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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 31

[Docket No. 96–23]

RIN 1557–AB40

Extensions of Credit to Insiders and Transactions With Affiliates

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules governing extensions of credit to national bank insiders. This rulemaking is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The final rule modernizes and clarifies the insider lending rules and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Aline Henderson, Senior Attorney, Bank Activities and Structure (202) 874–5300; Emily McNaughton, National Bank Examiner, Credit & Management Policy (202) 874–5170; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities (202) 874–5090, Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

Summary of Regulation Review Program

The OCC is revising 12 CFR part 31 as another component of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

The OCC intends for this final rule to reduce regulatory costs and other burdens on national banks by clarifying certain requirements and eliminating a separate statement of provisions that are similar to provisions found in the Federal Reserve Board's (the Board) Regulation O (12 CFR part 215) (Reg. O). The final rule also responds to commenters' requests for guidance on certain of the key differences between the requirements of part 31 (as amended by this final rule) and 12 CFR part 32 (Lending Limits).

The Proposal

Current part 31 contains two subparts. Subpart A implements 12 U.S.C. 375a(4) and 375b(3) by setting a limit on the amount that a national bank may lend to any one of its executive officers other than for housing- and education-related loans and by establishing a threshold above which approval of the bank's board of directors is required for any loan to an insider. Subpart B implements 12 U.S.C. 1817(k) and 1972(2)(G)(ii) by requiring a national bank to disclose, upon request, the names of its executive officers and principal shareholders who borrow more than specified amounts from the bank itself or from the bank's correspondent banks and to maintain records related to requests for this information. Subpart B also implements 12 U.S.C. 1972(2)(G)(i), which requires a national bank's executive officers and principal shareholders to report on loans they or their related interests receive from the bank's correspondent banks.

The OCC solicited comment in the proposal (60 FR 63461 (December 11, 1995)) on whether the agency should adopt exceptions to the limit on loans that a national bank may make to its executive officers for loans that are secured by United States obligations, guaranteed by a Federal agency, or secured by a segregated deposit account, in order to be consistent with recent changes made by other agencies.[1] The OCC also solicited comment on proposed changes intended to clarify and simplify the former rule by removing provisions that no longer are necessary. Finally, the OCC invited comments on whether guidance would be helpful on the differences between the insider lending limits and the loans-to-one-borrower limits.

The Final Rule and Comments Received

The OCC received eleven comments in response to the proposal, most of which supported the proposed changes. In many cases, a commenter expressed support for the proposed changes and then requested that the OCC reduce burden further. These comments fall for the most part into two broad categories: First, that the OCC either eliminate part 31 altogether or remove those provisions that substantively are identical to provisions in Reg. O; and second, that the OCC relax or clarify various restrictions that currently apply to loans to insiders. These comments are addressed in greater detail in the text that follows.

Adoption of proposed exceptions. Commenters addressing this issue uniformly supported adopting the three proposed exceptions to the limits that apply to loans to an executive officer. The OCC continues to believe that these exceptions are appropriate for two reasons. First, the OCC recognizes that a lending bank's position clearly is protected where a loan is secured by obligations of the United States, guaranteed by a Federal agency, or secured by a segregated deposit account. The strength of the security in these situations reduces the need for the additional protections against insider abuse that the lower limits on loans to executive officers provide. Second, conforming the OCC's regulation to those of the other Federal banking agencies is consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) (12 U.S.C. 4803) (which requires each agency to work with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or

[1] *See* 59 FR 66666 (December 28, 1994) (amending the Federal Deposit Insurance Corporation's rule) and 59 FR 8831 (February 24, 1994) (amending the Board's rule). The Office of Thrift Supervision's regulation automatically applies the Board's rule to thrifts. *See* 12 CFR 563.43.

supervisory policies). Accordingly, the OCC adopts the exceptions as proposed.

Elimination of part 31. One commenter suggested that the OCC eliminate part 31 in its entirety. This commenter stated that part 31 is unnecessary because national banks, as member banks, must comply with Reg. O. Another commenter suggested that the OCC eliminate requirements in part 31 that duplicate requirements in Reg. O. In this commenter's view, national banks are put at a disadvantage by having to comply with the more restrictive set of rules if part 31 and Reg. O differ. Finally, a third commenter stated that, if the OCC retains a separate rule, the rule should be identical to comparable provisions in Reg. O because even stylistic differences raise the question of whether a substantive difference is intended.

In light of these comments and the agency's further internal considerations, the OCC has decided simply to state in its rule that a national bank and its insiders shall comply with provisions contained in 12 CFR part 215. The final rule therefore eliminates from part 31 those sections that are redundant in light of comparable provisions in Reg. O. The reference in the final rule to 12 CFR part 215 includes the exceptions to the limits on the amount of loans a bank may make to its insiders. The OCC agrees with the commenters that part 31 is substantively identical to comparable restrictions in Reg. O (with the addition of the exceptions that are being adopted as part of this final rule) and that compliance would be simplified by eliminating a restatement of the provisions in question.

The OCC is not eliminating part 31 altogether because several provisions in the statutes that part 31 implements mandate that certain restrictions be set by the ''appropriate Federal banking agency.'' For instance, section 22(g) of the Federal Reserve Act (12 U.S.C. 375a(4)) states that a member bank may make extensions of credit not otherwise specifically authorized under that section in an amount ''prescribed by regulation of the member bank's appropriate Federal banking agency.'' Similarly, section 22(h) of the Federal Reserve Act (12 U.S.C. 375b(3)) states that a member bank must obtain the approval of the bank's board of directors before extending credit to an insider in an amount that would exceed a threshold established by regulation by the bank's ''appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)* * *.'' See also 12 U.S.C. 1817(k) (regarding reports on, and disclosure of, loans by a bank to its executive officers and principal shareholders) and 12 U.S.C. 1972(2)(G)(ii) (regarding reports on, and disclosure of, loans by a correspondent bank to the reporting bank's executive officers and principal shareholders).

The OCC believes that adopting a regulation that incorporates restrictions from another regulation satisfies its obligation to implement these statutes. Moreover, this eliminates any confusion that may exist concerning, for instance, whether the OCC intends for the rules to be identical to those adopted by the Board or whether national banks must comply with a different and/or more restrictive provision.

Relaxation or clarification of restrictions. Several commenters, while supporting the proposed changes, asked that the OCC relax certain provisions governing insider lending. Others suggested amendments to clarify existing ambiguities.

Two commenters seeking a relaxation of various standards objected to provisions that are mandated by statute. One of these commenters suggested that the OCC eliminate the requirement that an executive officer submit a detailed current financial statement as a condition of receiving credit from the officer's bank. However, this requirement comes from section 22(g)(1)(C) of the Federal Reserve Act (12 U.S.C. 375a(1)(C)) and thus cannot be eliminated by a regulation. Another commenter suggested that the OCC eliminate the prior approval requirements and the requirement that a loan to an executive officer be payable on demand whenever the officer becomes indebted to other banks in an amount greater than the officer could borrow from his or her own bank. These, too, are mandated by statutes. See 12 U.S.C. 375b(3) and 375a(1)(D), respectively. Accordingly, the OCC has not made the changes suggested by these commenters.

In other cases, commenters requested that the OCC unilaterally adopt changes to certain insider lending restrictions that have been established by regulation. For instance, three commenters requested that the OCC raise the maximum amount that a national bank may lend to one of its executive officers. Another commenter suggested that the OCC exempt loans secured by readily marketable securities or cash value life insurance policies from the limits on loans to an executive officer. Two other commenters requested that the OCC clarify certain provisions that these commenters find ambiguous. The first of these commenters noted that bank holding companies are excluded from definition of ''principal shareholder'' in 12 CFR 215.2(m) but are included in the definition of the same term in 12 CFR 215.11(a)(1). The commenter stated that this difference requires the preparation of many unnecessary reports of loans made by correspondent banks to subsidiaries of a member bank's parent holding company. Another commenter requested that the OCC clarify which provisions of the insider lending restrictions apply to subsidiaries of a bank.

The OCC believes these types of changes should be considered on an interagency basis, which also would be consistent with section 303 of the CDRI Act. For these reasons, the OCC has declined to make the changes suggested, but will discuss these suggestions with the other Federal banking agencies.

The following discussion summarizes the amendments to part 31 and the remaining comments.

Title of Regulation

The final rule changes the title of part 31 from ''Extensions of credit to national bank insiders'' to ''Extensions of credit to insiders and transactions with affiliates.'' This change reflects the relocation to part 31 of two interpretations regarding transactions with affiliates that formerly were set out in part 7.

Authority (§ 31.1)

The final rule states that part 31 is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 93a, 375a(4), 375b(3), 1817(k), and 1972(2)(G), as amended. With the exception of 12 U.S.C. 93a (which provides general rulemaking authority to the OCC), each of these sections directs or authorizes the appropriate Federal banking agency to issue rules governing various aspects of loans to insiders.

Insider Lending Restrictions and Reporting Requirements (§ 31.2)

The final rule implements the statutes identified in § 31.1 by requiring national banks to comply with the provisions of Reg. O. These statutes are implemented as follows: 12 U.S.C. 375a(4) is implemented in § 215.5 (b) and (c) of Reg. O; 12 U.S.C. 375b(3) is implemented in § 215.4(b); 12 U.S.C. 1817(k) is implemented in § 215.11; and 12 U.S.C. 1972(2)(G) is implemented in subpart B of part 215. Because national banks are members of the Federal Reserve System, the remaining provisions in Reg. O implementing other provisions of the insider lending statutes also apply to national banks. Thus, rather than create the impression that national banks are to comply with

only some of Reg. O's provisions (namely, those provisions that implement the statutes identified in § 31.1), the final rule simply states that national banks and their insiders shall comply with all of Reg. O.

By stating the OCC's rule in this way, the final rule incorporates the definitions used in Reg. O. In order to promote uniformity between part 31 and Reg. O, the final rule does not distinguish between insured and uninsured national banks in the definition of ''bank'' as that term was used in former § 31.5(a)(1). Finally, the rule clarifies that the OCC administers and enforces Reg. O as it applies to national banks.

The OCC intends for the provisions of Reg. O that have been incorporated, as now or hereafter in effect, to govern insider lending by national banks. The OCC will review subsequent revisions to Reg. O and will publish further amendments to part 31 if necessary.

Interpretations (Appendix A)

Earlier this year, the OCC relocated several interpretations pertaining to section 23A of the Federal Reserve Act (12 U.S.C. 371c) that formerly appeared in part 7. See 61 FR 4849 (February 9, 1996) (relocating 12 CFR 7.7360—loans secured by stock or obligations of an affiliate, 7.7365—Federal funds transactions between affiliates, and 7.7370—deposits between affiliated banks). The OCC relocated these interpretations to part 31 because the section 23A interpretations and part 31 stem from similar concerns about persons or entities taking undue advantage of positions of influence and thereby adversely affecting the safety and soundness of a national bank.

The final rule amends the interpretation concerning loans secured by stock or obligations of an affiliate (Section 1) to emphasize that a loan is a covered transaction for purposes of section 23A if the loan proceeds in the circumstances identified in the interpretation are used for the benefit of, or transferred to, an affiliate.

The final rule removes the interpretation concerning Federal funds transactions between affiliates (proposed § 31.101). This interpretation is substantively identical to a Board interpretation (*see* 12 CFR 250.160) that applies to all member banks. Accordingly, there is no need for the OCC to restate this provision.

The remaining interpretation (Section 2) has been restated without amendment.

Guidance Regarding Differences Between Lending Limits and Insider Lending Standards (Appendix B)

In the proposal, the OCC sought comment on whether it would be useful for the agency to issue guidance clarifying the differences between the insider lending limits (part 31) and the loans-to-one-borrower limits (part 32).

The four commenters addressing this issue uniformly favored having the OCC provide guidance. Of those who identified areas where additional guidance would be helpful, one requested guidance on the differences between the rules for combining loans to related interests with the insider and the rules for combining loans due to a common enterprise. Another asked for guidance on the differences between the tangible economic benefit rule in part 31 and the direct benefit rule in part 32. Two commenters expressed concern about the possibility of the guidance adding burden to national banks. One of these commenters stated that the OCC should proceed with caution so that guidance does not deviate from Reg. O.

In light of these comments, the OCC has decided to issue guidance that focuses on areas of significant difference. Appendix B sets forth guidance on the differences in part 31 (as amended by this final rule) and part 32 between (a) the definitions of ''extension of credit,'' (b) exceptions to the definitions of ''extension of credit,'' and (c) the attribution rules. This guidance does not impose any new requirements on national banks. Rather, it simply provides an accessible reference for several important areas where parts 31 and 32 differ and highlights areas that will require additional care by banks when engaging in transactions that are subject to both sets of standards.

Effective Date

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that a Federal banking agency regulation that imposes ''additional reporting, disclosures, or other new requirements on insured depository institutions [to] * * * take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.* * *'' A regulation may become effective earlier than the first day of the next calendar quarter if the agency determines that good cause exists to make the effective date earlier and publishes this determination with the regulation.

The OCC has determined that the part 31 final rule does not impose any additional requirements on national banks. Rather, it simplifies the former rule by removing provisions that are unnecessary in light of comparable provisions in Reg. O, provides national banks with additional flexibility in extending credit to executive officers, and highlights certain differences between the insider lending restrictions and the lending limits regulation. Accordingly, the requirement for a delayed effective date does not apply.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This final rule will reduce somewhat the regulatory burden on national banks, regardless of size, by eliminating and clarifying current regulatory requirements. However, its impact will be minimal.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a rule.

The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 31

Credit, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 31 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

Authority: 12 U.S.C. 93a, 375a(4), 375b(3), 1817(k), and 1972(2)(G).

§ 31.1 Authority.

This part is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 93a, 375a(4), 375b(3), 1817(k), and 1972(2)(G), as amended.

§ 31.2 Insider lending restrictions and reporting requirements.

(a) *General rule.* A national bank and its insiders shall comply with the provisions contained in 12 CFR part 215.

(b) *Enforcement.* The Comptroller of the Currency administers and enforces insider lending standards and reporting requirements as they apply to national banks and their insiders.

Appendix A to Part 31—Interpretations

Section 1. Loans Secured by Stock or Obligations of an Affiliate

A bank that makes a loan to an unaffiliated third party may take a security interest in securities of an affiliate as collateral for the loan without the loan being deemed a ''covered transaction'' under section 23A of the Federal Reserve Act (12 U.S.C. 371c) if:

a. The borrower provides additional collateral that, taken alone, meets or exceeds the collateral requirements specified in section 23A(c) (12 U.S.C. 371c(c)); and

b. The loan proceeds:

1. Are not used to purchase the bank affiliate's securities that serve as collateral; and

2. Are not otherwise used for the benefit of, or transferred to, any affiliate.

Section 2. Deposits Between Affiliated Banks

a. *General rule.* The OCC considers a deposit made by a bank in an affiliated bank to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c. These deposits must be secured in accordance with 12 U.S.C. 371c(c). However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (*see, e.g.,* 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 U.S.C. 371c noted in paragraph b. of this interpretation applies or unless another exception applies that enables a bank to meet the collateral requirements of 12 U.S.C. 371c(c), a national bank may not:

1. Make a deposit in an affiliated national bank;

2. Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 U.S.C. 371c; or

3. Receive deposits from an affiliated bank.

b. *Exceptions.* The restrictions of 12 U.S.C. 371c (other than 12 U.S.C. 371c(a)(4), which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

1. Made in the ordinary course of correspondent business; or

2. Made in an affiliate that qualifies as a ''sister bank'' under 12 U.S.C. 371c(d)(1).

Appendix B to Part 31—Comparison of Selected Provisions of Part 31 and Part 32 (as of October 1, 1996)

Note: Even though part 31 now simply requires that national banks comply with the insider lending provisions contained in Regulation O (Reg. O) (12 CFR part 215), the chart in this appendix refers to part 31 because Reg. O is a Federal Reserve Board regulation and part 31 is the means by which several provisions of Reg. O are made applicable to national banks and their insiders.

Definition of ''Loan or Extension of Credit''

Renewals	In most cases, the two definitions of ''loan or extension of credit'' will be applied in the same manner. A difference exists, however, in the treatment of renewals. Under Part 31, a renewal of a loan to an ''insider'' (which, unless noted otherwise, includes a bank's executive officers, directors, principal shareholders, and ''related interests'' of such persons) is considered to be an extension of credit. Under Part 32, renewals generally are not considered to be an extension of credit if the bank exercises reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit. Renewals would be considered an extension of credit under Part 32, however, if new funds are advanced to the borrower, a new borrower replaces the original borrower, or the OCC determines that the renewal was undertaken to evade the lending limits.
Commitments to extend credit..	A binding commitment to make a loan is treated as an extension of credit under Part 31. Under Part 32, a commitment to make a loan will not be treated as an extension of credit if the amount of the commitment exceeds the lending limit. Rather, the commitment will be deemed a ''nonqualifying commitment'' under Part 32 and advances may be made thereunder only if the advance, together with all other outstanding loans to the borrower, will not exceed the bank's lending limit.
Overdrafts	An advance by means of an overdraft (except for an intraday overdraft) generally is considered to be an extension of credit under both Parts 31 and 32. However, indebtedness in amounts up to $5,000 is excluded from the definition of ''extension of credit'' under Part 31 if the indebtedness arises pursuant to a written, preauthorized, interest-bearing plan or written, preauthorized transfer of funds from another account. Under Part 31, if an overdraft is not made pursuant to this type of plan or transfer, a bank is prohibited from paying an overdraft of an insider (which, in this case, includes only an executive officer or director of the insider's bank) unless the overdraft is inadvertent, in amounts not exceeding $1,000, outstanding for not more than 5 business days, and subject to the bank's standard overdraft fee. Part 32 does not contain these exceptions for overdrafts, and simply treats overdrafts (except for intraday overdrafts) as extensions of credit subject to lending limits.
Guarantees	Generally speaking, guarantees are included in the Part 31 definition of ''extension of credit'' but are not included in the definition of ''extension of credit'' in Part 32 unless other criteria are satisfied. Part 31 applies to any transaction as a result of which an insider becomes obligated to pay money to a bank, whether the obligation arises (i) directly or indirectly, (ii) because of an endorsement on an obligation or otherwise, or (iii) by any means whatsoever. Accordingly, a loan guaranteed by an insider will be deemed to have been made to that insider. In contrast, Part 32 does not consider a loan on which someone signs as guarantor as having been made to the guarantor unless that person is deemed to be a borrower under the ''direct benefit'' or ''common enterprise'' tests (*see* discussion of these tests in the discussion of the ''General Rule'' under ''Combination/Attribution Rules,'' below).

	Exclusions to Definition
Funds advanced for taxes, etc., necessary to preserve collateral or that are incidental to indebtedness.	Both rules exclude funds advanced for items such as taxes, insurance, or other expenses related to existing indebtedness. However, Part 32 includes these advances for the purpose of determining whether subsequent loans meet the lending limit, whereas Part 31 excludes these advances for all purposes. In addition, Part 32 requires that the funds, which are advanced ''for the benefit of'' a borrower, be advanced by the bank directly to the third party to whom the borrower is indebted. Part 31 contains no such requirement.
Loan participations	Both rules exclude loan participations if the participation is without recourse. However, Part 32 elaborates on this exclusion by requiring that the participation result in a *pro rata* sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Part 32 also requires the originating bank, if funding the entire loan, to receive funding from the participants before the close of the next business day. Otherwise, the portion funded will be treated as a loan by the originating bank to the underlying borrower, and may be treated as a ''nonconforming'' loan rather than a violation if (i) the originating bank had an agreement with the participating bank that reduced the loan to an amount within the originating bank's lending limit, (ii) the participating bank reconfirmed its participation and the originating bank had no knowledge of information that would permit the participating bank to withhold its participation, and (iii) the participation was to be funded by close of business of the originating bank's next business day.
Acquisition of debt through merger or foreclosure.	Under Part 31, a note or other evidence of indebtedness acquired through a merger is excluded from the definition of ''extension of credit.'' Under Part 32, the indebtedness is deemed to be a loan or extension of credit. However, if a loan that conformed with Part 32 when originally made exceeds the lending limits following a merger after the loan is aggregated with other extensions of credit to the same borrower, the loan will not be deemed to be a lending limits violation. Rather, the loan will be treated as ''nonconforming,'' and the bank will have to exercise reasonable efforts to bring the loan into compliance unless to do so would be inconsistent with safe and sound banking practices.
Credit card indebtedness	An insider may incur up to $15,000 in debt on a credit card or similar open-end credit plan offered by the insider's bank without the debt counting as an extension of credit under Part 31. The terms of the credit card or other credit plan must be no more favorable than those offered by the bank to the general public. Part 32 does not exclude credit card debt from the lending limits.
	Combination/ Attribution Rules
General rule	Under Part 31, a loan will be attributed to an insider if the loan proceeds are ''transferred to,'' or used for the ''tangible economic benefit of,'' the insider or if the loan is made to a ''related interest'' of the insider. Under Part 32, a loan will be attributed to another person when either (i) the proceeds of the loan are to be used for the direct benefit of the other person or (ii) a common enterprise exists between the borrower and the other person. The ''transfer'' test and ''tangible economic benefit'' test of Part 31 are substantially the same as the ''direct benefit'' test of Part 32. Under each of these tests, a loan will be attributed to another person where the proceeds are transferred to the other person, unless the proceeds are used in a *bona fide* arm's length transaction to acquire property, goods, or services. However, the ''related interest'' test of Part 31 and the ''common enterprise'' test under Part 32 will lead to different results in many instances. Under Part 31, a ''related interest'' is a company or a political or campaign committee that is ''controlled'' by an insider. Part 31 defines ''control'' as meaning, generally speaking, that someone owns or controls at least 25 percent of a class of voting securities of a company, controls the election of a majority of the company's directors, or can ''exercise a controlling influence'' over the company. Part 32 uses the same definition of ''control'' in the ''common enterprise'' test, but a mere finding of ''control'' is not, by itself, a sufficient basis to find that a common enterprise exists. Part 32 will attribute a loan under the ''common enterprise'' test if the borrowers are under common control (including where one of the persons in question controls the other) *and* there is ''substantial financial interdependence'' between the borrowers (*i.e.,* where at least 50 percent of the gross receipts or expenditures of one borrower comes from transactions with the other). If there is not both common control and substantial financial interdependence, the OCC will not attribute a loan under the ''common enterprise'' test unless (i) the expected source of repayment for a loan is the same for each borrower and neither borrower has another source of income from which the loan may be repaid, (ii) two people borrow to acquire a business of which they will own a majority of the voting securities, or (iii) OCC determines that a common enterprise exists based on facts and circumstances of a particular transaction.
Loans to corporate groups	Both Parts 31 and 32 will consider a loan that was made to a corporation to have been made to a third person if the tests identified in the previous discussion of the ''General Rule'' are satisfied. If these tests are not met, Parts 31 and 32 still may require attribution, but the circumstances when this will occur and the consequences of attribution under these circumstances differ under the two rules. Under Part 31, a loan to a corporation will be deemed to have been made to an insider if the corporation is a ''related interest'' of the insider (*i.e.,* the insider owns at least 25% percent of a class of voting shares of the company, controls the election of a majority of the company's directors, or has the power to exercise a controlling influence over the company). Under Part 32, a loan to an individual or company will not be considered to have been made to a corporate group until a ''person'' (which includes individuals and companies) owns more than 50% of the voting shares of a company. If a loan is found to have been made to a related interest of an insider under Part 31, the loan must comply with all of the insider lending restrictions of Part 31. If a loan is found to have been made to a corporate group under Part 32, the loan, when aggregated with all other loans to that corporate group, generally may not exceed 50% of the bank's capital and surplus.

Loans to partnerships, joint ventures, and associations.	Part 31 applies different rules to implement different restrictions applicable to partnerships. For purposes of the limits on loans to executive officers, a loan made to a partnership in which an executive officer of the lending bank holds a majority interest is deemed to have been made to the executive officer. For all other purposes under Part 31, a loan to a partnership will be attributed to an executive officer or other insider only if the partnership is a ''related interest'' of the insider or if the loan is transferred to, or used for the tangible economic benefit of, the insider. Part 32 does not make any similar distinction based on the restriction in question. Under Part 32, a loan made to a partnership, joint venture, or association will be attributed to all members of such an entity—regardless of the percentage of ownership—unless a person's liability is limited by a valid agreement. Conversely, loans to members of a partnership, joint venture, or association will not be attributed to the entity under Part 32 unless either the ''common enterprise'' or ''direct benefit'' test is met.

Dated: October 2, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

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BILLING CODE 4810–33–P

SMALL BUSINESS ADMINISTRATION

13 CFR PART 121

Small Business Size Standards; Notice of Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the Nonmanufacturer Rule for Purified Terephthalic Acid Ground (PTAG) and Un-Ground (PTAU).

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for Purified Terephthalic Acid Ground (PTAG) and Un-Ground (PTAU). The basis for a waiver is that no small business manufacturers are available to participate in the Federal market for these products. The effect of a waiver will allow otherwise qualified nonmanufacturers to supply the products of any domestic manufacturer on a Federal contract set-aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: October 21, 1996.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, Procurement Analyst, (202) 205–6475, FAX (202) 205–7324.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The SBA was asked to issue a waiver for PTAG and PTAU because of an apparent lack of any small business manufacturers or processors for them within the Federal market. The SBA searched its Procurement Automated Source System (PASS) for small business participants and found none. We then published a notice in the Federal Register on May 6, 1996 (vol. 61, no. 88, found none. We then published a notice in the Federal Register on May 6, 1996 (vol. 61, no. 88, p. 20191), of our intent to grant a waiver for these classes of products unless new information was found. The proposed waiver covered PTAG and PTAU (PSC 6810). The notice described the legal provisions for a waiver, how SBA defines the market and asked for small business participants of these classes of products. After the 15-day comment period, no small businesses were identified for PTAG and PTAU. This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100–656 for PTAG and PTAU. The waiver will last indefinitely but is subject to both an annual review and a review upon receipt of information that the conditions required for a waiver no longer exist. If such information is found, the waiver may be terminated.

Judith A. Roussel,

Associate Administrator for Government Contracting.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–40–AD; Amendment 39–9782; AD 96–21–05]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft SA226 and SA227 series airplanes that do not have a certain elevator torque tube installed. This action requires drilling inspection access holes in the elevator torque tube arm, inspecting the elevator torque tube for corrosion, replacing any corroded elevator torque tube, and applying a corrosion preventive compound. Several reports of corrosion found in the elevator torque tube area on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of the flight control system caused by a corroded elevator torque tube, which could result in loss of control of the airplane.

DATES: Effective November 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone