

period, but only a countywide voter list is available, acquisition of the that voter list would still fall within new section 100.24(a)(1)(iii) and would not be Type II FEA. However, if the local party committee acquires a voter list that is for a geographic region that is larger than the municipality conducting the non-Federal election and a small voter list covering the municipality is available, the acquisition of the larger voter list would be Type II FEA. Choosing a list of voters that goes beyond the voters participating in the municipal election demonstrates that the voter identification program is not exclusively in connection with the municipal election.

The interim final rule is consistent with section 441i(b) of BCRA, which seeks to regulate the funds used for Type II FEA that are in connection with Federal elections by State, district, and local political party committees and organizations. In defining "FEA," BCRA limited the definition to voter registration activity within 120 days of a Federal election and to Type II FEA that are "in connection with" an election in which a Federal candidate appears on the ballot. See 2 U.S.C. 431(20)(A)(i) and (ii). Thus, BCRA recognizes that some voter registration activity, voter identification, GOTV activity, and generic campaign activity is not FEA. New section 100.24(a)(1)(iii) applies only to voter identification and GOTV activities that are not "in connection with an election in which a candidate for Federal office appears on the ballot," as required by BCRA.

The interim final rule will not lead to circumvention of BCRA. The definition of "FEA" as amended by the interim final rule fully captures the activities Congress sought to subject to BCRA's funding restrictions. As noted above, the FEA provisions in BCRA address "the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties," and it does so "while preserving the rights and abilities of our State and local parties to engage in truly local activity." See 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (Statement of Sen. McCain). The new interim final rule does not create an opportunity for such evasion because the communications and activities that fall within the rule are "purely non-Federal activities," which the FEA provisions were not intended to reach. See *id.* Lastly, State, district, and local political party committees and organizations must continue to use an allocable mix of Federal and non-Federal funds to pay for any communications or activities covered by

the new interim final rule. See 11 CFR 106.7(b), (c)(3), and (c)(5). Therefore, even under the new interim final rule, use of non-Federal funds for those communications and activities remains limited.

#### **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

The Commission certifies that the attached interim final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by this rule are State, district, and local political party committees, which are not "small entities" under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of "small organization," which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered "small organizations," the number affected by this rule is not substantial. Finally, new § 100.24(a)(1)(iii) operates to relieve funding restrictions, which reduces the economic impact on any affected entities.

#### **List of Subjects in 11 CFR Part 100**

Elections.

■ For the reasons set out in the preamble, Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* is amended as follows:

#### **PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

■ 1. The authority citation for 11 CFR part 100 continues to read as follows:

**Authority:** 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. In § 100.24, paragraph (a)(1)(iii) is added to read as follows:

#### **§ 100.24 Federal Election Activity (2 U.S.C. 431(20)).**

(a) \* \* \*

(1) \* \* \*

(iii) *Voter Identification and Get-Out-the-Vote Activities Limited to Non-Federal Elections.*

(A) Notwithstanding paragraphs (a)(1)(i) and (ii) of this section, in connection with an election in which a candidate for Federal office appears on the ballot does not include any activity or communication that is in connection with a non-Federal election that is held on a date separate from a date of any Federal election and that refers exclusively to:

(1) Non-Federal candidates participating in the non-Federal election, provided the non-Federal candidates are not also Federal candidates;

(2) Ballot referenda or initiatives scheduled for the date of the non-Federal election; or

(3) The date, polling hours and locations of the non-Federal election.

(B) Paragraph (a)(1)(iii) of this section shall not apply to any activities or communications after September 1, 2007.

\* \* \* \* \*

Dated: March 16, 2006.

**Michael E. Toner,**

*Chairman, Federal Election Commission.*

[FR Doc. 06-2766 Filed 3-21-06; 8:45 am]

**BILLING CODE 6715-01-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:** Final rule.

**SUMMARY:** Ex-Im Bank is adopting a regulation that establishes policy and prescribes 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 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. A proposed rule on this subject was published in the **Federal Register** on October 24, 2005 (70 FR 61395). Ex-Im Bank did not receive any comments on the proposed rule. Ex-Im Bank is accordingly

adopting the proposed provisions as a final rule without further change.

**DATES:** Effective March 22, 2006.

**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 Final Rule**

The final 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 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 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 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 will 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 regulation will not authorize any Ex-Im Bank personnel to refuse to comply with the law. Rather, the regulation will 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 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 will not infringe upon the judiciary or create new privileges not previously recognized by law but will 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 will 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*

In compliance with the Administrative Procedure Act (5 U.S.C. 553), Ex-Im Bank Published a proposed rule on this subject in the **Federal Register**. This final rule will become effective as noted above.

*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 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.

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

**PART 404—INFORMATION DISCLOSURE**

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

**Authority:** 5 U.S.C. 552 and 552a. 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.
  - 404.26 Definitions.
  - 404.27 Demand requirements.
  - 404.28 Notification of General Counsel required.
  - 404.29 Restrictions on testimony and production of records.
  - 404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.
  - 404.31 Procedure for declining to testify and/or produce records.
  - 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.

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

**§ 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;

(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 or 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: March 15, 2006.

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

[FR Doc. 06–2749 Filed 3–21–06; 8:45 am]

BILLING CODE 6690–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2005–23476; Directorate Identifier 2005–NM–204–AD; Amendment 39–14516; AD 2006–06–07]

RIN 2120–AA64

**Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires inspecting the main landing gear (MLG) main fitting for cracks, and repair if necessary. This AD also requires installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane. This AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are issuing this AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

**DATES:** This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 26, 2006.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Fokker Services B.V., Technical Services Dept, P.O. Box 231,