

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-PS-2006-001]

Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability.

SUMMARY: The Department of Energy (DOE or Department) Building Technologies Program will hold a public meeting to discuss appliance standards scheduling issues. The Department is interested in receiving comments on the Department's desire to bring all appliance rulemaking activities into compliance with the applicable statutory requirements. The Department will finalize its standards scheduling plan after consideration of comments received during and following the public meeting.

DATES: The Department will hold a public meeting on Tuesday, November 15, 2005, from 9 a.m. to 4 p.m. Please submit written comments by Thursday, December 15, 2005.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

The DOE Web site at http://www.eere.energy.gov/buildings/appliance_standards/2006_schedule_setting contains background information, including: The list of rulemaking activities; summary data sheets for affected products; analysis spreadsheets; and other information.

The Department welcomes your participation at the meeting as well as written comments. Written comments, data, and information regarding scheduling issues will be accepted no

later than the date provided in the **DATES** section.

You may submit comments, identified for the 2006 Appliance Standards Schedule Setting, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* schedulesetting2006@ee.doe.gov. Include 2006 Appliance Standards Schedule Setting in the subject line of the message.

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 2006 Appliance Standards Schedule Setting, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original.

- *Hand delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 2006 Appliance Standards Schedule Setting, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Instructions: All submissions received must include the agency name and reference the 2006 Appliance Standards Schedule Setting. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) format file; avoid the use of special characters or any form of encryption; and, wherever possible, include the electronic signature of the author. If you don't include an electronic signature, you must authenticate comments by thereafter submitting the signed original paper document. No telefacsimiles (telefaxes) will be accepted.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J-018 Resources Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Linda Graves, Esq., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000

Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-1851, e-mail: Linda.Graves@ee.doe.gov, or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: Francine.Pinto@hq.doe.gov, or Thomas.DePriest@hq.doe.gov, respectively.

SUPPLEMENTARY INFORMATION: The Department invites your participation in a public meeting to address how the Department will develop and implement a full compliance scheduling plan for appliance standards rulemaking activities. The Department particularly welcomes your perspective and assistance with respect to scheduling activities, given the enormous, competing demands on its resources.

The meeting will be conducted in an informal, conference style. There will not be any discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the meeting and expiration of the period for submitting written statements, the Department will consider the comments received.

If you would like to participate in the meeting or be added to the DOE mailing list to receive future notices and information regarding the energy conservation program for consumer products and commercial and industrial equipment, please contact Ms. Brenda Edwards-Jones at (202) 586-2945.

Issued in Washington, DC, on October 19, 2005.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 05-21248 Filed 10-20-05; 9:07 am]

BILLING CODE 6450-01-P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

Production of Records and Testimony of Personnel of the Export-Import Bank of the United States in Legal Proceedings

AGENCY: Export-Import Bank of the United States ("Ex-Im Bank").

ACTION: Proposed rule.

SUMMARY: Ex-Im Bank is issuing a proposed regulation that would establish policy and prescribe procedures with respect to the testimony of Ex-Im Bank personnel, both current and former, and the production of agency records, in legal proceedings. The proposed regulation is designed to balance concerns such as preserving the time of Ex-Im Bank personnel for the conduct of official business against concerns such as whether the disclosure of information requested is necessary to prevent fraud or injustice.

DATES: Comments due by November 23, 2005.

ADDRESSES: Office of the General Counsel, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Brian J. Sonfield, Assistant General Counsel for Administration, Export Import Bank of the United States, Phone: (202) 565-3439/Fax: (202) 565-3586.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301 of title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. The Supreme Court has interpreted this statute as allowing Federal agencies to promulgate regulations under the authority of section 301 establishing procedures governing the production of records and testimony by federal agency personnel in legal proceedings in which the agency is not a party. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Ex-Im Bank frequently receives demands for: (1) Testimony of its employees or (2) the production of agency records—in legal proceedings to which Ex-Im Bank is not a party. Ex-Im Bank currently does not have any regulations or procedures to address this situation.

II. Analysis of Proposed Regulation

The proposed rule is designed to establish centralized Ex-Im Bank policies and procedures to govern the production of agency records and testimony regarding information acquired in the course of the performance of official duties by current and former Ex-Im Bank personnel in legal proceedings before Federal, state, and local entities (as specified in the proposed regulation) in which Ex-Im Bank (i) Is not a party; (ii) is not represented; (iii) does not have a direct

and substantial interest; and (iv) is not providing representation to an individual or entity that is a party. The proposed rule does not cover requests for information that are not part of legal proceedings, such as requests for records under the Freedom of Information Act, 5 U.S.C. 552.

The proposed regulation is intended to address Ex-Im Bank's need to conserve official personnel resources for the performance of the agency's statutory duties while at the same time accommodating legitimate requests or demands for official records or testimony to the extent possible. The procedures established would also provide necessary internal controls for management of Ex-Im Bank personnel on official duty and for release of Ex-Im Bank records and information.

This proposed regulation would not authorize any Ex-Im Bank personnel to refuse to comply with the law. Rather, the proposed regulation would permit Ex-Im Bank personnel, under certain circumstances, to refuse to comply with a party to litigation's demand or a court order due to: (1) Incomplete compliance with this proposed rule; or (2) a determination by the General Counsel that a challenge to, or immediate review of, the demand or order is legally appropriate.

These procedures would not infringe upon the judiciary or create new privileges not previously recognized by law, but would simply make uniform a process of responding to each request or demand for the production of records or testimony by Ex-Im Bank personnel in private controversies. Further, these procedures would not impede Ex-Im Bank personnel's access to the courts in relation to legal matters unrelated to their official duties or not involving the official records of Ex-Im Bank.

III. Matters of Regulatory Procedure

Administrative Procedure Act

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 30-day comment period. Interested persons are invited to submit written comments to Ex-Im Bank on this proposed regulation, to be received within 30 days of publication of the proposed rule. Prior to issuing its final rule, Ex-Im Bank will review all comments received and consider any modifications to this proposal that appear warranted.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a "major rule," as defined by the Small Business Enforcement Fairness Act of 1996. This

rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C., chapter 25, subchapter II), this proposed rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more (as adjusted for inflation).

List of Subjects in 12 CFR Part 404

Administrative practice and procedure, Government employees, Information, Records.

Authority: 5 U.S.C. 552 and 552a.

Accordingly, for the reasons set forth in the preamble, the Export-Import Bank of the United States proposes to amend 12 CFR part 404 as follows:

PART 404—[AMENDED]

1. The authority citation for part 404 is revised to read as follows:

Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Section 404.21 also issued under 5 U.S.C. 552a.

Note Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

2. Subpart C is added to read as follows:

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

Sec.

404.24 General provisions.

404.25 Applicability.

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404.30 Factors the General Counsel may consider in determining whether to authorize testimony and/or the production of records.

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404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

404.33 Procedure in the event of an adverse ruling.

404.34 Procedure for demands for testimony or production of documents regarding confidential information.

404.35 Procedure for requests for Ex-Im Bank employees to provide expert or opinion testimony.

404.36 No private right of action.

§ 404.24 General provisions.

(a) *Purpose.* This subpart establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records of Ex-Im Bank in all legal proceedings to which Ex-Im Bank is not a party; and

(2) Demands for testimony of Ex-Im Bank personnel related to information acquired as a result of performance of their official duties, or by virtue of their official status, in all legal proceedings where Ex-Im Bank is not a party; and

(3) The offer of expert or opinion testimony by Ex-Im Bank personnel regarding matters related to the performance of their official duties.

(b) *Policy.* Ex-Im Bank seeks to further the following goals in enacting this subpart:

(1) Conservation of agency resources for official business;

(2) Minimization of agency involvement in controversial issues unrelated to its mission;

(3) Maintenance of the agency's impartiality amongst private litigants;

(4) Protection of confidential and/or sensitive information; and

(5) Maintenance of the integrity of the agency's deliberative processes.

§ 404.25 Applicability.

This subpart applies exclusively to demands for testimony and/or production of records issued to Ex-Im Bank personnel, in connection with legal proceedings to which Ex-Im Bank is not a party, regarding information acquired in the course of the performance of official duties or due to their official status. Nothing in this subpart shall be construed to waive the sovereign immunity of the United States.

This subpart shall not apply to the following:

(a) Demands for testimony and/or production of records pursuant to a legal proceeding to which Ex-Im Bank is a party;

(b) Demands for testimony and/or production of records in those instances in which Ex-Im Bank personnel are asked to disclose information wholly unrelated to their official duties; and

(c) Congressional demands and requests for testimony or records.

§ 404.26 Definitions.

For purposes of this subpart, the following definitions shall apply—

Demand—includes an order, subpoena, or other compulsory process issued by a party in litigation or a court of competent jurisdiction, requiring the production or release of Ex-Im Bank information or records, or requiring the testimony of Ex-Im Bank personnel.

Ex-Im Bank personnel—includes any current or former officer or employee of Ex-Im Bank, including all individuals who have been appointed by, or subject to, the official supervision, jurisdiction, or control of any Ex-Im Bank employees. This definition encompasses all individuals hired through contractual agreements with Ex-Im Bank, such as: consultants, contractors, sub-contractors, and their employees.

Legal proceeding—a case or controversy pending before any federal, state, or local court, including a grand jury proceeding; a proceeding before a federal, state, or local administrative judge, board, or other similar body with adjudicative powers; or a legislative proceeding before a state or local legislative body.

Records—all documentary materials that Ex-Im Bank creates or receives in connection with the transaction of official business, including any materials classified as “Federal records” under 44 U.S.C. 3301 and its implementing regulations.

Testimony—written or oral statements, including, but not limited to, depositions, answers to interrogatories, affidavits, declarations, and any other statements made in a legal proceeding, including any expert or opinion testimony.

§ 404.27 Demand requirements.

A party's demand for testimony and/or production of records by Ex-Im Bank personnel regarding information acquired in the course of their performance of official duties or due to their official status shall be set forth in, or accompanied by, a signed affidavit or other written statement. Such affidavit or written statement must be submitted at least 30 days prior to the date such testimony and/or production of records is requested to be taken and/or produced. A copy of the affidavit or written statement shall be served on the other parties to the legal proceeding. The affidavit or written statement must:

(a) Be addressed to the Export Import Bank of the United States, Office of the General Counsel, 811 Vermont Ave., NW., Washington, DC 20571;

(b) State the nature of the legal proceeding, including any docket number, title of the case, and the name of the administrative or adjudicative body before which the proceedings are to be heard;

(c) State the nature of the testimony or records sought;

(d) State the relevance of the information sought to the legal proceedings;

(e) State why such information can only be obtained through testimony or production of records by Ex-Im Bank personnel; and

(f) Comply with all procedures governing valid service of process.

§ 404.28 Notification of General Counsel required.

Ex-Im Bank personnel receiving a demand for testimony and/or production of records regarding information acquired in the course of their performance of official duties, or due to their official status, shall immediately notify the General Counsel of Ex-Im Bank (“General Counsel”) upon receipt of such demand. The General Counsel maintains the exclusive authority to waive the requirements of any or all sections of this subpart and reserves the right to delegate his or her authority under this subpart to other appropriate Ex-Im Bank personnel.

§ 404.29 Restrictions on testimony and production of records.

Ex-Im Bank personnel may not provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, in connection with any legal proceeding to which this subpart applies, without authorization by the General Counsel. Such authorization must be in writing, unless the General Counsel determines that circumstances warrant an oral authorization, and such oral authorization is subsequently documented.

§ 404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.

In determining whether to authorize Ex-Im Bank personnel to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, the General Counsel may consider factors including, but not limited to, the following:

(a) *Efficiency*—the conservation of the time and resources of Ex-Im Bank personnel for the conduct of official business;

(b) *Undue burden*—whether the demand creates an undue burden upon Ex-Im Bank or is otherwise inappropriate under any applicable administrative or court rules;

(c) Appearance of bias—whether the testimony and/or production of records could result in the public perception that Ex-Im Bank is favoring one party over another, or advocating the position of a party to the proceeding;

(d) Furtherance of agency policy—whether the testimony and/or production of records is consistent with the policy and mission of the Ex-Im Bank;

(e) Prevention of fraud or injustice—whether the disclosure of the information requested is necessary to prevent the perpetration of fraud or injustice;

(f) Relevance to litigation—whether the testimony and/or production of records sought is relevant to the subject litigation;

(g) Necessity—whether the testimony and/or production of records, including a release of such in camera, is appropriate or necessary as determined by either the procedural rules governing the legal proceeding, or according to the relevant laws concerning privilege;

(h) Availability from another source—whether the information sought through testimony or production of records is available from another source;

(i) Violations of laws or regulations—whether the testimony and/or production of records would violate a statute, regulation, executive order, or other official directive;

(j) Classified information—whether the testimony and/or production of records would improperly reveal information classified pursuant to applicable statute or Executive Order; and

(k) Compromise of rights and interests—whether the testimony and/or production of records would compromise any of the following: law enforcement interests, constitutional rights, national security interests, foreign policy interests, or the confidentiality of commercial and/or financial information.

§ 404.31 Procedure for declining to testify and/or produce records.

Ex-Im Bank personnel receiving a demand to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, and who have not received written authorization from the General Counsel to provide such information, shall:

(a) Respectfully decline to answer or appear for examination on the grounds that such testimony is forbidden by this subpart;

(b) Request the opportunity to consult with the General Counsel;

(c) Explain that only upon consultation may they be granted approval to provide such testimony;

(d) Explain that providing such testimony or records absent approval may subject the individual to criminal liability under 18 U.S.C. 641, as well as other applicable laws, and other disciplinary action; and

(e) Request a stay of the request or demand pending a determination by the General Counsel.

§ 404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before a determination has been rendered by the General Counsel, the U.S. Attorney or such other attorney as may be designated for the purpose will appear with the Ex-Im Bank personnel upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending determination by the General Counsel.

§ 404.33 Procedure in the event of an adverse ruling.

If the court of other authority declines to stay the effect of the demand in response to a request made in accordance with § 404.32 pending a determination by the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462).

§ 404.34 Procedure for demands for testimony or production of documents regarding confidential information.

In addition to compliance with the requirements of this subpart, demands to provide testimony and/or produce records that concern information protected by the Privacy Act, 5 U.S.C. 552a, or any other authority mandating confidentiality of certain classes of records or information, must also satisfy the requirements for disclosure imposed by such authority before records may be produced or testimony given.

§ 404.35 Procedures for requests for Ex-Im Bank employees to provide expert or opinion testimony.

No Ex-Im Bank personnel may, unless specifically authorized by the General Counsel, testify in any legal proceeding as an expert or opinion witness as to any matter related to his or her duties or the functions of the Ex-Im Bank, including the meaning of Ex-Im Bank documents. Any demand for expert or opinion testimony shall comply with the policies and procedures outlined in this subpart.

§ 404.36 No private right of action.

Nothing in this subpart shall be construed as creating any right, substantive or procedural, enforceable at law or equity by a party against Ex-Im Bank or the United States.

Dated: October 18, 2005.

Howard A. Schweitzer,
General Counsel (Acting), Export Import Bank of the United States.

[FR Doc. 05-21147 Filed 10-21-05; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-22055; Directorate Identifier 2005-NE-31-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Model CF6-80C2D1F Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company Model CF6-80C2D1F turbofan engines. This proposed AD would require modifying the latching system of the fan reverser. This proposed AD results from 13 reports of released thrust reverser hardware. We are proposing this AD to prevent release of the thrust reverser cascade on landing, which could result in runway debris and a possible hazard to other aircraft.

DATES: We must receive any comments on this proposed AD by November 23, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.