

RESCINDED

Office of Thrift Supervision
Department of the Treasury

November 18, 2003

Transmittal
TR-345

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Number TR-345

The attached joint notice and request for comment regarding Agency Information Collection Activities: Proposed Collection; Comment Request – Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks was published in the Federal Register on November 13, 2003.

§ 175.78 of the HMR.⁶⁰ Air France should not be required to choose between following the Fire Department's storage requirements or complying with the segregation and separation requirements contained in the HMR.

Let us be clear that the local Houston requirement is clearly restricting storage that is incidental to transportation subject to the HMR. All hazardous material shipments at the Air France IAH facility are under active shipping papers (through air waybills); they are in transit prior to continuing transportation by truck or by aircraft to the ultimate consignee.

The local Houston requirement to store certain in transit hazardous materials in a storage cabinet also has the potential to create delays and diversions in the transportation of such materials. Obviously, the storage cabinet required by the Fire Department is only able to hold a limited amount of hazardous materials, *i.e.*, 48 55-gallon drums. When the cabinet is full (or other incompatible hazardous materials are already stored in the cabinet) hazardous materials may have to be shipped through other jurisdictions using a more circuitous routing in order to reach their final destination. Thus, the Fire Department's storage cabinet requirement could have a direct impact on the length of time certain shipments of hazardous materials remain in transit thereby increasing the risk associated with their transportation. In fact, within the first few days of using the storage cabinet, Air France had to delay for two days the acceptance of a shipment of flammable liquid due to the lack of space in the cabinet. As RSPA noted in IR-28 (San Jose) "[t]he manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation."⁶¹

In addition, if the Fire Department's storage cabinet requirement is allowed to remain in place, Air France will be required to load and unload certain hazardous materials into and out of the cabinet increasing the number of times that the hazardous materials are handled. As one court has recognized, "the more frequently hazardous material is handled during transportation, the greater the risk of mishap. Accordingly, these provisions [the HMTA] require that the material reach its destination as quickly as possible, with the least amount of handling and temporary storage."⁶² Since the hazardous materials storage cabinet being required by the Houston Fire Department has the potential to create delays and diversions in the transportation of hazardous materials and will increase the amount that the materials are required to be handled, this requirement should be preempted as an obstacle to the execution of the HMTA and the HMR.

⁶⁰ § 175.78 provides a similar hazardous materials segregation and separation chart for air carriers (including air carrier cargo facilities) as that found in § 177.848(d).

⁶¹ 55 FR at 8892.

⁶² *Consolidated Rail Corp. v. Bayonne*, 724 F. Supp. 320, 330 (D.N.J. 1989).

Given the obvious potential for delays and diversions in the transportation of hazardous materials associated with the Houston Fire Department's storage cabinet requirement, the current situation can easily be distinguished from PD-12(R), 62 Fed. Reg. 15970 (April 3, 1997), in which RSPA reversed its earlier decision in the same proceeding concluding that certain secondary containment requirements of the New York State Department of Environmental Conservation were not preempted due to a lack of information from which to determine that the requirements actually cause delays or diversions in the transportation of hazardous materials.

Nor is there a rational and compelling local governmental interest for requiring Air France to use storage cabinets to store certain in transit hazardous materials in its warehouse while not imposing the same requirement on comparably constructed retail establishments like a Home Depot or a Wal-Mart. According to Table 7902.5-A, Air France is required to store a shipment of paint thinner (a class I-B flammable liquid) over 120 gallons in a storage cabinet (the Air France facility is equipped with an approved automatic sprinkler system), while Table 7902.5-B provides a 15,000-gallon to 30,000-gallon exemption (depending on the size of the store) for paint thinner stored in retail establishments. The Houston Building Code also appears to provide an exception to the city's H-occupancy requirements for wholesale and retail establishments that store flammable and combustible liquids.⁶³ The irrational nature of the Fire Department's differing treatment of these two types of facilities becomes even more apparent when one considers that hazardous materials temporarily stored in the Air France warehouse will have the added security of being enclosed in DOT-approved packaging rendering them suitable for carriage by air; hazardous materials stored in retail establishments, on the other hand, are most likely packaged and stored in ordinary boxes or other types of containers. Absent a rational and compelling regulatory scheme, any claim of local governmental interest must be rejected and the local requirement preempted as an obstacle to the execution of the HMTA and the HMR.

VI. Conclusion

Pursuant to 49 CFR 107.205(b), Air France respectfully requests that a notice of this Application be published in the **Federal Register** with an opportunity for public comment. Air France further requests that upon consideration of the comments received and the prior Inconsistency Rulings, Preemption Determinations and court decisions discussed in this Application, that RSPA issue a determination finding that: (1) the Hazardous Materials Management Plan and Hazardous Materials Inventory Statement provisions contained in the Houston Fire Code are preempted to the extent that these items are required to be submitted in order for Air France to obtain

⁶³ See § 307.9, paragraph 4 of the Building Code of the City of Houston, the 2000 edition of the International Building Code as adopted with certain amendments, attached hereto as Exhibit 9.

a permit to handle or store in transit hazardous materials at its cargo facility at George Bush Intercontinental Airport; and (2) the Houston Fire Department's requirement that Air France use a hazardous materials storage cabinet for the storage of certain in transit hazardous materials is preempted.

VII. Certification

Pursuant to 49 CFR 107.205(a), I hereby certify that a copy of this Application has been sent via first class mail postage pre-paid with an invitation to submit comments to:

Randy Rivin, Esquire, Legal Department, City of Houston, P.O. Box 1562, Houston, TX 77251-1562.

Mr. Richard M. Vacar, Director of Aviation, Bush Intercontinental Airport, P.O. Box 60106, Department of Aviation, Houston, TX 77205-0106.

Dated: October 15, 2003.

Respectfully submitted,

Michael F. Goldman,

L. Jeffrey Johnson,

Silverberg, Goldman & Bikoff, L.L.P., 1101 30th Street, NW., Suite 120, Washington, DC 20007. Counsel for Societ  Air France.

List of Exhibits

Exhibit 1—Applicable Houston Fire Code Provisions

Exhibit 2—Fire Department Notice of Violation, dated October 23, 2002

Exhibit 3—HMMPs and HMISs prepared for Air France by Loss Control Associates, Inc.

Exhibit 4—City of Houston permits issued to Air France to handle or store hazardous materials and flammable or combustible liquids

Exhibit 5—Fire Department Violation Citations, dated February 10, 2003

Exhibit 6—Letter Agreement between Lynxs Group and Air France, dated April 15, 2003

Exhibit 7—Certificate of occupancy, issued June 27, 2003

Exhibit 8—Fire Code tables of exempt amounts

Exhibit 9—Applicable Houston Building Code Provisions

[FR Doc. 03-28254 Filed 11-12-03; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Office of

Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks (FFIEC 004), which are currently approved information collections. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the report. The agencies will then submit the report to OMB for review and approval.

DATES: Comments must be submitted on or before January 12, 2004.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Comments should be sent to the Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0070, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874-4448, or by e-mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550-0075, Fax number (202) 906-6518, or e-mail to

infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

Board: Written comments, which should refer to "FFIEC 004, 7100-0034" may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by electronic mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or (202) 452-3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room M-P-500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All comment should refer to "FFIEC 004, 3064-0023." Commenters are encouraged to submit comments by fax or electronic mail [FAX number (202) 898-3838; Internet address: comments@fdic.gov]. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to jlackeyj@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

OTS: Marilyn Burton, OTS Clearance Officer, (202) 906-6467, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898-3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved information collection:

Title: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks

Form Number: FFIEC 004

Frequency of Response: Annually (for executive officers and principal shareholders), and on occasion (for national banks, state member banks, insured state nonmember banks, and savings associations)

Affected Public: Individuals or households, businesses or other for-profit

For OCC:

OMB Number: 1557-0070

Estimated Number of Respondents: 25,300 (23,000 executive officers and principal shareholders fulfilling record keeping burden, 2,300 national banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 2.25 hours

Estimated Total Annual Burden: 56,925

For OTS:

OMB Number: 1550-0075

Estimated Number of Respondents: 4,336

Estimated Time per Response: 2.75 hours

Estimated Total Annual Burden: 11,924

For Board:

OMB Number: 7100-0034

Estimated Number of Respondents:

4,955 (3,964 executive officers and principal shareholders fulfilling record keeping burden, 991 state member banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 1.12 hours

Estimated Total Annual Burden:

5,551

For FDIC:

OMB Number: 3064-0023

Estimated Number of Respondents:

27,495 (21,996 executive officers and principal shareholders fulfilling record keeping burden, 5,499 insured state nonmember banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 1.8 hours

Estimated Total Annual Burden:

49,491

General Description of Report: These information collections are mandatory: 12 U.S.C. 1972(2)(G) (all); 12 U.S.C. 1817(k), 12 CFR 31.2, and 12 U.S.C. 93a (OCC); 12 U.S.C. 1468 and 12 CFR 563.43 (OTS); 12 U.S.C. 375(a)(6) and (10), and 375(b)(10) (Board); and 12 CFR 349.3 and 349.4 (FDIC). In general, these information collections are given confidential treatment (5 U.S.C. 552 (b)(8)), but banks and saving associations are required to make certain limited disclosures.

Abstract: Executive officers and principal shareholders of insured banks and saving associations must file with their institution the information contained in the FFIEC 004 report on their indebtedness and that of their related interests to correspondent banks. The information contained in the FFIEC 004 report is prescribed by statute and regulation, as cited above. Banks and saving associations must retain these reports or reports containing similar information and fulfill other record keeping requirements, such as furnishing annually a list of their correspondent banks to their executive officers and principal shareholders. Banks and saving associations also have certain disclosure requirements for these information collections.

Current Actions: The agencies propose to extend, without revision, the FFIEC 004 report. The agencies continue to evaluate the record keeping requirements contained in their regulations that relate to the FFIEC 004 report. Should the agencies decide to revise these regulations, a separate Federal Register notice will be published inviting comment from the public on the proposed revisions. Any revisions that may be made to the agencies' regulations would be

subsequently incorporated into these information collections (FFIEC 004).

Request for Comment

Comments are invited on:

- Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;
- The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

October 23, 2003.

Mark J. Tenhundfeld

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency

November 4, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision

Board of Governors of the Federal Reserve System, November 6, 2003.

Jennifer J. Johnson

Secretary of the Board

Dated at Washington, D.C., this 22nd day of October, 2003.

Federal Deposit Insurance Corporation

Robert E. Feldman

Executive Secretary

[FR Doc. 03-28452 Filed 11-12-03; 8:45 am]

BILLING CODE 4810-33- 6720-01-P; 6210-01-P; 6714-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1-888-912-1227, or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, December 1, 2003 from 8 a.m. Pacific Time to 8 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Dated: November 5, 2003.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03-28447 Filed 11-12-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0154]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.