agencies and to be consistent with longstanding requirements governing the effective date of within-grade increases. OPM believed the regulation was consistent with the spirit and purpose of the WPA. While we are not persuaded that this regulation is inconsistent with the spirit and purpose of the WPA, we recognize that the interpretation reflected in MSPB's recent decision is a plausible reading of the law. Further, we do not wish to create undue difficulty for agencies that are required to provide interim relief under the WPA. Therefore, upon reconsideration, we have determined that the effective date of an interim within-grade increase must be the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective in less than 30 days. This regulation is being made effective on March 2, 1992, the effective date of the final regulations on interim relief (57 FR 3707), in order to be consistent with an interpretation of law in a decision of the U.S. Merit Systems Protection Board (*Andrew W. Harrell v. Department of the Army*, AT-531D-93-0559-I-1, December 22, 1993).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of the Performance Management and Recognition System Termination Act of 1993, 107 Stat. 981; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), 104 Stat. 1462, 5 U.S.C. 5304, 5305, and 5553, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under section 404 of FEPCA, 104 Stat. 1466, section 3(7) of Pub. L. 102-378 (October 2, 1992), section 302 of FEPCA, 104 Stat. 1462, and 5 U.S.C. 5304, 5305, and 5553;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553, and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR, 1993 Comp., p. 682.

Subpart D—Within-Grade Increases

3. In § 531.412, paragraph (a) is revised to read as follows:

§ 531.412 Effective date of within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. Interim within-grade increases shall become effective as provided in § 541.414(b).

* * * * *

3. In § 531.414, paragraph (b) is revised to read as follows:

§ 531.414 Interim within-grade increase.

(b) An interim within-grade increase granted under paragraph (a) of this section shall become effective on the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

[FR Doc. 94-11163 Filed 5-9-94; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 890

RIN 3206-AG03

Federal Employees Health Benefits Program: Debarment

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to incorporate into regulations the statutory requirement that carriers in the Federal Employees Health Benefits (FEHB) Program may not deny claims for services or supplies due to the debarment of the providers who supplied them if the claimants could not have known that the provider was debarred. The purpose of these regulations is to comply with the provision of law that requires OPM to prescribe regulations on this issue.

DATES: These interim regulations are effective June 9, 1994. Comments must be received on or before July 11, 1994.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 3415, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606-0191.

SUPPLEMENTARY INFORMATION: On October 30, 1989, OPM published interim regulations in the *Federal Register* (54 FR 43939) implementing title I of Public Law 100-654, which allowed OPM to exclude from further participation in the FEHB Program any health care provider (1) convicted of fraud or various other cited examples of unethical professional conduct, or (2) determined by OPM to have committed various cited offenses against the FEHB Program.

Public Law 100-654 contained a provision requiring OPM to prescribe

regulations allowing payment of claims for service or supplies furnished by debarred providers if the claimant could not reasonably have known of the debarment. This issue was inadvertently not addressed by the regulations published October 30, 1989. Therefore, in compliance with the requirements of 5 U.S.C. 8902a(i) OPM is now issuing these interim regulations.

Under these interim regulations, carriers cannot deny claims based on debarment if there was no reasonably way the claimant could have known that the provider was debarred. When an individual who has not previously been notified of a provider's debarment, submits a claim for services or supplies furnished by a debarred provider, the carrier must (1) honor the claim under the terms of its contract with OPM, and (2) inform the individual about the debarment of the provider and the minimum period of time remaining under the terms of the debarment.

In practical terms, this generally means that the first claim(s) an enrollee submits for services or supplies received after a provider has been debarred, but before the enrollee has been informed of the debarment, is (are) paid to the same extent it (they) would have been paid had the provider not been debarred. The carrier must, at the same time, inform the enrollee concerning the debarment. The carrier will deny any subsequent claims for service or supplies furnished during the period the provider is debarred.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. code, I find that good cause exists for waiving the general notice of rulemaking because this regulation primarily affects Federal employees and annuitants and merely incorporates statutory requirements into regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees and annuitants.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064.

2. In subpart J, a new § 890.1006 is added to read as follows:

§ 890.1006 Payment of claims for service or supplies furnished by debarred providers.

Health plans may not deny claims for services or supplies based on debarment of the provider under this subpart if the claimant did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved must take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

[FR Doc. 94-11164 Filed 5-9-94; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036 and 1049

[Docket Nos. AO-166-A61; AO-179-A56; and AO-319-A39; DA-90-015; Docket Nos. AO-166-A62-RO2; AO-179-A57-RO2; and AO-319-A40-RO2; DA-91-013]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations which were published Tuesday, August 17, 1993 (58 FR 43504), and Wednesday, December 1, 1993 (58 FR 63283). The final rules amended the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Federal milk marketing orders on the basis of evidence received at a hearing held in August 1990 to consider a multiple component pricing plan for the three orders, and at two hearings held in 1991 and 1992 to consider Class III-A pricing under 27 orders for milk used to make nonfat dry milk. This

docket amends the orders to correct the errors.

EFFECTIVE DATE: The correcting amendments are effective December 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections inadvertently omitted several paragraphs of regulatory language which should be added. These paragraphs were omitted from a final rule incorporating multiple component pricing for the three orders effective October 1, 1993, and resulted in the incorrect designation of paragraphs for these three orders included in a final rule establishing Class III-A pricing for 27 milk orders, effective December 1, 1993.

Need for Correction

As published, the final regulations do not contain language that is needed for the proper administration of the three orders.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

Accordingly, 7 CFR parts 1033, 1036 and 1049 are corrected by making the following correcting amendments:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for part 1033 continues to read as follows:

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

2. In § 1033.60, redesignate paragraph (m) as paragraph (n), and add a new paragraph (m), to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to

the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for part 1036 continues to read as follows:

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

2. In Section 1036.60, redesignate paragraph (m) as paragraph (n), and add a new paragraph (m), to read as follows:

§ 1036.60 Computation of handlers' obligation to pool.

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. The authority citation for part 1049 continues to read as follows:

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

2. In § 1049.60, redesignate paragraph (l) as paragraph (m), and add a new paragraph (l), to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated

fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

Dated: May 2, 1994.

Charles R. Brader,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 94-11006 Filed 5-9-94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210a

[INS No. 1635-93]

RIN 1115-AB05

Expiration of the Replenishment Agricultural Worker Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service (Service) relating to Replenishment Agricultural Workers (RAWs) under section 210A of the Immigration and Nationality Act (Act). Specifically, this rule removes the regulations pertaining to the RAW program as the program expired at the end of Fiscal Year 1993.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald S. Chirlin, Senior Immigration Examiner, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington DC 20536, Telephone: (202) 514-5014.

SUPPLEMENTARY INFORMATION: On December 9, 1993, the Immigration and Naturalization Service (Service) published in the Federal Register at 58 FR 64695, a proposed rule to remove 8 CFR part 210a from the Code of Federal Regulations. Section 210A of the Immigration and Nationality Act, the Replenishment Agricultural Worker (RAW) program, was added by the Immigration Reform and Control Act of 1986, Pub. L. 99-603, dated November 6, 1986. According to section 210A(a)(1) of the Act, the RAW program was to be effective from Fiscal Year 1990 through the end of Fiscal Year 1993. The program was enacted as a means of providing additional seasonal agricultural workers to United States agricultural employers to alleviate

possible shortages of workers for perishable crops. The program allowed the government to replenish the supply of farmworkers by providing foreign workers with legal resident status if the Secretaries of Agriculture and Labor determined that a shortage of such workers existed.

In the three years during which the program was in place, however, a shortage of agricultural workers was never found to exist. Therefore, no immigration benefits were ever granted through the RAW program. As Congress gave no indication that it would extend the RAW program beyond the statutory expiration date, the Service found it appropriate to remove the regulations implementing the RAW program.

The Service received comments from two organizations as a result of the proposed rule. Both organizations supported the removal of part 210a from the Code of Federal Regulations, as the Service's authority to implement the RAW program expired on September 30, 1993. Both commenters also suggested that the Service inform all RAW registrants who contact the Service that the program has expired and that they are not eligible for work authorization under that program. The Service will ensure that all registrants who inquire about the program are informed about the program's expiration either orally or in writing, depending on the nature of the inquiry.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. Since the RAW program was never implemented because a shortage of agricultural workers was never found to exist, any adverse economic impact on small entities would be minimal, if any.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service has certified that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this rule will not have an impact on family formation, maintenance, or general well-being.

List of Subjects in 8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

PART 210a—[REMOVED]

Accordingly, under the Commissioner's authority, 8 U.S.C. 1103, part 210a of chapter I of title 8 of the Code of Federal Regulations is removed.

Dated: April 25, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94-11235 Filed 5-9-94; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-0818]

Truth in Savings; Final Preemption Determination (Wisconsin)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final determination that Wisconsin's Truth in Savings law is not inconsistent with the federal Truth in Savings Act and Regulation DD, and therefore is not preempted.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667; for the hearing impaired only contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) General

Section 273 of the Truth in Savings Act (12 U.S.C. 4312) states that the act does not supersede provisions of the law of any State relating to the disclosure of yields payable or account terms, except to the extent that those laws are inconsistent with the provisions of the federal statute, and then only to the extent of the inconsistency. The act also grants the Board the authority to determine whether any inconsistencies exist between federal and state law.

Regulation DD (12 CFR part 230), which implements the act, provides the standards for preemption determinations in appendix C. State requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also inconsistent if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

Preemption determinations for the act are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.9(c)(5), as amended December 15, 1993, 58 FR 65539).

(2) Discussion of Specific Request and Final Determination

The Board was asked to determine whether specific provisions of Wisconsin Statutes section 224.08 regarding disclosures for deposit accounts at banks are inconsistent with the act and Regulation DD and are therefore preempted. The Board published a proposed determination on December 14, 1993 (58 FR 65293), stating that the provisions of the Wisconsin law found in Wisconsin Statutes section 224.08 are not inconsistent with the federal Truth in Savings law, and therefore are not preempted by the federal law.

The act and Regulation DD require depository institutions to give consumers disclosures before opening a deposit account and upon a request made by a consumer. The act also sets out requirements for the payment of interest on accounts, provides rules for

account advertisements and change in terms notices, and mandates certain information to be provided on periodic statements for accounts that receive such statements. In addition, the act and Regulation DD provide for an "annual percentage yield" to aid consumers in making comparisons between the rates paid on different accounts.

Section 224.08 of the Wisconsin Statutes requires disclosure statements to be given for each account offered by a bank, setting forth the following information: a description of the account, the conditions (if any) on which the account is offered, the terms of interest offered for the account, and all fees charged for the account. The disclosure statement under state law may include a separate interest rate table or fee schedule, or both. Banks must provide this information at the time of the depositor's initial deposit into the account, upon any change in any of the information applicable to a depositor's account (other than a change in the interest rate of a variable interest rate account if the variability of the interest rate was disclosed at the time of the initial deposit), and upon request. Finally, the state law requires that the disclosure statement for an account be accompanied by a brief description of all other accounts offered by the bank and a statement that more detailed information is available upon request.

The Board received three comment letters on its proposal, all opposing the Board's proposed determination and requesting that the Board preempt the Wisconsin law based on inconsistencies with the federal provisions. After careful review, the Board has made a final determination *not* to preempt the Wisconsin law for the reasons discussed below.

Coverage of Institutions

The requesting party suggested that state law is inconsistent with the act and Regulation DD because the state law covers only state-chartered banks, whereas the federal law covers all depository institutions, including savings associations and national banks. The Board has determined that a state law providing for more limited coverage than federal law is not inconsistent with the act, and therefore is not preempted.

Content and Format of Disclosures

The requesting party asked the Board to determine that the content of the state law disclosures is inconsistent with the federal law. The state law permits disclosures to be more general than the federal law allows—for example, by mandating only a statement of the "terms of interest offered for the

account," and not requiring an "annual percentage yield" to be given, using that term. However, state law does not prohibit institutions from being more specific in fulfilling their state disclosure requirements. Therefore, the Board believes institutions can comply with the state provisions while still complying with the more detailed federal requirements.

Similarly, the requesting party suggested that preemption of the state law is warranted, based on the format of the required state disclosures because Wisconsin law requires that each account disclosure include a "brief description" of all other accounts offered by the bank along with a statement that more detailed information is available upon request. The federal law contains no similar requirement, and in fact permits an institution to combine disclosures for all of its accounts, as long as it is clear which disclosures are applicable to the consumer's account (12 CFR 230.3(a)). However, Regulation DD provides a very narrow preemption standard: preemption is appropriate only where a state law requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. The Board believes that banks are able to comply with Wisconsin law without contradicting the requirements of the federal law. Thus, preemption of the state requirement to provide information about other available accounts is not warranted.

Moreover, the Wisconsin Commissioner of Banking, the state enforcement agency for Wisconsin-chartered banks, has provided an interpretation to the Board stating that banks would comply with this provision of the Wisconsin law by providing disclosures in keeping with the federal law. The agency has stated that the "brief description" of other accounts was intended as an accommodation to banks to provide something less than full disclosures for each available account; thus, banks would not violate state law if they provide full account disclosures for all accounts offered by the institution, as federal law allows. Finally, agency officials confirmed that they would not require the statement that more detailed information is available upon request if full account disclosures are provided for all accounts in compliance with the requirements of Regulation DD.

Change in Terms Notice

The requesting party asked that the Board find the provision of the Wisconsin law requiring a change in

terms notice to be inconsistent with the federal law and therefore preempted for three reasons. First, the state law requires redisclosure of all state law disclosures when any term is changed. In contrast, federal law requires notice to consumer account-holders only of the specific term being changed. Second, state law requires a change in terms notice to be sent upon any change to a depositor's account that was initially required to be disclosed (except a change in the interest rate for a variable rate account). Federal law requires such a notice only for a change that reduces the annual percentage yield or adversely affects the consumer. See § 230.5(a). Third, state law redisclosure is required upon any change in the account. Federal law generally requires a change in terms notice at least 30 days prior to the effective date of the change.

As stated above, the Board believes the state Truth in Savings law is not inconsistent simply because the state law requires more information than federal law requires, or because the state law requires disclosures in cases where the federal law is silent. A Wisconsin-chartered bank can comply with the advance change in terms notice required under federal law while providing the more detailed disclosures required by the state law. The Board notes that Regulation DD allows institutions to comply with change in terms requirements by sending new account disclosures if the changed terms are specifically brought to the consumer's attention (for example, by highlighting them in some way). Although state and federal laws have different requirements in this regard, the Board believes that they are not inconsistent, given that a bank can comply with both requirements without violating either.

Finally, the Board has determined that the state law requirement that a bank redisclose all applicable information "upon" any change in a term that was initially disclosed is not inconsistent with the federal provision requiring at least 30 days advance notice of the effective date of the change. As stated in the Board's proposed determination, State officials have indicated to the Board that institutions providing the disclosures required under state law at least 30 days in advance of the effective date of the change, as the federal provisions require, would comply with the state law. As Wisconsin banks are therefore able to comply with both the federal and state laws, the Board has determined that this provision is not preempted by the federal law.

(3) Regulatory Flexibility Analysis and Paperwork Reduction Act

The determination that State law is not preempted is not likely to have a significant impact on institutions' costs, including those of small institutions.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Federal Reserve System, Truth in savings.

By order of the Board of Governors of the Federal Reserve System, May 4, 1994.

William W. Wiles,
Secretary of the Board.

[FR Doc. 94-11152 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 93-NM-156-AD; Amendment 39-8901; AD 94-09-12]

Airworthiness Directives; McDonnell Douglas Model DC-8, DC-9, and DC-9-80 Series Airplanes; Model MD-88 Airplanes; and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8, DC-9, and DC-9-80 series airplanes; Model MD-88 airplanes; and C-9 (military) airplanes; that requires inspection of the center and side windshields, and replacement of discrepant windshields. This amendment is prompted by reports that the core ply of certain windshields was incorrectly tempered during the manufacturing process. The actions specified by this AD are intended to prevent failure of the windshield.

DATES: Effective June 9, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate,

Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

David Hempe, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5224; fax (310) 988-5210; or Mike Lee, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5325; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-8, DC-9, and DC-9-80 series airplanes; Model MD-88 airplanes; and C-9 (military) airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the *Federal Register* on February 15, 1994 (59 FR 7233). That action proposed to require inspection of the center and side windshields, and replacement of discrepant windshields.

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

Three commenters support the proposed rule.

One commenter requests that inspections performed prior to the effective date of the AD be considered acceptable for compliance with the inspection requirement in the proposal. The FAA concurs. As allowed by the phrase, "unless accomplished previously," in the "Compliance" section of this AD, if the inspection has been accomplished prior to the effective date of the AD, this AD does not require that it be repeated. Therefore, no change to the final rule is necessary.

One commenter requests that the final rule be revised to include the option of reviewing purchasing records in lieu of the proposed inspection requirement. The commenter asserts that a review of purchasing records would be more cost effective, and safety would not be compromised since the end result would be the same: a determination of the manufacturing source of the

windshields. The FAA does not concur. Since tracking systems for shipping and purchasing records vary from operator to operator, the possibility exists for windshields to be tracked by part number alone. These common part numbers may be assigned to several manufacturers. Therefore, purchasing records would not be reliable in determining the manufacturing source of windshields.

One commenter requests that the proposed compliance time of 30 days to inspect the windshields be extended to 90 days or at the next regularly scheduled "B" check. The commenter states that a compliance time of 30 days would impose an unnecessary hardship on operators of large fleets. Two commenters also express concern that replacement parts would not be available in sufficient quantities; therefore, the extension in compliance time would give the manufacturer sufficient time to produce an adequate quantity of replacement windshields. The FAA does not concur. In developing an appropriate compliance time for this 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 inspecting and installing the necessary parts within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA has verified that, of the original 730 discrepant windshields known to have been produced and in service, 599 (82%) have already been removed from service and returned to the vendor; that leaves only 131 windshields remaining in service. Further, the FAA also has verified that an adequate supply of replacement windshields will be available for affected operators to accomplish the requirements of this AD within the 30-day compliance time. In light of all of these factors, the FAA has determined that the 30-day compliance time is warranted and appropriate. However, under the provisions of paragraph (d) of the final rule, operators may apply for the approval of an alternative method of compliance or adjustment of the compliance time by submitting justification for such an alternative or adjustment to the FAA.

One commenter requests that proposed paragraphs (a)(2)(ii), (b)(2)(ii), and (c) be changed to limit applicability only to those airplanes on which the windshield has been replaced after February 1992. The FAA does not consider that this suggested change is necessary. Since the applicability statement of the AD states that the AD