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Presidential Documents

Title 3—

Presidential Determination No. 90-20 of May 19, 1990

The President

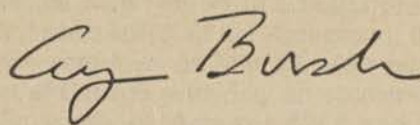
Determination To Authorize Assistance through the Organization of American States for Nicaragua

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 451 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2261, I hereby authorize the use of up to \$1.25 million in funds to be made available under Chapter 3 of Part I of the Act in Fiscal Year 1990 for emergency assistance through the Organization of American States to Nicaragua notwithstanding any other provision of law. The assistance is provided in order to care for and feed members of the Nicaraguan Resistance who are located in designated security zones under appropriate agreements with the Government of Nicaragua for their demobilization and resettlement.

You are authorized and directed to report this determination to the Speaker of the House of Representatives, the House Appropriations Committee, and the Senate Committees on Foreign Relations and Appropriations immediately, and to publish it in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 19, 1990.



[FR Doc. 90-12651

Filed 5-25-90; 3:55 pm]

Billing code 3195-01-M

Presidential Documents

Proclamation 6142 of May 25, 1990

To Implement an Accelerated Schedule of Duty Elimination Under the United States-Canada Free-Trade Agreement

By the President of the United States of America

A Proclamation

1. On January 2, 1988, the President entered into the United States-Canada Free-Trade Agreement (the Agreement). The Agreement and certain letters exchanged between the Governments of Canada and the United States were approved by the Congress in section 101(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Public Law 100-449; 102 Stat. 1851). The Agreement entered into force on January 1, 1989.

2. Section 201(b) of the Implementation Act grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Implementation Act, the authority to proclaim such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement. Consistent with Article 401(5) of the Agreement, the President, through his duly empowered representative, on May 18, 1990, entered into an agreement with the Government of Canada providing an accelerated schedule of duty elimination for specific goods of Annexes 401.2 and 401.7 to the Agreement. The President has complied with the consultation and lay-over requirements of section 103(a) of the Implementation Act with respect to such schedule.

3. Pursuant to section 201(b) of the Implementation Act, I have determined that the modifications hereinafter proclaimed of existing duties on goods originating in the territory of Canada are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement and to carry out the agreement with Canada providing an accelerated schedule of duty elimination for specific goods of Annexes 401.2 and 401.7 to the Agreement.

4. Section 202 of the Implementation Act provides for certain rules of origin. I have determined that it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS) to correct technical errors in the previously proclaimed rules of origin.

5. Section 604 of the Trade Act of 1974 (the 1974 Act) (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder.

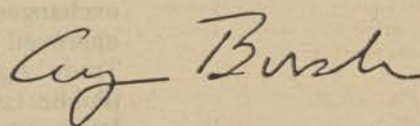
NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 201(b) and 202 of the Implementation Act and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide for an accelerated schedule of duty elimination and to correct technical errors in the rules of origin, general note 3 to the HTS and the tariff treatment provided for in the HTS for goods originating in the territory of Canada are modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations (in particular provisions concerning staged reductions in rates of duty for goods originating in the territory of Canada) inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The amendments made to the HTS by the Annex to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on the dates indicated in such Annex.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-12622

Filed 5-25-90; 1:32 pm]

Billing code 3195-01-M

Annex

Modification in the Harmonized Tariff Schedule of the United States
(HTS) of the Tariff Treatment of Goods Originating in the Territory of Canada

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, general note 3(c)(vii) to the HTS is modified:

- (1) by deleting from subdivision (B)(2)(1) in such note the words "in Canada".
- (2) by deleting from rule (R)(11)(qq) in such note "41,805,000 square meters" and "5,016,600 square meters" and inserting in lieu thereof "41,806,500 square meters" and "5,016,780 square meters", respectively.
- (3) by deleting from rule (R)(11)(rr) in such note "25,083,000 square meters" and inserting in lieu thereof "25,083,900 square meters".

Section B. Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after April 1, 1990, the Rates of Duty 1-Special subcolumn in the HTS is modified as follows:

- (1) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, strike the symbol "(CA)" and the duty rate preceding it, and in lieu thereof insert in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order:

0201.10.00	2901.10.20	2917.39.15	2933.59.23	3806.30.00	7013.32.40	8412.31.00	8517.90.70	8545.90.40
0204.10.00	2901.10.50	2917.39.17	2933.59.25	3810.90.10	7115.10.00	8412.39.00	8517.90.80	8602.10.00
0204.21.00	2903.11.00	2917.39.20	2933.59.26	3810.90.50	7302.30.00	8413.19.00	8523.20.00	8607.11.00
0409.00.00	2903.12.00	2917.39.30	2933.59.27	3811.11.10	7302.90.00	8413.20.00	8525.10.20	8607.91.00
0410.00.00	2903.15.00	2917.39.50	2933.59.28	3811.11.50	7315.11.00	8413.60.00	8525.10.60	8608.00.00
0811.90.35	2903.30.15	2918.14.00	2933.59.29	3811.19.00	7315.19.00	8424.81.90	8525.10.80	8701.30.50
1007.00.00	2903.30.20	2918.15.10	2933.59.30	3815.90.10	7323.91.50	8426.49.00	8525.30.00	9002.11.40
1102.90.40	2903.59.05	2918.15.50	2933.59.35	3815.90.20	7323.94.00	8428.20.00	8527.11.11	9007.29.40
1103.12.00	2903.59.40	2918.19.10	2933.59.40	3815.90.50	7505.11.10	8451.90.00	8527.11.20	9007.29.80
1103.14.00	2905.11.20	2918.19.60	2933.59.50	3823.60.00	7505.11.30	8458.99.10	8527.11.40	9007.92.00
1104.12.00	2905.13.00	2918.29.10	2933.71.00	3903.20.00	7505.11.50	8460.40.00	8527.11.60	9009.12.00
1104.19.00	2905.16.00	2918.29.20	2934.20.10	3905.20.00	7505.12.10	8465.93.00	8527.31.05	9009.90.00
1104.22.00	2905.17.00	2918.29.22	2934.20.15	3905.90.10	7505.12.30	8472.10.00	8527.31.40	9010.20.10
1104.29.00	2905.43.00	2918.29.30	2934.20.20	3905.90.50	7505.12.50	8472.90.40	8527.31.50	9010.20.30
1104.30.00	2905.44.00	2918.29.40	2934.90.50	3907.60.00	7505.21.10	8472.90.80	8527.31.60	9010.20.40
1202.10.00	2905.50.10	2918.29.50	2935.00.45	3908.10.00	7505.21.50	8473.10.00	8527.32.00	9010.20.50
1202.20.00	2905.50.50	2921.12.00	2935.00.50	3908.90.00	7506.10.10	8477.30.00	8531.10.00	9010.20.60
1207.20.00	2907.29.10	2921.29.00	2936.24.00	3911.90.20	7506.10.30	8483.10.30	8531.20.00	9010.30.00
1208.10.00	2907.29.50	2921.44.10	2936.27.00	3912.31.00	7506.10.50	8483.10.50	8532.21.00	9010.90.40
1208.90.00	2908.10.10	2922.50.15	2936.29.10	3913.10.00	7506.20.10	8483.30.40	8532.22.00	9010.90.80
1501.00.00	2908.10.20	2925.19.10	2936.29.15	3920.62.00	7506.20.30	8483.30.80	8532.30.00	9014.80.40
1503.00.00	2908.10.25	2925.19.20	2936.29.20	3920.73.00	7506.20.50	8483.60.80	8533.10.00	9015.80.60
1506.00.00	2908.10.30	2929.10.10	2936.29.50	3926.90.15	7603.10.00	8483.90.20	8533.21.00	9018.49.80
1903.00.40	2908.10.50	2929.10.15	2936.90.00	4014.90.10	7603.20.00	8483.90.30	8533.29.00	9018.90.70
2106.10.00	2909.30.05	2929.10.20	2939.30.00	4201.00.30	7605.11.00	8501.31.80	8533.31.00	9019.20.00
2201.10.00	2909.30.07	2929.10.40	2940.00.00	4201.00.60	7605.19.00	8501.32.20	8533.39.00	9026.90.20
2804.10.00	2912.11.00	2929.10.50	2941.90.10	4504.90.20	7605.21.00	8501.32.60	8533.40.00	9030.31.00
2804.21.00	2912.19.10	2931.00.15	2941.90.30	4504.90.40	7605.29.00	8501.61.00	8533.90.00	9031.20.00
2804.29.00	2912.19.20	2931.00.50	2941.90.50	4602.10.11	7606.12.30	8501.62.00	8534.00.00	9031.40.00
2804.30.00	2912.19.30	2932.29.10	3002.90.10	4602.10.12	7606.12.60	8505.11.00	8539.10.00	9031.90.40
2804.40.00	2912.19.40	2932.29.20	3006.10.00	4602.10.13	7609.00.00	8506.12.00	8539.21.40	9207.10.00
2805.21.00	2912.19.50	2932.29.30	3301.30.10	4602.10.19	8112.11.60	8506.13.00	8539.29.10	9402.10.00
2805.22.10	2914.19.00	2932.29.40	3701.20.00	4818.40.40	8112.19.00	8507.40.00	8539.29.20	9506.99.50
2805.30.00	2915.90.10	2932.29.50	3702.20.00	5308.90.00	8207.30.30	8507.80.00	8539.29.40	9602.00.10
2811.22.10	2915.90.50	2932.90.10	3702.32.00	5402.10.30	8207.30.60	8515.11.00	8539.40.40	9608.10.00
2826.19.00	2916.12.10	2932.90.20	3702.41.00	5402.20.30	8207.40.30	8516.72.00	8539.40.80	9616.10.00
2827.10.00	2916.12.50	2932.90.30	3702.42.00	5403.20.30	8207.40.60	8517.30.15	8539.90.00	9617.00.10
2827.60.20	2916.19.50	2932.90.35	3702.52.00	5504.10.00	8207.50.20	8517.30.25	8540.20.20	9617.00.30
2827.60.50	2916.32.10	2932.90.37	3702.92.00	5911.10.10	8207.50.40	8517.40.50	8540.20.40	9617.00.60
2828.10.00	2916.32.20	2932.90.39	3703.10.30	5911.10.20	8207.50.60	8517.40.70	8540.30.00	
2835.10.00	2916.39.10	2932.90.41	3703.10.60	6903.20.00	8207.50.80	8517.81.00	8540.41.40	
2836.99.10	2916.39.15	2932.90.45	3703.20.30	6903.90.00	8213.00.30	8517.82.00	8540.42.00	
2836.99.50	2917.12.10	2932.90.50	3703.20.60	7011.10.10	8213.00.60	8517.90.05	8540.49.00	
2841.60.00	2917.19.15	2933.59.10	3707.10.00	7011.10.50	8213.00.90	8517.90.15	8541.60.00	
2843.21.00	2917.19.17	2933.59.15	3707.90.30	7013.32.10	8301.30.00	8517.90.35	8543.20.00	
2843.29.00	2917.19.50	2933.59.18	3707.90.60	7013.32.20	8301.70.00	8517.90.40	8544.30.00	
2843.90.00	2917.39.10	2933.59.20	3806.10.00	7013.32.30	8305.10.00	8517.90.60	8545.90.20	

Annex (con.)
2 of 8

Section B (con.):

(2) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, strike the symbol "(CA)" and the duty rate preceding it, and in lieu thereof insert "Free (CA)".

5402.42.00	5507.00.00
5403.20.60	5801.22.00
5505.20.00	5801.32.00

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 1, 1990, subchapter V of chapter 99 to the HTS is modified:

(1) by deleting from U.S. note 2 to such subchapter "heading 9905.00.00" and inserting in lieu thereof "subheadings 9905.00.00 and 9905.00.30".

(2) by deleting U.S. note 5 to such subchapter and renumbering U.S. notes 1, 2, 3, and 4 to such subchapter as U.S. notes 2, 4, 5, and 6, respectively, and by substituting "subheading" for "heading" and "subheadings" for "headings" at each occurrence in such notes.

(3) by inserting new U.S. notes 1, 3 and 7 to such subchapter, in numeric sequence, as follows:

"1. This subchapter contains the temporary modifications of the provisions of the tariff schedule established pursuant to the United States-Canada Free-Trade Agreement. Unless the context otherwise requires, goods originating in the territory of Canada described in the provisions of this subchapter, for which a rate of duty followed by the symbol "(CA)" is herein provided, are subject to duty at the rate set forth in lieu of the rate provided therefor in chapters 1 through 98. No other preferential tariff treatment provided under general note 3(c) to the tariff schedule shall be afforded under the provisions of this subchapter. Unless otherwise provided, the provisions and notes of this subchapter are effective as to such goods, under general note 3(c)(vii) to the tariff schedule, through the close of December 31, 1998, on which date this subchapter shall be deleted from the tariff schedule and shall cease to apply to any goods entered after that date.

3. On or after January 1 of each of the following years, the percentage set forth in the "Special" subcolumn of the rates of duty 1 column for subheading 9905.00.30 which is applicable to goods originating in the territory of Canada shall be modified as follows:

1991	1992
40 percent	20 percent

7. Whenever a fabric is entered under subheading 9905.00.30, the importer shall file with the appropriate Customs officer a written statement, accompanied by such supporting documentation as the Commissioner of Customs may require, stating that the imported fabric is intended for use as outer covering in the manufacture of upholstered furniture."

(4) by indenting the article descriptions of headings 9905.00.00, 9905.00.10 and 9905.00.20 at the same level of indentation as the article description of subheading 9904.30.50; by inserting the following new superior text immediately preceding such provisions: "Goods originating in the territory of Canada under general note 3(c)(vii) to the tariff schedule:"; and by striking out, from the rate of duty column 2 and from the "General" and the "Special" subcolumns of the rates of duty 1 column in each such provision as appropriate, the words "No change", along with any symbols in parentheses following such words in the "Special" subcolumn.

(5) by deleting from subheading 9905.00.00 in the article description for such subheading "7416.00", "8483.10", "8501.20", "8501.31", "8536.41", "8539.10", "8539.21", "8539.29", "8544.30", "9026.10", "9026.20", "9026.80", "9026.90", "9030.39", "9030.40", "9032.10", and "9032.20"; and by deleting for such subheading in the Rates of Duty 1-Special subcolumn "U.S. note 3" and inserting in lieu thereof "U.S. note 5".

Annex (con.)
3 of 8

Section C (con.):

(6) by inserting in numerical sequence in such subchapter the following HTS subheadings set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

(Goods originating...)

"9905.00.30	Upholstery fabrics certified by the importer as intended for use as outer covering in the manufacture of upholstered furniture, provided for in the following provisions:					
	5208.39	5210.51	5407.54	5513.41	5515.91	5801.35
	5208.42	5210.59	5407.60.20	5514.21	5515.99	5801.36
	5208.49	5211.31	5407.72	5514.22	5516.13	5801.90
	5208.52	5211.32	5407.73.20	5514.23	5516.14	5802.30
	5208.53	5211.39	5407.74	5514.29	5516.22	5903.10
	5208.59	5211.41	5407.82	5514.31	5516.23	5903.20
	5209.31	5211.43	5407.83	5514.32	5516.24	5903.90
	5209.32	5211.49	5407.84	5514.33	5516.43	5906.99
	5209.39	5211.51	5407.92.20	5514.39	5516.93	5907.00
	5209.41	5211.52	5407.94.20	5514.41	5801.10	60 percent of the
	5209.43	5211.59	5408.22	5514.42	5801.22	column 1-general
	5209.49	5407.10	5408.23.20	5514.43	5801.23	rate of duty
	5209.51	5407.42	5408.24	5514.49	5801.25	applicable under
	5209.52	5407.43.20	5512.19	5515.11	5801.26	the respective
	5209.59	5407.44	5512.99	5515.12	5801.31	listed heading
	5210.39	5407.52.20	5513.21	5515.21	5801.32	or sub-
	5210.49	5407.53.20	5513.23	5515.29	5801.33	heading (CA)
9905.02.10	Meat and edible meat offal of grouse, partridges, pheasants and squabs (provided for in subheading 0208.90.40).....					
	[See section G of this Annex (CA)]					
9905.20.05	Frozen battered and breaded onion rings and chips (provided for in subheading 2004.90.90).....					
	[See section G of this Annex (CA)]					
9905.20.10	Grape juice, not concentrated (provided for in subheading 2009.60.00).....					
	Free (CA)					
9905.20.15	Juice of any single fruit, except fruits provided for elsewhere in heading 2009, not concentrated (provided for in subheading 2009.80.60).....					
	Free (CA)					
9905.20.20	Mixtures of fruit juices, not concentrated, and concentrated mixtures of fruit juices containing not less than 50 percent by volume of pineapple juice (provided for in subheading 2009.90.40).....					
	Free (CA)					
9905.28.10	Sodium azide (provided for in subheading 2850.00.50).....					
	Free (CA)					
9905.29.05	Acetylene (provided for in subheading 2901.29).....					
	Free (CA)					
9905.29.10	Tetradecabromodiphenoxybenzene (provided for in subheading 2909.30.40).....					
	Free (CA)					
9905.29.15	Diocetyl diphenylamine (provided for in subheading 2921.44.50).....					
	Free (CA)					
9905.29.20	N-(9-Fluorenyl)methoxycarbonyloxy)succinimide (provided for in subheading 2925.19.50).....					
	Free (CA)					
9905.29.25	Organo-silicon compounds, organo-phosphines, and benzenboronic acid (phenylboron hydroxide) (provided for in heading 2931.00).....					
	Free (CA)					
9905.29.30	N,N'-Carbonyldiimidazole (provided for in subheading 2933.29.50).....					
	Free (CA)					
9905.29.35	2-(2'-Hydroxy-3',5'-di-tert-amylphenyl)benzotriazole, 2-(benzotriazol-2-yl)-4,6-bis(methylethyl-1-phenylethyl)phenol, and 2-(2'-hydroxy-5'-methylphenyl)benzotriazole (provided for in subheading 2933.90).....					
	Free (CA)					
9905.30.10	Aminocaproic acid, antibacterial creams containing sulfanilamide as the single active ingredient, antihistaminic agents in tablet form containing terfenadine as the single active ingredient, anthelmintic based on pyrantel pamoate or morantel tartarate for treating internal parasites in horses and in dairy and feed cattle, antimicrobial ointments other than sulfonamides for the treatment of vaginal yeast infections in animals, and laxatives for animals (provided for in subheading 3004.90.60).....					
	Free (CA)					

Annex (con.)

4 of 8

Section C(6) (con.):

[Goods originating....]

9905.34.10	Soap in the form of bars, cakes, molded pieces or shapes (provided for in subheading 3401.11.50).....	Free (CA)
9905.38.05	Caustic alkali liquid (black liquor) (provided for in subheading 3804.00.50).....	Free (CA)
9905.38.10	Gaseous mixtures of hydrogen sulfide and nitrogen, gaseous mixtures of nitric oxide and nitrogen, and phosphonium salts (provided for in subheading 3823.90).....	Free (CA)
9905.39.05	Bathtubs and showerstalls of plastics reinforced with glass fibers (provided for in subheading 3922.10).....	Free (CA)
9905.39.10	Facemasks and visors specially designed for headgear used in ice-hockey (provided for in subheading 3926.90.90).....	Free (CA)
9905.40.10	Infant pacifiers of vulcanized rubber (provided for in subheading 4014.90.50).....	Free (CA)
9905.44.05	Plywood doorskins having a face ply of birch (provided for in subheading 4412.12.10).....	Free (CA)
9905.44.10	Pressure treated lumber, finger-jointed builders' joinery, and edge-glued lumber (provided for in subheading 4418.90.40).....	Free (CA)
9905.44.15	Laminated hemlock post blanks, finger-jointed lumber, and edge-glued lumber (provided for in subheading 4421.90.90).....	Free (CA)
9905.54.05	Nylon yarn, single, untwisted or with a twist not exceeding 50 turns/m (provided for in subheading 5402.41.00).....	Free (CA)
9905.54.10	Yarn, solely of polyurethane, single, untwisted, not on beams (provided for in subheading 5402.49.00).....	Free (CA)
9905.54.15	Nylon filament fabrics for typewriter and computer ribbons (provided for in subheading 5407.41.00).....	Free (CA)
9905.55.10	Aramid staple fibers, not carded, combed or otherwise processed for spinning (provided for in subheading 5503.10.00).....	Free (CA)
9905.59.05	Transmission or conveyer belts suitable for use with the machinery of subheadings 8433.40, 8433.51, 8433.52, 8433.53, 8433.59, or 8436.80 (provided for in subheading 5910.00.10).....	Free (CA)
9905.59.10	Packing yarns with cores of glass fibers, whether or not incorporating a metal wire, covered with a textile wrapper (provided for in subheading 5911.90.00).....	Free (CA)
9905.61.05	Pants and shells for pants for use in ice hockey (provided for in subheadings 6114.30.30, 6210.40.10, or 6210.40.20).....	Free (CA)
9905.61.10	Gloves for use in ice hockey (provided for in subheadings 6116.93.20 or 6216.00.48).....	Free (CA)
9905.65.10	Headgear of reinforced or laminated plastics for use in ice hockey (provided for in subheading 6506.10.30).....	Free (CA)
9905.66.10	Canes specially designed for use by the blind and orthopedic canes (provided for in heading 6602.00.00).....	Free (CA)
9905.70.10	Yarns and woven fabrics of electrically nonconductive continuous glass fiber filaments having a diameter of not less than 9.3 microns but not more than 10.7 microns, and impregnated, coated or covered with resorcinol formaldehyde latex (provided for in subheadings 7019.10.10, 7019.10.20, or 7019.20).....	Free (CA)
9905.73.05	Railway track switch heaters and parts thereof (provided for in subheading 7322.90.00).....	Free (CA)
9905.73.10	Treeball baskets (provided for in subheading 7326.20).....	Free (CA)

Annex (con.)

5 of 8

Section C(6) (con.):

[Goods originating...]

9905.73.15	Flush floor and duct systems (provided for in subheading 7326.90.90).....	Free (CA)
9905.82.10	Handles, incorporating a socket wrench, for mechanical automobile jacks (provided for in subheading 8204.11.00).....	Free (CA)
9905.83.05	Push-button combination doorlocks (provided for in subheading 8301.40.60).....	Free (CA)
9905.83.10	Parts of locks of a kind used for furniture, and parts of push-button combination doorlocks (provided for in subheading 8301.60.00).....	Free (CA)
9905.84.05	Parts of pneumatic power engines and motors (provided for in subheading 8412.90).....	Free (CA)
9905.84.10	Soft ice-cream makers and dispensers (provided for in subheadings 8418.61.00 or 8418.69.00).....	Free (CA)
9905.84.15	Parts of filtering or purifying machinery and apparatus for gases of subheading 8421.39 (provided for in subheading 8421.99.00).....	Free (CA)
9905.84.20	Log loaders, and front-end loaders designed to be attached to tractors and suitable for use in agriculture, horticulture, or forestry (provided for in subheading 8428.90.00).....	Free (CA)
9905.84.25	Parts of pneumatic elevators and conveyors of subheading 8428.20, parts suitable for use solely or principally with grain augers of subheading 8428.39.00, and parts of front-end loaders designed to be attached to tractors and suitable for use in agriculture, horticulture or forestry (provided for in subheading 8431.39.00).....	Free (CA)
9905.84.30	Key cutting machinery (provided for in subheading 8460.90.00).....	Free (CA)
9905.84.35	Parts and accessories of vertical turret lathes of subheading 8458.99.10, parts and accessories of honing or lapping machines of subheading 8460.40, and parts of key-cutting machinery (provided for in subheading 8466.93.70).....	Free (CA)
9905.84.40	Shank straighteners (provided for in subheading 8462.29).....	Free (CA)
9905.84.45	Parts and accessories of duplicating machines of subheading 8472.10, of pencil sharpeners of subheading 8472.90.40, and of other office machines of subheading 8472.90.80 (provided for in subheading 8473.40.40).....	Free (CA)
9905.84.50	Barrels and cylinders for plastic processing machines (provided for in subheading 8477.80.00).....	Free (CA)
9905.84.55	Parts of blow-molding machines of subheading 8477.30, and parts of barrels and cylinders for plastic processing machines (provided for in subheading 8477.90.00).....	Free (CA)
9905.84.70	Universal joints (provided for in subheading 8483.60.40).....	Free (CA)
9905.84.75	Parts, other than for clutches, of the goods of subheadings 8483.10.30, 8483.10.50, 8483.60.40, and 8483.60.80 (provided for in subheading 8483.90.80).....	Free (CA)
9905.85.05	Electric gear motors (provided for in subheadings 8501.33.30, 8501.33.40, 8501.34.30, 8501.51, 8501.53.60 or 8501.53.80).....	Free (CA)
9905.85.10	Parts of electric motors and generators of subheadings 8501.20, 8501.31, 8501.32.20, 8501.32.60, 8501.61, or 8501.62, and parts of electric gear motors of subheadings 8501.33.30, 8501.33.40, 8501.34.30, 8501.51, 8501.53.60, or 8501.53.80 (provided for in heading 8503.00).....	Free (CA)

Annex (con.)

6 of 8

Section C(6) (con.):

[Goods originating...]

9905.85.15	Auto-transformers having an individual base MVA exceeding 100 MVA but not exceeding 300 MVA, regardless of voltage classification, and transformers, other than auto-transformers, having an individual base MVA exceeding 50 MVA but not exceeding 275 MVA, regardless of voltage classification, and transformers exceeding 10,000 kVA having an individual voltage classification of 765 kV or greater (provided for in subheading 8504.23.00).....	[See section G of this Annex (CA)]
9905.85.20	Bushings and tap changers of auto-transformers or transformers of subheading 9905.85.15 (provided for in subheading 8504.90.00).....	[See section G of this Annex (CA)]
9905.85.25	Parts of primary cells and primary batteries of subheadings 8506.12 and 8506.13 (provided for in subheading 8506.90.00).....	Free (CA)
9905.85.30	Parts of electric storage batteries other than lead-acid or nickel-cadmium batteries (provided for in subheading 8507.90.80).....	Free (CA)
9905.85.35	Food grinders and processors (provided for in subheading 8509.40.00).....	Free (CA)
9905.85.40	Parts of electric soldering irons and guns of subheading 8515.11.00 (provided for in subheading 8515.90.40).....	Free (CA)
9905.85.45	Transmission apparatus incorporating reception apparatus, other than radio paging devices (provided for in subheading 8525.20).....	Free (CA)
9905.85.50	Antennas for land mobile transceivers, cellular telephones, or radio and television transmitters, and parts thereof (provided for in subheading 8529.10).....	Free (CA)
9905.85.55	Parts of apparatus of subheadings 8525.10, 8525.20 (other than radio paging devices), 8525.30, 8527.11, 8527.31, and 8527.32 (provided for in subheading 8529.90).....	Free (CA)
9905.85.60	Parts of burglar or fire alarms and similar apparatus of subheading 8531.10 and of indicator panels incorporating liquid crystal devices or light emitting diodes of subheading 8531.20 (provided for in subheading 8531.90)....	Free (CA)
9905.85.65	Parts of electrical capacitors of subheadings 8532.21, 8532.22, and 8532.30 (provided for in subheading 8532.90.00).....	Free (CA)
9905.85.70	Parts of signal generators (provided for in subheading 8543.90).....	Free (CA)
9905.86.10	Railway freight cars imported for temporary use in transportation within the United States and certified by the importer to be exported within 1 year from the date of importation (provided for in heading 8606).....	Free (CA)
9905.87.10	Aluminum construction drop-center livestock trailers having a g.v.w. of 11.778 metric tons and a length exceeding 12 m (provided for in subheading 8716.39.00).....	Free (CA)
9905.89.10	Personal watercraft, being vessels of 5 m or less in overall length that are inboard powered, water-jet driven, and designed to be operated while sitting on, standing on, or kneeling on, rather than sitting in, as in conventional vessels (provided for in subheading 8903.99.90).....	Free (CA)
9905.90.05	Parts and accessories of the instruments and apparatus of subheading 9030.31 (provided for in subheading 9030.90.80).....	Free (CA)
9905.90.10	Parts and accessories of the instruments and apparatus of subheadings 9030.39 and 9030.40 (provided for in subheading 9030.90.80).....	[See section G of this Annex (CA)]
9905.90.15	Parts and accessories of test benches (provided for in subheading 9031.90.60).....	Free (CA)

Annex (con.)
7 of 8

Section C(6) (con.):

[Goods originating...:]

- 9905.90.20 Electronic logic panels for multi-zone controls, automatic regulation or control instruments, and fan and humidity controls (provided for in subheading 9032.89.60)..... [See section G of this Annex (CA)]
- 9905.90.25 Parts and accessories of thermostats of subheading 9032.10, of manostats of subheading 9032.20, and of electronic logic panels for multi-zone controls, automatic regulation or control instruments, and fan and humidity controls of subheading 9032.89.60 (provided for in subheading 9032.90.60)..... [See section G of this Annex (CA)]
- 9905.94.10 Dental lamps and parts thereof (provided for in subheadings 9405.40, 9405.91.60, 9405.92.00, or 9405.99)..... Free (CA)
- 9905.95.10 Closed-face spin casting fishing reels (provided for in subheading 9507.30)... Free (CA)"

Section D. Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after May 1, 1990, for the HTS subheadings 1102.90.30 and 1102.90.50, in the Rates of Duty 1-Special subcolumn, strike the symbol "(CA)" and the duty rate preceding it, and in lieu thereof insert in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order.

Section E. Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after July 1, 1990:

(1) For the HTS subheadings 2935.00.44 and 2935.00.46, in the Rates of Duty 1-Special subcolumn, strike the symbol "(CA)" and the duty rate preceding it, and in lieu thereof insert in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order.

(2) The article description of subheading 9905.61.10 is modified by deleting "6216.00.48" and by inserting in lieu thereof "6216.00.47".

Section F. Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1991:

(1) For the HTS subheadings 8481.10.00 and 8481.80.90, in the Rates of Duty 1-Special subcolumn, strike the symbol "(CA)" and the duty rate preceding it, and in lieu thereof insert in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order.

(2) by inserting in numerical sequence in subchapter V of chapter 99 to the HTS the following HTS subheadings set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

[Goods originating...:]

- "9905.84.60 Valves, other than valves of subheading 8481.80.90, exceeding 19 mm internal pipe size for gas-fired apparatus for cooking, heating buildings or water, or for refrigeration, including such valves used in the gas line between such apparatus and the meter or in the gas line between such apparatus and the consumer's gas storage device, and wellhead valves, other than valves of subheading 8481.80.90, not less than 5.08 cm nor exceeding 7.62 cm nominal size, rated for service in working pressures not exceeding 13,790 kPa W.O.G (water, oil, gas) excluding needle valves, for use in the exploration, discovery, development, maintenance, testing, depletion or production of oil or natural gas wells (provided for in subheading 8481.80)..... Free (CA)
- 9905.84.65 Parts of pressure-reducing valves of subheading 8481.10, of taps, cocks, valves and similar appliances of subheading 8481.80.90, and of valves used for gas-fired apparatus and wellhead valves of subheading 9905.84.60 (provided for in subheading 8481.90)..... Free (CA)"

Annex (con.)
8 of 8

Section G. Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after April 1 in 1990, and January 1 of each of the following years set forth in the following tabulation, for each of the following HTS subheadings, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof on such aforementioned dates.

Heading/ Subheading	1990	1991	1992	1993	1994	1995	1996	1997	1998
2007.99.05	:2.4%	:2.1%	:1.8%	:1.5%	:1.2%	:0.9%	:0.6%	:0.3%	:Free
2007.99.20	:5.6%	:4.9%	:4.2%	:3.5%	:2.8%	:2.1%	:1.4%	:0.7%	:Free
2007.99.25	:5.6%	:4.9%	:4.2%	:3.5%	:2.8%	:2.1%	:1.4%	:0.7%	:Free
2007.99.35	:5.6%	:4.9%	:4.2%	:3.5%	:2.8%	:2.1%	:1.4%	:0.7%	:Free
7416.00.00	:3.4%	:2.2%	:1.1%	:Free	:Free	:Free	:Free	:Free	:Free
8501.20.20	:2.5%	:1.6%	:0.8%	:Free	:Free	:Free	:Free	:Free	:Free
8501.20.40	:3%	:2%	:1%	:Free	:Free	:Free	:Free	:Free	:Free
8501.20.50	:3%	:2%	:1%	:Free	:Free	:Free	:Free	:Free	:Free
8501.20.60	:2.2%	:1.4%	:0.7%	:Free	:Free	:Free	:Free	:Free	:Free
8501.31.20	:2.5%	:1.6%	:0.8%	:Free	:Free	:Free	:Free	:Free	:Free
8501.31.40	:3%	:2%	:1%	:Free	:Free	:Free	:Free	:Free	:Free
8501.31.50	:3%	:2%	:1%	:Free	:Free	:Free	:Free	:Free	:Free
8501.31.60	:2.2%	:1.4%	:0.7%	:Free	:Free	:Free	:Free	:Free	:Free
8536.41.00	:3.1%	:2.1%	:1%	:Free	:Free	:Free	:Free	:Free	:Free
9026.10.20	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9026.10.40	:29.4¢ each + : 4.5%	:19.6¢ each + : 3%	:9.8¢ each + : 1.5%	:Free	:Free	:Free	:Free	:Free	:Free
9026.10.60	:2.8%	:1.8%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9026.20.40	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9026.20.80	:2.8%	:1.8%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9026.80.20	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9026.80.40	:29.4¢ each + : 4.5%	:19.6¢ each + : 3%	:9.8¢ each + : 1.5%	:Free	:Free	:Free	:Free	:Free	:Free
9026.80.60	:2.8%	:1.8%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9026.90.40	:5.4%	:3.6%	:1.8%	:Free	:Free	:Free	:Free	:Free	:Free
9026.90.60	:2.8%	:1.8%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9030.39.00	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9030.40.00	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9032.10.00	:2.8%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9032.20.00	:2.8%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9905.02.10	:6.6¢/kg	:4.4¢/kg	:2.2¢/kg	:Free	:Free	:Free	:Free	:Free	:Free
9905.20.05	:5.6%	:4.9%	:4.2%	:3.5%	:2.8%	:2.1%	:1.4%	:0.7%	:Free
9905.85.15	:0.9%	:0.4%	:Free	:Free	:Free	:Free	:Free	:Free	:Free
9905.85.20	:0.9%	:0.4%	:Free	:Free	:Free	:Free	:Free	:Free	:Free
9905.90.10	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9905.90.20	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free
9905.90.25	:2.9%	:1.9%	:0.9%	:Free	:Free	:Free	:Free	:Free	:Free

[FR Doc. 90-12622

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Rules and Regulations

Federal Register

Vol. 55, No. 104

Wednesday, May 30, 1990

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 GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA02

Corrective Action and Reporting Requirements Relating to Executive Agency Ethics Programs: Implementation of the Office of Government Ethics Reauthorization Act of 1988

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing final rules to establish procedures: (1) To correct deficiencies in executive branch agency ethics programs; (2) to bring individual agency employees into compliance with rules, regulations and executive orders relating to standards of conduct and conflicts of interest; and (3) to specify requirements for executive agency reports.

EFFECTIVE DATE: May 30, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie L. Wilcox, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Review of Comment Letters and Rule Changes Adopted

The Office of Government Ethics published interim regulations on January 18, 1990 at 55 Federal Register 1665 establishing procedures to correct deficiencies in executive branch agency ethics programs, to bring individual executive agency employees into compliance with ethics standards and to specify requirements for executive agency reports and assistance. The interim rules document provided that interested persons could file comments through March 19, 1990. We received comments from 5 agencies.

The Office of Government Ethics (OGE) has adopted changes that accommodate national security concerns and clarify executive agencies' role in hearings and their responsibility for notifying OGE of conflict cases referred for possible prosecution. These changes address the substance of the concerns expressed by four of the five agencies that furnished comments (the other comment was not adopted, see below).

Three agencies noted that new § 2638.603(b) of 5 CFR would appear to require reporting by agencies to OGE of any case referred for possible prosecution, whereas Section 402(e) of the Ethics in Government Act of 1978, as amended, 5 U.S.C. app. IV, only requires notification of cases involving alleged violations of Federal conflict of interest laws. Sections 2638.603(b) and 2638.603(c)(1) of 5 CFR are accordingly revised to make clear that the notification requirement applies only to alleged violations of Federal conflict of interest laws referred for prosecution pursuant to 28 U.S.C. 535. One agency noted that conflict of interest cases may be referred for possible prosecution under authorities other than 28 U.S.C. 535 and another noted that the Department of Justice has systems in place that may provide information about case referrals. OGE recognizes that there are other referral authorities and other sources of information about conflict of interest cases referred for possible prosecution. Section 2638.603 is intended to implement the statutory requirement under the Ethics Act that agencies, unless otherwise prohibited by law, report to OGE any conflict of interest case referred for possible prosecution under 28 U.S.C. 535. It does not foreclose the collection of other information or the use of other sources of information about conflict of interest cases.

Two agencies expressed concern with the absence of regulatory language in the interim rules that would accommodate any national security concerns that might arise in connection with proceedings involving individual employees conducted under subpart E. They suggested that language be inserted at several points to ensure that personnel involved in investigations and hearings, including administrative law judges, have proper security clearances and that classified information is not

improperly disclosed. In lieu of the several changes recommended by these agencies, a new § 2638.501(d) of 5 CFR is added to provide that proceedings under subpart E shall be conducted in accordance with national security requirements. Furthermore, § 2638.505(e)(2) is revised to provide that hearings, which are generally to be open to the public, may be closed, *inter alia*, in the interest of national security.

Two agencies felt that the regulations did not clearly define the agency's role in proceedings conducted under subpart E. One suggested a provision for agency participation in proceedings involving its own employees in order to protect agency interests and information. The other suggested changes that would make the agency concerned virtually a third party to hearings conducted under § 2638.505. That agency suggested for example, that the designated agency ethics official be served with copies of all submissions as well as a copy of the administrative law judge's recommended decision and be provided an opportunity to comment thereon.

The procedures contained in subpart E will generally ensure that the views of the agency of the individual employee involved are taken into account in any proceeding conducted under that subpart. The Office of Government Ethics does not agree that the designated agency ethics official should have an active role in such proceedings; this is simply not contemplated in the Ethics Act statutory scheme. However, to clarify and enhance the agency's role in hearings involving its own employees, we have amended §§ 2638.505(c) and 2638.505(g) of 5 CFR, respectively, to ensure that the views of the designated agency ethics official concerned may be obtained when necessary to develop the record and to provide that the Director may request comments by the designated agency ethics official on the recommended decision of the administrative law judge. To ensure that the employee's agency is apprised of proceedings under § 2638.505, we have adopted the recommendation to amend § 2638.505(b) to provide that a copy of the notice of proceedings shall be provided to the head of the agency and the designated agency ethics official. We have also adopted the recommendation that specific provision be made for attendance by the designated agency ethics official at

hearings closed to the public. Accordingly, § 2638.505(e)(2) is amended to permit attendance by the designated agency ethics official of the employee's agency at closed hearings unless specifically excluded by the administrative law judge.

The Office of Government Ethics rejected the recommendation by the fifth commenting agency that the regulations be amended to provide that an agency attorney who has furnished ethics advice to an employee who is the subject of a proceeding under subpart E may not be required to provide information with respect of that advice without the consent of the employee. This recommendation sought recognition of the existence of a privilege similar to the attorney-client privilege as between agency attorneys or ethics officials and individual employees. In providing advice relating to standards of conduct and conflicts of interest, agency attorneys and ethics officials act on behalf of their Government agency and not in an attorney-client or similar relationship to the employees they advise.

Finally, OGE has additionally decided to clarify that these corrective action and agency report regulations apply to executive branch agencies and their employees, and not to the other two branches of the Government, by amending the titles of subparts D, E and F of 5 CFR part 2638 to include reference to the executive branch (the amended subpart D title also makes it clear that ethics programs are the subject of its provisions).

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the Director of the Office of Government Ethics finds good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice is being waived because these regulations concern matters of agency organization, practice and procedure and because the Office of Government Ethics Reauthorization Act of 1988 has been in effect since November 1988, and it is essential to the workings of executive branch agency ethics programs that these revisions to the implementing regulations go into effect as soon as possible. Further, these revisions in large measure reflect the comments received on the interim rules published at 55 Federal Register 1665 (Jan. 18, 1990).

Executive Order 12291

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify under the Regulatory Flexibility Act [5 U.S.C. chapter 6] that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: May 8, 1990.

Donald E. Campbell,

Acting Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics pursuant to its authority under title IV of the Ethics in Government Act is adopting the interim rules amending 5 CFR part 2638 published at 55 FR 1665 (January 18, 1990) as final rules with the following changes:

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

1. The authority citation for part 2638 is revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV.

2. The title of subpart D of part 2638 is revised to read as follows:

Subpart D—Correction of Executive Branch Agency Ethics Programs

3. The title of subpart E of part 2638 is revised to read as follows:

Subpart E—Corrective and Remedial Action in Cases Involving Individual Executive Agency Employees

4. The title of subpart F of part 2638 is revised to read as follows:

Subpart F—Executive Branch Agency Reports

5. Section 2638.501 is amended by adding a new paragraph (d) at the end to read as follows:

§ 2638.501 In general.

* * *

(d) *National security.* Proceedings under this subpart shall be conducted in accordance with applicable national security requirements.

6. Section 2638.505 is amended by revising the introductory text of paragraph (b), by adding a new sentence to the end of paragraph (c), by removing the first two sentences of and adding three new sentences in place thereof to paragraph (e)(2), and by redesignating paragraphs (g)(1), (g)(2), and (g)(3) as paragraphs (g)(2), (g)(3) and (g)(4) and adding a new paragraph (g)(1) to read as follows:

§ 2638.505 Director's decision and order.

* * *

(b) *Notice.* The employee will be served, personally or by United States mail, with notice of proceedings to determine whether a violation of an ethics provision is occurring and whether corrective action is necessary to end the violation. A copy of the notice shall be provided to the head of the employee's agency and the designated agency ethics official thereof. The notice shall specify the employee's right to present evidence or arguments either in writing or, at the employee's written request, at a hearing conducted on the record. The notice shall be signed by the Director and shall include:

* * *

(c) * * * the Deputy General Counsel may request the views or report of the designated agency ethics official of the employee's agency when necessary to develop the record.

* * *

(e) * * *

(2) *Public hearings.* Hearings shall generally be open to the public. However, the administrative law judge may order a hearing or any part thereof closed, on his own initiative or upon motion of a party or other affected person, where to do so would be in the best interests of national security, the respondent employee, a witness, the public or other affected persons. Unless specifically excluded by the administrative law judge, the designated agency ethics official of the employee's agency shall be permitted to attend a closed hearing. * * *

* * *

(g) * * *

(1) Preliminary to issuing a decision and order, the Director may request that comments on the recommended decision be provided by the designated agency ethics official of the employee's agency.

7. Section 2638.603 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 2638.603 Reports of referral for possible prosecution.

(b) *Report of referral.* When any matter involving an alleged violation of Federal conflict of interest law is referred pursuant to 28 U.S.C. 535, the agency shall concurrently notify the Director of the Office of Government Ethics of the referral and provide a copy of the referral document, unless such notification or disclosure would otherwise be prohibited by law.

(c) *Disposition reports.* (1) Where there has been notice that the matter reported under paragraph (b) of this section will not be prosecuted, the agency shall promptly notify the Director of that fact, the date of the decision and any disciplinary or corrective action initiated, taken or to be taken by the agency.

[FR Doc. 90-12489 Filed 5-29-90; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-90-103]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this final rule increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1989 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

EFFECTIVE DATE: June 29, 1990.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural

Marketing Service, USDA, room 2624-S; P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, (202) 382-1115.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the *Federal Register* (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule increases the amount of assessments on certain imported pork and pork products subject to assessment by one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated increase in assessments of \$62,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the *Federal Register* (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909 and 53 FR 30243) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the

live porcine animals from which such pork and pork products were produced. This final rule increases the assessment on all but six of the imported pork and pork products subject to assessment as published in the *Federal Register* on September 21, 1989, and effective on October 23, 1989 (54 FR 38813). This increase is consistent with the increase in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1989 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This increase in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule does not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, *Federal Register* at 51 FR 41901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and

Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1989, the average annual seven market price increased to \$43.77, an increase of about 1 percent of the 1988 per hundred weight price of \$43.25 which results in an increase in assessments for all but six of the Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110, 54 FR 15915; April 20, 1989, as amended at 34 FR 38814; September 21, 1989, of an amount equal to one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. The HTS numbers listed in the table in section 1230.110 on which the per pound or kilogram assessment will not be increased are 0203.19.20000, 0203.29.20008, 0210.19.00005, 1601.00.20007, 1602.49.20009, and 1602.49.40005. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1989, through October 31, 1989, the increases in the assessment amounts would result in an estimated \$62,000 increase in assessments over a 12-month period.

On March 26, 1990, AMS published in the *Federal Register* (55 FR 11025) a proposed rule which would increase the per-pound assessments on imported pork and pork products consistent with increases in the 1989 average prices of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposed rule was published with a request for comments by April 25, 1990. No comments were received. Accordingly, this final rule establishes the per-pound assessment on imported pork and pork products as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

2. Amend subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported live porcine animals, pork, and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004.....	0.25 percent Customs Entered Value.
0103.91.00006.....	0.25 percent Customs Entered Value.
0103.92.00005.....	0.25 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and Pork Products	Assessment	
	cents/lb	cents/kg
0203.11.00002.....	.16	.352736
0203.12.10009.....	.16	.352736
0203.12.90002.....	.16	.352736
0203.19.20000.....	.18	.396828
0203.19.40006.....	.16	.352736
0203.21.00000.....	.16	.352736
0203.22.10007.....	.16	.352736
0203.22.90000.....	.16	.352736
0203.29.20008.....	.18	.396828
0203.29.40004.....	.16	.352736
0206.30.00006.....	.16	.352736
0206.41.00003.....	.16	.352736
0206.49.00005.....	.16	.352736
0210.11.00003.....	.16	.352736
0210.12.00208.....	.16	.352736
0210.12.00404.....	.16	.352736
0210.19.00005.....	.18	.396828
1601.00.20007.....	.22	.485012
1602.41.20203.....	.24	.529104
1602.41.20409.....	.24	.529104
1602.41.90002.....	.16	.352736
1602.42.20202.....	.24	.529104
1602.42.20408.....	.24	.529104
1602.42.40002.....	.16	.352736
1602.49.20009.....	.22	.485012
1602.49.40005.....	.18	.396828

Done at Washington, DC on: May 24, 1990.

Daniel Haley,
Administrator.

[FR Doc. 90-12430 Filed 5-29-90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Reg. CC; Docket No. R-0679]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted amendments to its Regulation CC, Availability of Funds and Collection of Checks. The regulation requires banks to make funds available to their customers within specified times, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. The final amendments include changes to the model forms to reflect the permanent schedule and other technical and clarifying modifications to the regulation and its Official Commentary (appendix E to the regulation). The Board has determined not to adopt the proposed amendment that would shorten the time requirements for giving notice of nonpayment.

EFFECTIVE DATES: The amendments to § 229.13(h)(4) and its Commentary are effective September 1, 1990. The amendment to the Commentary to § 229.36(e) is effective February 1, 1991. All other amendments are effective May 22, 1990.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Brett, Manager (202/452-2934), Division of Federal Reserve Bank Operations, Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to disclosures or appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. *For the hearing impaired only:* Telecommunications Device for the Deaf, EArnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010). The regulation requires banks ¹ to make

¹ The regulation defines "bank" to include all depository institutions, including commercial banks.

Continued

funds available to their customers for withdrawal within specified time frames, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. Section 229.33(a) of the regulation currently requires a paying bank to provide notice of nonpayment of any returned check in the amount of \$2,500 or more. This notice must be received by the depository bank by 4 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depository bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depository banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Therefore, in December 1989 (Docket No. R-0679, 54 FR 51405, December 15, 1989), the Board requested comment on alternatives to shorten the current time requirements for giving notice of nonpayment. In response to various questions that have been raised by banks regarding the regulation, the Board also issued for comment proposed technical and clarifying amendments. The Board received 124 comments on the proposed amendments to Regulation CC. Commenters comprised:

Commercial Banks.....	43
Bank Holding Companies.....	24
Corporations.....	21
Savings and Loan Institutions.....	15
Trade Associations.....	8
Credit Unions.....	7
Clearing Houses.....	5
Federal Home Loan Banks.....	1
Total.....	124

As discussed below, commenters were divided on whether and by how much the period for notice of nonpayment should be shortened. After reviewing the comments, the Board has determined that, on balance, the operational difficulties associated with shortening the time for notice of nonpayment outweigh the risks resulting

savings and loan associations, and credit unions. A "depository bank" is defined as the first bank to which a check is transferred. A "paying bank" is generally the bank by, at, or through which a check is payable and to which it is sent for collection. A "returning bank" is a bank (other than the paying or depository bank) that handles a returned check or a notice in lieu of return.

from the current requirement. Therefore, the Board has not adopted an amendment to the notice of nonpayment provision. In addition, the Board issued proposed revisions to the deposit deadlines for the Federal Reserve notice of nonpayment service that would take effect if the time requirements for notice of nonpayment were to be shortened (Docket No. R-0680, 54 FR 51493, December 15, 1989). Thirty-four commenters discussed the proposed service changes and indicated how the Federal Reserve Banks' service should be modified if specific regulatory changes were adopted. Because the Board has not amended the notice of nonpayment provision, it has not adopted changes to the Federal Reserve notice of nonpayment service.

The final amendments and substantive comments are summarized below.

Section 229.2(k) Definition of "check." The Board was requested to clarify the status of ACH debit transfers under Regulation CC. The Board proposed a revision to the Commentary to the definition of "check" to state explicitly that an ACH debit transfer is not a check. The Board received fourteen comments, all in support of this proposal. The Board has adopted the amendment as proposed.

Section 229.2(r) Definition of "local check." The Board adopted final rules regarding the issuance of bank payable through checks in July 1989 (54 FR 32035, August 4, 1989). Under the new rules, effective February 1, 1991, bank payable through checks are required to contain, in a conspicuous place such as the title plate, the words "payable through" followed by the name of the payable through bank and the first four digits of the nine-digit routing number of the bank on which the check is written. Two sentences in the Commentary to the definition of "local check" refer to bank payable through checks that do not contain a designation of the payable through bank. The Board proposed to delete those sentences and to revise the Commentary to indicate that, in the case of bank payable through checks, the depository bank may rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

The Board received 16 comments on this proposal. Ten commenters supported the proposal with no specific comment. Four commenters requested that the Board clarify whether the proposed language refers to the first four digits located in the check's Magnetic

Ink Character Recognition ("MICR") line or located elsewhere on the check. Three commenters noted that any nonautomated means of identifying the paying bank is inefficient and burdensome to the depository bank.

The Board has revised the proposed language to clarify that the Commentary refers to the four-digit number printed near the name of the paying bank in the title plate, not the first four digits of the routing number in the MICR line. In addition, instead of making the proposed deletions, the Board has revised the existing Commentary language to explain that, until the February 1, 1991 transition date, when paying banks will be liable for payable through checks issued by their customers that do not name the payable through bank, such payable through checks may continue to be issued and depository banks cannot rely on the routing number to determine whether these checks are local or nonlocal.

Section 229.2(u) Definition of "noncash item." The Board proposed a revision to the Commentary to "noncash item" to clarify that if a bank handles an item in the same manner as it would handle a cash item, the item does not qualify as a noncash item. The Board received 16 comments on this proposal. Six commenters supported the proposal without specific comment, and seven commenters opposed the amendment. Those in opposition stated that noncash items should not become cash items by virtue of the manner in which they are handled, and that depository banks should be allowed to collect noncash items as quickly as possible without compromising the status of the items or giving up noncash item defenses. Two commenters asked that the Board clarify the problem this amendment is intended to address.

The Board has added the phrase "by the depository bank" to the final amendment to clarify that if a depository bank accepts a check as a noncash item it must forward the check as a noncash item (for example, with special payment instructions attached) and not in the same manner it normally handles checks for forward collection. The purpose of this provision is to prevent a depository bank from evading the availability and notice requirements of the regulation by accepting a check for deposit as a noncash item, yet collecting the check in the same manner as it would collect a cash item. Banks generally handle noncash items outside of the normal check collection process because they do not qualify for automated handling. A depository bank should accept checks as noncash items

only in limited circumstances, such as when its customer is concerned about whether the check will be paid and requests that the check be accompanied by special notice or payment instructions.

One commenter stated that a depository bank should be able to attach a MICR strip to an un-MICRed item and collect it as a cash item. A depository bank may add a MICR strip to an unMICRed item, but the item must then be treated as a check and not a noncash item.

One commenter asked whether a noncash item mistakenly accepted as a cash item by a teller must be given cash item availability. If a depository bank accepts a noncash item as a cash item inadvertently, it must either provide availability according to the regulation or return the item to the customer.

Section 229.3(a) Enforcement agencies. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Congress amended the Expedited Funds Availability Act regarding the enforcement agency for savings associations. The Board proposed a conforming amendment to Regulation CC to provide that the Director of the Office of Thrift Supervision has authority to enforce compliance with Regulation CC by savings associations. The Board received eight comments on this amendment, seven in support and one objecting to allowing the Office of Thrift Supervision to oversee compliance. Because this amendment is statutorily mandated, the Board has adopted it as proposed.

Section 229.13(h)(4) Availability of deposits subject to exceptions. The regulation provides that if a bank invokes an exception hold under § 229.13 (b) through (f), it may extend the availability schedule by a reasonable period of time. Currently, the regulation provides that a four-business-day extension is a reasonable period and that a longer extension may also be reasonable, but the bank has the burden of so establishing. The four-day period is designed to provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned. Thus, under the temporary schedule, a bank invoking an exception hold under § 229.13 may normally hold local checks until the seventh business day after deposit and nonlocal checks until the eleventh business day after deposit. When the permanent schedule becomes effective on September 1, 1990, these periods would have been shortened to six and nine business days, respectively.

Because there will be no further significant payments system improvements applicable to the return of checks before the permanent schedule becomes effective, it would be unlikely that depository banks would learn of the return of checks subject to a § 229.13 exception faster than they do today. Therefore, the Board requested comment on a proposal to extend the reasonable hold period from four days to five days for local checks and from four days to six days for nonlocal checks, thereby retaining the existing exception hold periods of seven and eleven days, respectively. The Board requested comment on whether such a change would obviate the need to revise disclosures and the need to extend the reasonable hold period, based on current returned check experience.

The Board received 51 comments on this proposal, all favoring the amendment. The commenters agreed that there have been no substantial improvements to the check collection system since the changes accompanying implementation of the temporary schedules and that the amendment would help reduce risk to depository banks. Twelve commenters stated that this amendment would obviate the need to revise disclosures, and eight stated that they would need to revise disclosures for the permanent schedule in any event. The Board has adopted the amendment as proposed.

Section 229.18(e) Changes in policy. The Board proposed to revise the Commentary to § 229.18(e) to clarify how institutions could disclose the changes in policy due to the implementation of the permanent schedule. Any necessary notice must be provided by October 1, 1990. Eighteen commenters addressed this proposal and were generally supportive. The Board has adopted the proposed amendments, with a revision to provide guidance to banks that reserve the right to impose the cash withdrawal limitation in § 229.12(d) when invoking a case-by-case hold.

One commenter asked whether an institution could disclose current and future policies on one disclosure form. This approach is permitted under the regulation provided the period during which each policy is applicable is clearly set forth. Another commenter asked whether banks could use existing stocks of forms supplemented with an attachment indicating the permanent schedule changes. This, too, is permitted under the regulation.

Section 229.19(a) When funds are considered deposited. Under § 229.19(a)(5)(ii), funds deposited at an

ATM or off-premise facility after the depository bank's cut-off hour of 12 noon or later are considered deposited on the next banking day. The Board was asked whether the 12 noon cut-off is determined by the local time of the ATM or off-premise facility or the local time of the branch or other location at which the account is maintained (the "account-holding branch").

The Board proposed to clarify that the depository bank could establish a cut-off hour for deposits at ATMs or other off-premise facilities of no earlier than 12 noon local time of the account-holding branch. The Board specifically requested comment on the operational and customer service implications of this proposal, and whether the cut-off should be determined by the local time of the ATM rather than the local time of the account-holding branch.

The Board received 34 comments on the proposal. Nineteen commenters supported the proposed rule that ATM cut-off hours should be determined by local time of the account-holding branch. Twelve commenters opposed or noted operational problems with the proposal. Three commenters did not voice a preference for either alternative; one of these commenters requested that the Board study the issue further and republish the proposal for comment.

Under the proposal, an East Coast bank that permits its customers to make deposits at ATMs nationwide could establish a 12 noon Eastern Time cut-off for receipt of ATM deposits. Thus, deposits made by customers of the East Coast bank at West Coast ATMs after 9 a.m. Pacific Time could be considered received on the next banking day, which may adversely affect the customer's availability of funds. Conversely, a West Coast bank would have to consider all deposits made at East Coast ATMs by 3 p.m. Eastern Time (12 noon Pacific Time) received on that banking day, which would limit the time for the ATM processor to remove the deposits from the ATM, verify and process them, and put them in the forward collection stream.

Operational and customer relations concerns were raised by both those who supported and those who opposed the proposal. It appears from the comments that some banks use a cut-off hour based on local time at the account-holding branch, some are based on local time at the ATM, and some are based on local time at a central processing facility.

Commenters in favor of the proposal stated that using local time of the ATM would require significant computer modification because their present

accounting and processing systems are currently based on local time of the account-holding branch. These commenters noted that customers understand their current cut-offs based on the local time at the account-holding branch and that this rule is consistent with other provisions of Regulation CC. Supporters of the proposal asserted that if they were required to base cut-offs on local time of the ATM, processing costs would increase, resulting in decreased services and/or increased fees to customers. One commenter, with ATM locations from the East Coast to Hawaii, strongly supported the proposal, citing servicing and processing cost savings. One trade association gave qualified support to the proposal, requesting that the Board monitor the ATM situation to protect depositors from an increasing number of interstate banks that may seek to take advantage of this rule in order to delay availability of ATM deposits by an extra day.

Many of the commenters opposed to the proposal were members of nationwide shared ATM networks. One commenter suggested that a bank be able to set its own cut-off hour consistent with its processing procedures. Another stated that the operator of a shared ATM network should be able to set the cut-off hour no earlier than noon local time of the ATM. Commenters noted that it would be impractical for the ATM operator to keep track of the local times of all the account-holding branches whose customers use the shared ATM and that the proposal may require several intraday pick-ups and manual processing.

Commenters that opposed the proposal argued that customers would benefit more from a cut-off time based on local time at the ATM because it is easier to understand and disclose. One commenter suggested that, if the ATM is in a locale where the depository bank has a branch, the cut-off hour should be determined by the local time of that branch, otherwise the bank could use local time at the account-holding branch. A Hawaii bank indicated that Hawaii banks with East Coast ATMs would be put at extreme disadvantage by the proposal.

The Board wishes to avoid disruption in current ATM and off-premise facility operations that would increase costs to both depository banks and consumers. The responses of the commenters indicate that if either alternative is adopted, some banks will experience significant operating difficulties, depending on the extent of their ATM network and on the relative locations of

the account-holding branch and the ATM or off-premise facility. Therefore, the Board has revised the Commentary to allow the depository bank to set a cut-off hour for ATMs and off-premise facilities at either 12 noon local time of the account-holding branch or 12 noon local time of the ATM or off-premise facility. The Board believes that this flexibility will enable banks to offer ATM deposit services to their customers over broad geographic areas, without incurring significant costs due to this provision of the Commentary. A bank must apply the cut-off hour for ATMs and off-premise facilities on a uniform basis for all locations and all customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request.

Commenters also suggested other related clarifications. The Commentary to the definitions of "business day" and "banking day" states that the day of deposit for funds received at an ATM is determined by the banking day at the account-holding branch at the time the funds are received at the ATM. One commenter requested that the Board revise this Commentary provision to clarify that deposits at ATMs are subject to a 12 noon cut-off rule, i.e., even if the account-holding branch is open until 5 p.m., deposits to an ATM are not necessarily considered received on that banking day if made between 12 noon and 5 p.m. The Board has revised the Commentary to "business day" and "banking day" to reflect the cut-off rule for ATM and off-premise facilities and to clarify how to determine the day of deposit at such locations.

Two commenters asked that the Board clarify whether the proposal would apply to both proprietary and nonproprietary ATMs. The Board believes this clarification is not necessary because § 229.19(a) does not distinguish between proprietary and nonproprietary ATMs.

Another commenter asked that the Board clarify "account-holding branch." Consistent with the Commentary to § 229.19(b), the revised Commentary refers to "the branch or other location at which the account is maintained." For example, the account-holding branch may be the branch that opened the account and acts as the primary office serving the customer, that maintains signature cards on the account or other customer information, or that is credited for the customer's deposits on the books of the bank.

Section 229.19(c) Effect on policies of depository bank. The Board proposed

a revision to the Commentary to § 229.19(c) to clarify the relationship between the availability schedules and the depository bank's right to charge back its customer's account for a returned check. The proposed language stated explicitly that the depository bank may charge back its customer's account upon receipt of a returned check or notice of nonpayment, even if the check or notice is received after the time by which the proceeds of the check must otherwise be made available for withdrawal under the provisions of the regulation.

The Board received 21 comments on this proposal, all in support. Two commenters suggested that the Board also allow placement of a hold upon receipt of a notice of nonpayment until the returned check is received, rather than immediately charging back the depositor's account. Under the regulation, a depository bank that receives a notice of nonpayment may place a hold under the reasonable cause exception of § 229.13(e), but this hold may not be unlimited; the depository bank has the burden of establishing the reasonableness of an extension of the regulation's availability schedule of more than five business days for local checks and six business days for nonlocal checks.

One commenter suggested amending the proposed language to state that "the regulation should not be interpreted as precluding the right" of the depository bank to charge back a customer's account based on receipt of a returned check for notice of nonpayment. The Board believes that the proposed language is essentially equivalent to the commenter's suggested language and has adopted the amendment as proposed.

Section 229.30(c) Extension of deadline. Increasingly, banks are providing banking services to the public on Saturdays and/or Sundays. These days are not regarded as banking days under Regulation CC, because Saturdays and Sundays are not "business days," but they may be regarded as banking days for the purposes of the Uniform Commercial Code ("UCC"). Banks that are open on Saturday may not have couriers leaving on Saturday to deliver returned checks, and even if they did, the returning or depository bank to which the returned checks were sent might not be prepared to receive or process checks until Sunday night or Monday morning.

Prior to the implementation of Regulation CC, these banks could meet a UCC Saturday night midnight deadline for checks presented on Friday by

mailing their returned checks on Saturday. Since the implementation of Regulation CC, however, these banks have been subject to expeditious return requirements that generally may not be met by mailing returned checks. For checks presented on Fridays, these banks cannot meet both a UCC Saturday midnight deadline and the expeditious return requirements of Regulation CC without establishing special courier runs on Saturday evening to deliver returned checks to returning or depository banks. Such runs would often be in addition to runs during the day on Sunday delivering forward collection checks to the same banks in their capacity as collecting or paying banks in the forward collection process.

To address this problem, the Board proposed to extend the Saturday night midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle for returned checks following the Saturday midnight deadline. The Board has adopted the proposed amendments with minor revisions.

The Board received 19 comments on this proposal. Twelve supported the amendment as proposed. One commenter noted that the proposal would require banks that wish to make returns directly to depository banks to know the cut-off hours for each of the depository banks' processing cycles and therefore would effectively force returns to be made through the Federal Reserve. The Board did not intend this result and has amended the final Commentary language to clarify that the return must be made by the cut-off hour for the returning bank's next processing cycle or for the depository bank's next banking day after midnight Saturday night.

One commenter asked that the extension apply to all instances when a bank is open on any non-business day, such as a mid-week holiday. Two commenters requested that the Board extend the midnight deadline even further (one suggested Monday night, the other Tuesday night) to accommodate weekend presentments that are not reviewed until Monday or Tuesday.

Another commenter suggested that the Board eliminate the problem by having the Regulation CC definition of "banking day" preempt the UCC's definition for the purpose of determining the midnight deadline. The effect of this suggestion would be that checks presented after a cut-off hour on a Friday would be considered received on the next

Regulation CC banking day (normally Monday), and the midnight deadline would be midnight Tuesday night.

The Board recognizes that nonstandard banking days create difficulties for the check clearing system as well as other payments operations. Issues relating to a midnight deadline other than the Saturday night deadline were not clearly raised by the proposal. Resolution of these issues will require additional data on banking practices. The Board will continue to study problems under the expeditious return rule that may arise from nonstandard banking days and may consider further modifications in the future.

Section 229.33(a) Notice of nonpayment. This section requires a paying bank to provide notice of nonpayment of any returned check in the amount of \$2,500 or more. Currently, this notice must be received by the depository bank by 4 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depository bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary schedule. However, under the permanent schedule, which becomes effective September 1, 1990, a depository bank may not receive notice of nonpayment of large-dollar returned checks being returned by local paying banks before the depository bank must make the first \$5,000 of these funds available to its customer.

In order to reduce the potential for increased risk resulting from the permanent availability schedule, some bankers suggested shortening the time within which notice of nonpayment must be provided to the depository bank. The Board requested comment on whether the risks inherent in the requirement that funds be made available to the customer for withdrawal prior to the time the depository bank has an opportunity to learn of the return of large-dollar local checks are sufficient to warrant accelerating the time within which notice of nonpayment must be provided to the depository bank.

The Board received 107 comments on whether the time within which a paying bank must provide notice to the depository bank of a large-dollar returned check should be shortened. Forty-four commenters opposed shortening the notice of nonpayment deadline. These commenters stated that the additional burdens an earlier notice deadline would place on paying banks outweigh the marginal benefits that would be derived by depository banks.

Some commenters noted that several categories of paying banks would have particular problems complying with an earlier notice deadline, including banks that use payable through banks or intercept processors, and West Coast banks, which have a shorter time frame within which to provide notice to East Coast depository banks due to the time zone differences.

Many commenters also believed that an earlier notice of nonpayment deadline would result in an increased number of returned checks, because banks would have a shorter time frame within which to make the decision of which checks to return. Accelerating the return decision would lessen the time available for management review of checks that are candidates for return, and would limit the ability of the paying bank to allow customers to deposit funds to cover a check on the day following presentment. This may result in customer service problems and an increased number of consumer complaints. Some commenters also indicated that most banks currently make funds available for withdrawal within the time frames required in the permanent schedule, and that no loss experience has been demonstrated to justify a shorter notice requirement.

Among the commenters opposed to shortening the time within which notice of nonpayment must be provided was the largest private sector notice of nonpayment service provider. This commenter indicated that, while it could modify its services to meet shorter time requirements, it was opposed to any change because it would reduce or eliminate bank officer involvement in making the return decision, increase the number of customer complaints, and increase returned check charges to banks.

Six commenters supported an earlier notice of nonpayment deadline and an additional 57 commenters conditioned their support for accelerating the notice requirement on the adoption of a particular new recommended deadline. Of the 57 conditional responses, 27 commenters recommended that the required time be shortened to the first business day following deposit, with 13 commenters recommending a 4 p.m. deadline and 14 commenters recommending various times after 4 p.m. Thirty commenters recommended that the notice requirement be accelerated to an earlier time on the second day following presentment, with 24 of those commenters indicating that the time should be before 10 a.m.

Commenters in favor of shortening the time within which the paying bank must

provide notice of nonpayment believed that an earlier notice deadline was important to protect depository banks from the increased risks arising from the shorter permanent availability schedule, although they generally agreed that an earlier deadline would not eliminate these risks. Those commenters that recommended that notice of nonpayment be provided to the depository bank on the business day following presentment, or before the start of business on the second business day following presentment, argued that accelerating the notice deadline to this extent was necessary to provide the intended benefits to the depository bank. Other commenters, which urged the Board to adopt a notice deadline on the second day following presentment between the opening of business and 4 p.m., indicated that any deadline earlier than what they recommended would impose undue operational burdens on the paying bank.

The Board has not adopted a change to the notice of nonpayment requirement. The Board does not believe that the benefits of an earlier notice deadline to depository banks would outweigh the burdens that would be imposed on paying banks. There appears to be an inverse relationship between the benefits of prompter notice to depository banks and the burdens and disruptions to the operations of paying banks. Notices received after the day following presentment will often be received after the funds must be made available for local checks under the permanent schedule. Although earlier notice, such as receipt on the business day following presentment, would help to protect some depository banks that make funds available pursuant to the permanent schedule for local checks, the Board believes that this earlier notice of nonpayment deadline may increase the number of checks that are returned. This increase would be inconsistent with the objectives of the Act. If a paying bank were required to provide notice of nonpayment by the day following presentment, the paying bank's midnight deadline for returning checks under the Uniform Commercial Code would effectively be shortened, because a paying bank that provides a notice of nonpayment warrants to the depository bank that it has or will return the check for payment. Moreover, the Board believes that requiring that notices of nonpayment be provided earlier than they are today would increase paying banks' costs of returning checks.

In many cases, paying banks currently notify depository banks of the return of large-dollar checks prior to the

regulation's notice of nonpayment deadline, where it is operationally practical to do so. The Federal Reserve recently reviewed sample notices of nonpayment processed by the Federal Reserve Banks; almost one-half of the notices surveyed were received by the depository bank on the second business day after the check was deposited (which generally would be the next business day following presentment). Some check clearinghouses have instituted new returned check exchanges to facilitate expeditious return of the physical checks prior to the notice deadline. The Board encourages initiatives of paying banks to notify depository banks of large-dollar returned checks prior to the notice deadline.

One trade association recommended that the Board eliminate the notice of nonpayment requirement altogether and instead lower the large-dollar safeguard exception to \$2,500. The Act provides that the large-dollar exception may not be invoked for aggregate daily deposits of less than \$5,000; therefore, the Board does not have the authority to reduce the large-dollar exception from \$5,000 to \$2,500.

Section 229.34(a) Warranty of returned check. The regulation provides that a paying or returning bank that transfers and receives settlement for a notice in lieu of return warrants that the original check has not and will not be returned. The Board has been asked to clarify that the paying or returning bank is warranting that the original check has not and will not be returned for payment, as opposed to being returned to the depository bank for other purposes, such as to provide evidence of a forgery, that do not call for payment of the returned check under § 229.32. The Board proposed to amend the Commentary accordingly.

The Board received six comments on the proposal, all in support. One commenter suggested that the Board change the word "payment" to "reimbursement" in the first sentence of the Commentary. Such a change would not be appropriate under subpart C, which provides that returned checks are subject to payment, not reimbursement. The Board has adopted the amendment as proposed.

Section 229.35(a) Indorsement standards. Since September 1988, when Regulation CC became effective, the quality of indorsements has varied widely. In some cases, banks that handle returned checks have found indorsements to be illegible, even though the indorsements may meet the informational requirements of the

regulation. There are several reasons indorsements may be unclear, such as very small type size or poor imprinting mechanisms, which may result in faint or indistinct indorsements.

Currently under § 229.35 appendix D, the duty of an indorsing bank to apply a legible indorsement is implied, but not explicit. The Board believes that an indorsing bank should be responsible for ensuring that its indorsement is legible and proposed to make this duty explicit in the regulation and the Commentary.

The Board received 46 comments on this proposal. Only one commenter opposed the proposal on the grounds that depository banks should not be held responsible for the inability of indorsement machine vendors to meet Regulation CC's standards. Seventeen producers of one-write (carbon-band) checks commented in favor of legible indorsements. These commenters expressed support for eye-readable indorsements because they believe machine-readable indorsements are not feasible in the immediate future.

Several respondents commented on the liability for not meeting a legibility standard. One commenter suggested that the Board allow recourse against the last identifiable processor or indorser. Another commenter suggested that all late returns should be excused when the depository bank indorsement is illegible. Under the current provisions of the regulation, if the depository bank is unidentifiable, a bank may return a check to a previous indorser in the forward collection chain, and the bank that is responsible for the illegible indorsement is liable for damages due to a late return. The Board believes that this scheme most effectively places liability for late returns due to poor indorsement on the indorsing bank.

One commenter asked that the Board set up a mechanism to enforce the legibility standards. Another commenter asked that the Board clarify that the ordinary care standards of § 229.38 would apply. Section 229.38 clearly states that it applies to all the requirements of subpart C, and thus the duty of ordinary care will apply to all indorsing banks and will serve as the enforcement mechanism.

One commenter stated that customers who apply the depository bank indorsement under agreement should be able to accept the liability. The regulation already allows such an agreement under § 229.37.

One commenter suggested disallowing the punching of holes in the MICR line, indicating that this practice not only prevents the check from being machine-readable, but also may render

indorsements on the back of the check illegible. Because this suggestion was not subject to the notice and comment period, the Board has not made such an amendment at this time, but may consider it in the future.

One commenter suggested the Board enlarge the space available for the payee and depository bank indorsements. The Board believes that it would be inappropriate to change the size of the depository bank indorsement area because of potential problems the change would create for payee and collecting bank indorsers and because this change was not subject to notice and public comment.

Other suggestions included minimum size requirements for indorsement information and establishment of legibility guidelines. The Board believes that banks should be subject to the requirement to indorse legibly but that it would be costly and burdensome to establish rigid standards such as specific type size and other guidelines.

Another commenter asked that depository banks be allowed to wait to upgrade their equipment until a major repair or replacement of current equipment is necessary. The Board believes that the regulation should not mitigate the consequences of an illegible indorsement until current equipment is replaced. Such an action would be inequitable to a paying bank or returning bank that delays a returned check due to the illegible indorsement.

Finally, one commenter asked why the phrase "during forward collection" was dropped from the regulatory language. The omission of this language was inadvertent. Accordingly, the Board has adopted the amendment and the Commentary language as proposed, with the restoration of the inadvertently omitted language in the amendment.

Section 229.36(e) Issuance of payable through checks. In July 1989, the Board amended Regulation CC to require certain information to be printed on checks payable by a bank and payable through another bank ("bank payable through checks") (54 FR 32035, August 4, 1989). Effective February 1, 1991, § 229.36(e) requires such checks to contain the name, address, and first four digits of the routing number of the bank by which the check is payable, and the phrase "payable through" followed by the name and address of the payable through bank.

The Board has received inquiries as to whether it would be permissible for a bank that holds checking accounts and processes checks at a central location but that has widely-dispersed branches to label all of its checks as "payable through" a single branch and include the

name, address, and four-digit routing symbol of another branch. These checks would be payable by and through the same bank,² and therefore the provisions of § 229.36(e) would not apply. If the Board were to allow such a practice, the result would be to lead depositors and depository banks to believe mistakenly that the check is a bank payable through check for which availability must be assigned based on the location of the branch whose four-digit routing symbol appears on the check rather than on the location of the central office whose nine-digit routing number is encoded on the MICR line of the check.

The Board proposed an amendment to the regulation and the Commentary to provide that a bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in § 229.36(e). The Board received nine comments on the proposal, all in support. The Board has adopted the amendment with revisions to clarify the intent of the provision.

Appendix A Routing Number Guide. Appendix A to Regulation CC contains a routing number guide to aid banks in identifying next-day-availability checks and local checks. Since the publication of the proposed amendments to Regulation CC, the Federal Housing Finance Board, which oversees the Federal Home Loan Banks, has provided the Board with two additional Federal Home Loan Bank routing numbers. These routing numbers have been added to appendix A. The Board has determined that these additions are technical in nature and do not change the substance of Regulation CC, and therefore publication for comment is not required by 5 U.S.C. 553.

Appendix C Model Forms, Clauses and Notices. The Board proposed changes to the model forms to reflect the permanent schedule and the amendments to the regulation regarding payable-through checks. In addition, the Board proposed to revise the Commentary to make clear that banks may rely on earlier versions of the forms though they are encouraged to update their forms when ordering new supplies. Six commenters addressed the proposed changes, which have been adopted as proposed. In addition, the Board is revising Form C-5 and the lobby notices in Forms C-15 and C-15A to reflect the permanent schedule. Corresponding changes have been made to the

Commentary. Although the revisions to appendix C and its Commentary are effective immediately, banks may continue to use disclosures that reflect the availability they provide under the temporary schedule until the permanent schedule takes effect.

Suggested Amendments to the Act. Several commenters asked the Board to request that Congress amend the Act to help ease compliance burdens. The suggestions included: Allowing all payable through checks to be considered local or nonlocal based on the payable through bank, delaying implementation of the permanent schedule, lengthening the allowable holds for deposits to nonproprietary ATMs under the permanent schedule, allowing all exception holds to be applied to "next-day" checks, eliminating the need to give notice on every deposit when invoking large-dollar and repeated overdraft exceptions, lowering the \$5,000 large-dollar exception threshold to \$2,500, permitting variation of availability schedules by agreement in the case of business customers, and expanding the \$400 cash withdrawal rule to cover both cash withdrawals and payment of checks presented.

The Board has recommended to Congress several amendments to the Act, including many of those suggested by the commenters. Specifically, the Board suggested that Congress:

- Modify the permanent schedule for local checks;
- Treat nonproprietary ATM deposits under the permanent schedule in the same manner as they are treated under the temporary schedule;
- Resolve the operational and disclosure difficulties concerning payable through checks;
- Expand the applicability of the exception holds to the availability schedules to checks that must be given next-day availability;
- Limit the next-day requirement for Treasury checks and "on-us" checks to checks deposited at staffed teller facilities;
- Provide greater flexibility in the manner of giving notice to the depositor that an exception has been invoked;
- Grant the Board authority to establish rules regarding losses and liabilities among entities other than depository institutions; and
- Provide for direct review of regulations adopted by the Board in the U.S. Court of Appeals.

The Board's legislative recommendations are contained in its 1990 Report to Congress Under the Expedited Funds Availability Act (March 1990).

² "Bank" is defined in § 229.2(e) to include all of a bank's offices in the United States. Therefore, all of a bank's U.S. branches would be considered part of a single bank.

Competitive Impact Analysis

The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.³ The Board believes that the final amendments will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Only one commenter raised a competitive issue, concerning proposed amendments to § 229.30(c) (see discussion above). The commenter believed that the proposed change would give an advantage to the Federal Reserve for certain returned check business. The Board revised the final regulatory and Commentary provisions to eliminate the potential Federal Reserve advantage noted. The Board will continue to study problems of nonstandard holidays that may raise similar issues.

Final Regulatory Flexibility Act Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) A succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. These changes are primarily clarifications to Regulation CC in response to questions and requests for clarification that the Board has received since Regulation CC was adopted. The amendments should help all depository institutions to comply with the regulation. The Board considered the effect of these revisions when developing them and does not believe the changes will result in any significant adverse economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. In § 229.3, paragraph (a)(2) is revised to read as follows:

§ 229.3 Administrative enforcement.

(a) *Enforcement agencies.* * * *
(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

3. In § 229.13, paragraph (h)(4) is revised to read as follows:

§ 229.13 Exceptions.

(h) *Availability of deposits subject to exceptions.* * * *

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, an extension of up to five business days for local checks and six business days for nonlocal checks is a reasonable period. A longer extension may be reasonable, but the bank has the burden of so establishing.

4. In § 229.30, paragraph (c) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

(c) *Extension of deadline.* The deadline for return or notice of nonpayment under the UCC or Regulation J (12 CFR part 210) is extended:

(1) If a paying bank, in an effort to expedite delivery of a returned check to a bank, uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent on or before the receiving bank's next banking day following the otherwise applicable deadline; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) If the deadline falls on a Saturday that is a banking day, as defined in the applicable UCC, for the paying bank, and the paying bank uses a means of delivery that would ordinarily result in the returned check being received by the

bank to which it is sent prior to the cut-off hour for the next processing cycle, in the case of a returning bank, or on the next banking day, in the case of a depository bank, after midnight Saturday night.

5. In § 229.35, paragraph (a) is revised to read as follows:

§ 229.35 Indorsements

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check during forward collection or a returned check shall legibly indorse the check in accordance with the indorsement standard set forth in appendix D to this part.

6. In § 229.36, a new sentence is added to the end of paragraph (e) concluding text to read as follows:

§ 229.36 Presentment and issuance of checks.

(e) *Issuance of payable through checks.* * * *

* * * A bank is responsible for damages under § 229.38 of this part to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

Appendix A—[Amended]

7. In appendix A, two new numbers are added, in numerical order, to the list of numbers under the subheading "Federal Home Loan Banks" as follows:

Federal Home Loan Banks

0654	0348	0		
1110	1083	7		

Appendix C—[Amended]

8. Appendix C is amended as set forth below:

a. In model forms C-1, C-2, and C-3, the first paragraph is revised to read as follows:

YOUR ABILITY TO WITHDRAW FUNDS

at [bank name and location]

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

b. In model form C-3, the heading is revised, and under the subheading "Longer Delays May Apply," the second sentence of the first paragraph is revised

³ These procedures are described in the Board's policy statement entitled "The Federal Reserve in the Payments System" (55 FR 11648, March 29, 1990).

to read as follows: C-3. Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (permanent schedule)

Longer Delays May Apply

* * * Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit.

c. In model forms C-4, C-5, C-6, and C-7, a new paragraph and a subheading is added immediately preceding the subheading "Next-Day Availability," and the first sentence under the subheading "Next-Day Availability" is revised to read as follows:

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers.

Checks drawn on [bank name] (unless [any limitations related to branches in different states or check-processing regions]).

d. In model forms C-4, C-6, and C-7, the second paragraph under the subheading "Other Check Deposits" is revised to read as follows:

Other Check Deposits

If the first four digits of the routing number (1234 in the examples above) are [local numbers], then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

e. In model form C-5, the heading is revised, and two new sentences are added at the beginning of the second paragraph under the subheading "Other Check Deposits" to read as follows: C-5. Holds to statutory limits on all deposits (permanent schedule, includes chart)

Other Check Deposits

Some checks are marked "payable through" and have a four or nine-digit

number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal.

f. In model form C-5, in the chart under the subheading "Other Check Deposits," the second and fourth entries are revised to read as follows:

First four digits from routing number	When funds are available—	When funds are available if a deposit is made on a Monday
	Remaining funds on the second business day after the day of your deposit.	Wednesday.
	Remaining funds on the fifth business day after the day of your deposit.	Monday of the following week.

g. In forms C-2, C-3, C-4, C-5, and C-6, under the subheading "Special Rules for New Accounts," the second paragraph is deleted, and the third paragraph is revised to read as follows:

Special Rules for New Accounts

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

h. In form C-7, under the subheading "Special Rules for New Accounts," the second, third, and fourth sentences of the first paragraph are deleted and the second paragraph is revised to read as follows:

Special Rules for New Accounts

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain

conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

i. In model clause C-8, the last sentence is deleted.

j. In model form C-15, the heading is revised, a new entry to be the first entry in the chart is added, and the third and fourth entries are revised to read as follows: C-15. Notice at locations where employees accept consumer deposits (permanent schedule)

FUNDS AVAILABILITY POLICY

Description of deposit	When funds can be withdrawn by cash or check
Direct deposits.....	The day we receive the deposit.
Local checks.....	The second business day after the day of deposit.
Nonlocal checks.....	The fifth business day after the day of deposit.

k. In model form C-15A, the heading is revised, a new sentence is added after the first sentence of the paragraph, and the last sentence of the paragraph is revised to read as follows: C-15A. Notice at locations where employees accept consumer deposits (case-by-case holds) (permanent schedule)

Funds Availability Policy

* * * Funds from electronic direct deposits will be available on the day we receive the deposit. * * * Then, the funds will generally be available by the fifth business day after the day of deposit.

1. Model clauses C-19 and C-19A are deleted.

Appendix E—[Amended]

9. Appendix E is amended as set forth below:

a. In the Commentary to § 229.2, the last four sentences of the third paragraph of paragraphs (f) and (g) are removed and four new identical sentences are added to the end of both paragraphs (f) and (g), the first sentence of the last paragraph of paragraph (k) is revised, the next to last sentence of paragraph (r) is revised and a new sentence is added to the end, and a new sentence is added to the end of the first paragraph of paragraph (u) to read as follows:

Section 229.2 Definitions

(f) and (g) *Banking Day and Business Day.*

On a calendar day that is a banking day for the branch or other location of the depository bank at which the account is maintained, a deposit received at an ATM before the ATM's cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered received on that location's next banking day. This rule for determining the day of the deposit would also apply to a deposit to an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under § 229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

(k) *Check*

The definition of "check" does not include an instrument payable in foreign currency (i.e., other than in United States money as defined in 31 U.S.C. 5101), a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer.

(r) *Local check* * * * Until the labelling requirements in § 229.36(e) for payable through checks become effective on February 1, 1991, there may be cases where the payable through bank will be designated only by routing number and will not be named on the check. * * * For payable through checks that meet the labelling requirements of § 229.36(e), the depository bank may rely on the four-digit routing symbol of the paying bank that is printed on the face of the check as required by that section, e.g., in the title plate, but not on the first four digits of the payable through bank's routing number printed in magnetic ink in the MICR line or in fractional form, to determine whether the check is local or nonlocal.

(u) *Noncash item.* * * * To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item by the depository bank.

b. In the Commentary to § 229.13, in paragraph (h), the second sentence of the first paragraph, the first sentence of the second paragraph, and the fourth paragraph are revised to read as follows:

Section 229.13 Exceptions

(h) *Availability of deposits subject to exceptions.* * * * This provision establishes

that an extension of up to five business days for local checks and six business days for nonlocal checks is reasonable. * * *

For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. * * *

Five business days for local checks and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depository bank to learn of the nonpayment of virtually all checks that are returned.

c. In the Commentary to § 229.18, a new paragraph is added after the last paragraph of paragraph (e) to read as follows:

Section 229.18 Additional Disclosure Requirements

(e) *Changes in policy.* * * *

In disclosing changes due to the implementation of the permanent schedule, a bank may provide notice in any form that is clear and conspicuous. For example, in disclosing the change in the maximum period for case-by-case holds, banks that used the previous version of Form C-3 could use language such as the following on account statements or inserts: "Our disclosure on funds availability indicated that, in certain circumstances, funds from deposits would not be available until the seventh business day following the day of your deposit. Effective September 1, 1990, that period [was/will be] reduced to five business days." A bank reserving the right to apply the cash withdrawal limitation in § 229.12(d) when invoking a case-by-case hold should indicate that the period is reduced to six, rather than five, business days.

d. In the Commentary to § 229.19, the third sentence in the fifth paragraph of paragraph (a) is revised and two new sentences are added immediately following the third sentence, and two new sentences are added to the end of the second paragraph of paragraph (c) to read as follows:

Section 229.19 Miscellaneous

(a) *When funds are considered deposited.*

* * * For receipt of deposits at ATMs or off-premise facilities, such as night depositories or lock boxes, the depository bank may establish a cut-off hour of 12 noon or later (either local time of the branch or other location of the depository bank at which the account is maintained or local time of the ATM or off-premise facility). The depository bank must use the same method for establishing the cut-off hour for all ATMs and off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. * * *

(c) *Effect on policies of depository bank.*

* * * For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depository bank may charge back the customer's account for the full amount of the check. (See § 229.33(d) and Commentary.)

e. In the Commentary to § 229.30, the heading and first two paragraphs of paragraph (c) are revised to read as follows:

Section 229.30 Paying Bank's Responsibility for Return of Checks

(c) *Extension of deadline.* This paragraph permits extension of the midnight deadline, but not of the duty of expeditious return, in two circumstances:

(1) a paying bank may have a courier that leaves after midnight to deliver its forward collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches either the depository bank or the returning bank to which it is sent on that bank's banking day following the expiration of the midnight deadline or other applicable time for return. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast depository bank even if the check arrives after the close of the depository bank's banking day.

(2) A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC midnight deadline for checks received on Friday might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depository bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depository bank by the cut-off hour on its next banking day following the Saturday midnight deadline.

The time limits that are extended in each case are the paying bank's midnight deadline in UCC §§ 4-301 and 4-302 and § 210.12 of Regulation J (12 CFR 210.12). As these extensions are designed to speed (§ 229.30(c)(1)), or at least not slow (§ 229.30(c)(2)), the overall return of checks, no modification or extension of the

expeditious return requirements in § 229.30(a) is required.

f. In the Commentary to § 229.34, the first sentence of paragraph (a) is revised to read as follows:

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned check.* This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC, Regulation J, or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment (see the Commentary to § 229.30(f)).

g. In the Commentary to § 229.35, a new sentence is added before the last sentence of the first paragraph of paragraph (a) to read as follows:

Section 229.35 Indorsements

(a) *Indorsement standards.* The regulation places a duty on banks to ensure that their indorsements are legible.

h. In the Commentary to § 229.36, five new sentences are added after the second sentence in the second paragraph of paragraph (e) to read as follows:

Section 229.36 Presentment and Issuance of Checks

(e) *Issuance of payable through checks.*

Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labelled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely-dispersed branches may be liable under this section if it labels all of its checks as "payable through" a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labelled as payable through checks. (All of a bank's offices within the United States are considered part of the same bank; see § 229.2(e).) In this example, the bank by which the checks are payable could be liable to a depository bank that suffers a loss, such as lost interest or liability under subpart B, due to the mislabelled check.

i. In the Commentary to appendix C, under the subheading "Models C-1 Through C-7 Generally," the second and fifth paragraphs are deleted, the last paragraph is revised, and a new paragraph is added at the end thereof to read as follows:

Appendix C—Model Forms, Clauses, and Notices

Models C-1 through C-7 generally.

While § 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits ("direct deposits") be made available on the day the bank receives the funds. Model Forms C-1 through C-7 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

Banks that have used earlier versions of the model forms or clauses (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering or reprinting supplies of forms.

j. In the Commentary to Appendix C, under the subheading "Model C-3," a new sentence is added to the end thereof to read as follows:

Model C-3

A bank reserving the right to impose the cash withdrawal limitation in § 229.12(d) should disclose that funds may not be available until the sixth (rather than the fifth) business day in the first paragraph under the heading "Longer Delays May Apply."

k. In the Commentary to appendix C, under the subheading "Model C-5," the references to "C-4" are revised to read "C-7."

l. In the Commentary to appendix C, under the subheading "Model C-15 and C-15A," the second sentence is revised to read as follows:

Model C-15 and C-15A

Model C-15 is based on an availability policy that is the same as the permanent schedule in the regulation and the policy reflected in models C-5 and C-7.

m. In the Commentary to appendix C, the subheading "Model C-19 and C-19A" and the accompanying paragraph are removed.

By order of the Board of Governors of the Federal Reserve System, May 22, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-12287 Filed 5-29-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-10; Amdt. 39-6607]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PT6A Series Turbopropeller Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to PWC PT6A series turbopropeller engines, that requires the removal from service of affected engines within 30 calendar days after the effective date of this AD. This AD is prompted by a finding that certain PWC PT6A series turbopropeller engines repaired by Gregory Flying Service/Airforce Turbine Service may be unairworthy as a result of the installation of life-limited parts for which confirmation of part times/cycles since new cannot be verified. The AD is needed to preclude an uncontained engine failure.

EFFECTIVE DATE: May 30, 1990.

COMMENTS: Comments for inclusion in the docket must be received on or before July 30, 1990.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-10, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to room 311, at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7094.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain PWC PT6A series turbopropeller engines repaired by Gregory Flying Service/Airforce Turbine Service (hereafter identified as Gregory Flying Service) may be unairworthy as a result of the installation of life-limited parts for

which confirmation of part times/cycles since new cannot be verified.

An FAA audit of Gregory Flying Service maintenance records, conducted on February 20-21, 1990, revealed that Gregory Flying Service had repaired engines which contained life-limited parts where verification of part life could not be determined. Records for these engines did not identify part numbers or serial numbers of the parts actually installed, or document the status of the hours or cycles since new on life-limited parts installed during the repair of certain PT6A series engines. A teardown inspection of one suspect PT6A-34 turbopropeller engine repaired by Gregory Flying Service revealed four of the five life-limited parts had been previously scrapped by PWC due to these parts having been installed in an engine involved in an accident. This engine was also assembled with parts from several different engines for which time since new, cycles since new, time since overhaul, and cycles since overhaul could not be determined. The FAA audit revealed that 22 engines repaired by Gregory Flying Service have insufficient maintenance records to substantiate a determination of airworthiness. Safe operation of high energy rotating engine disks requires mandatory retirement of these components at FAA safe life intervals predicated on accurate records of in service life consumption. The FAA was unable to determine the location of those 22 engines due to insufficient record keeping practices at Gregory Flying Service.

Since this situation is likely to exist or develop on other PWC PT6A series turbopropeller engines repaired by Gregory Flying Service, this AD requires removal from service, within 30 calendar days after the effective date of this AD, of certain PWC PT6A series turbopropeller engines repaired by Gregory Flying Service and also provides return to service requirements for these engines.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure thereon, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal

Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket 90-ANE-10, 12 New England Executive Park, Burlington, Massachusetts 01803.

All communications received by the deadline date indicated above will be considered by the Administrator and the AD may be amended in light of comments received.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It had been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PT6A series turbopropeller engines repaired by Gregory Flying Service/Airforce Turbine Service (hereafter identified as Gregory Flying Service), located in Tynan, Texas. The affected engines are identified by model and serial number as follows:

Model	Serial No.
PT6A-15AG	PCE 14012
PT6A-15AG	PCE 14018
PT6A-15AG	PCE 14028
PT6A-34	PCE 38093
PT6A-28	PCE 40023
PT6A-27	PCE 41704
PT6A-28	PCE 51327
PT6A-29	PCE 51426
PT6A-34	PCE 56089
PT6A-34AG	PCE 56381
PT6A-34AG	PCE 56405
PT6A-34AG	PCE 56433
PT6A-34AG	PCE 56466
PT6A-34AG	PCE 56471
PT6A-34AG	PCE 56516
PT6A-34AG	PCE 56522
PT6A-34AG	PCE 56527
PT6A-34AG	PCE 56812
PT6A-34AG	PCE 56828
PT6A-34AG	PCE 56850
PT6A-34AG	PCE 56717
PT6A-34AG	PCE 56773

Compliance is required as indicated, unless already accomplished.

To prevent the development of an unsafe condition which could result in an uncontained engine failure, accomplish the following:

(a) Remove from service those engines identified above within the next 30 calendar days after the effective date of this AD.

(b) Return to service engines removed from service in accordance with paragraph (a) by accomplishing either one of the two following requirements:

(1) Accomplish a complete engine overhaul in accordance with the requirements of the appropriate PWC overhaul manual.

(2) Submit to the FAA, Manager, Engine Certification Office, through the cognizant FAA Airworthiness Inspector, all the pertinent records identified below for review, and obtain a written FAA approval prior to returning an engine to service:

(i) For the parts, sub-assemblies, accessories, or components of engines that were subjected to repair or maintenance activities during the last shop visit at Gregory Flying Service, provide the following:

(A) A list of all life-limited components by serial number, service history, and their current status as required by FAR part 135, section 439, or FAR part 91, section 173, as appropriate, and records establishing the origin and/or the prior service history of the subject parts.

(B) Records of accomplishment of the required inspections, checks, tests, as applicable, in accordance with PWC engine manual requirements that establish the components' airworthiness.

(ii) All repair, maintenance, and inspection records, concerning the last shop visit at

Gregory Flying Service, as required by FAR part 135, section 439, or FAR part 91, section 173, as appropriate.

(iii) Substantiating evidence that the work performed during the last shop visit at Gregory Flying Service was done in accordance with FAA approved data as required by the FAR's.

(iv) Engine acceptance test data or engine installed test data, accomplished after the repair, whichever is applicable.

(v) A list by part number or serial number of any engine, part, sub-assembly, accessory, or component acquired from Gregory Flying Service that has been involved in an accident.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control No. 2120-0056.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, and alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on May 30, 1990.

Issued in Burlington, Massachusetts, on May 21, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-12409 Filed 5-29-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-05-AD; Amdt. 39-6612]

Airworthiness Directives; Beech 99 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech 99 Series airplanes, which requires replacement of existing steel wing-attach bolts and nuts with Inconel bolts and nuts. Inconel bolts and nuts provide superior stress corrosion resistant qualities and eliminate the need for existing mandatory repetitive inspections for stress corrosion cracking on steel bolts and nuts. The actions specified in this AD will preclude the loss of wing attachment integrity due to undetected wing-attach bolt stress corrosion.

EFFECTIVE DATE: July 2, 1990.

Compliance: Within the next 12 calendar months after the effective date of the AD.

ADDRESSES: Beech Structural Inspection and Repair Manual, and Beechcraft Mandatory Service Bulletin No. 2248, dated February 1988, applicable to this AD, may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7111, or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTAL INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring replacement of existing steel wing-attach bolts and nuts with specific Inconel wing-attach bolts and nuts on certain Beech 99 Series airplanes was published in the *Federal Register* on March 1, 1990 (55 FR 7341).

The proposal was prompted by reexamination, by the FAA, of the airworthiness issues relating to aging commuter class airplanes. Public meetings and operators data have confirmed that airplanes of this class are being operated well beyond the times envisioned at the time of design and manufacture.

Considering the experience gained in the transport industry, the FAA has determined that preventive action must be taken with the aging commuter fleet prior to the occurrence of a catastrophic structural failure.

The continued airworthiness of airplanes can normally be maintained by proper inspection, maintenance, and when necessary, by parts replacement. On airplanes being operated beyond their expected design life, the FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem rather than by repetitive inspections or special operating procedures. Long term special operating procedures may not provide the degree of safety assurance necessary.

This coupled with a better understanding of the human factors associated with numerous continual special procedures, has led the FAA to consider placing less emphasis on

special procedures and more emphasis on design improvements.

At an April, 1989 public conference, the General Aviation Manufacturers Association (GAMA) and the Regional Airline Association (RAA) recommended twenty-three (23) separate industry and government actions intended to resolve the aging commuter airplane issue. Recommendation No. 3 stated: "The FAA should take the lead, working closely with industry, to review existing ADs on all airplanes used in regional air carrier service to determine if repetitive inspections need to be replaced by terminating actions."

In December 1989, the FAA conducted a review of the existing ADs applicable to the Beech 99 Series airplanes, and identified AD 85-22-05 (which requires repetitive inspections) as one that could be terminated by the installation of an improved part. AD 85-22-05 applies to H-11 steel wing-attach bolts in the front spar only. However, steel bolts that are susceptible to corrosion may also be present at the rear spar attachments. The actions proposed in the NPRM would replace each steel bolt existing at any of the four attachments on each wing with an Inconel bolt.

In addition, AD 88-04-07 was issued to require a one-time inspection for cracks in certain Inconel nuts unless a specially marked Part No. 81790-1414 nut was installed. The actions specified in the proposed AD would extend this requirement to replacement nuts at the lower, forward wing attachment. The FAA has determined that the actions in this proposal meet the intent of GAMA/RAA Recommendation No. 3 and are consistent with current FAA policy. Since the condition described is likely to exist or develop in other Beech 99 Series airplanes of the same design, an AD was proposed which would require replacement of the existing steel wing-attach bolts and nuts with specific Inconel wing-attach bolts and nuts on Beech 99 series airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation only involves 100 airplanes at an approximate one-time cost of \$3,000 per airplane, or a total one-time fleet cost of \$300,000. The total cost of complying with the proposed AD is less than \$100 million, the threshold for a significant rule. This cost per airplane is less than the threshold significant cost amount for

those small entities operating one airplane and the FAA has determined, on the basis of the aircraft registration records, that less than 1/3 of the owners of the affected airplanes own more than 1 of the affected airplanes so as to incur a cost greater than the significant amount threshold.

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.

Therefore, 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 copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

BEECH: Applies to Beech 99 Series (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished. To preclude the loss of wing attachment integrity due to undetected wing-attach bolt stress corrosion accomplish the following:

- (a) Replace any existing steel wing-attach

bolts and nuts with Inconel wing-attach bolts and nuts in accordance with the instructions in Beech Structural Inspection and Repair Manual, P/N 98-39006, dated December 20, 1984, or revisions thereto through Revision A4, dated May 1, 1987.

(b) Immediately after installation of any new Inconel nut in the lower, forward wing attachment per paragraph (a) of this AD, except those specially marked with Part No. 81790-1414, visually inspect the nut for cracks in accordance with the instructions in Beech Mandatory Service Bulletin 2248, dated February 1988. Prior to further flight, replace any nut found cracked with a specially marked Part No. 81790-1414 nut per Figure 2 of the above referenced Service Bulletin.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 2, 1990.

Issued in Kansas City, Missouri, on May 15, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-12408 Filed 5-29-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-21]

Establishment of Transition Area; Louisa, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This corrective action changes the effective date for the establishment of the Louisa, VA, Transition Area. The proposed commissioning date of the new Louisa Nondirectional Radio Beacon (NDB) and

the effective date of the new Standard Instrument Approach Procedure (SIAP) based on this NDB have been delayed; therefore, the effective date of the establishment of the Transition Area must also be delayed.

EFFECTIVE DATE: 0901 U.t.c. May 31, 1990.

FOR FURTHER INFORMATION CONTACT:

Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building No. 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket number 89-AEA-21 was published in the *Federal Register* on April 10, 1990 (55 FR 13263) establishing a Transition Area at Louisa, VA. The development of a new SIAP to the Louisa County/Freeman Field Airport, utilizing the new Louisa NDB, made this action necessary. An unforeseen delay in the commissioning of the Louisa NDB and the SIAP based on the NDB has required the effective date of this action to also be delayed from May 3, 1990 to May 31, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Delay of Effective Date

The effective date on Airspace Docket number 89-AEA-21 is hereby delayed from May 3, 1990 to May 31, 1990.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.