

## Discussion

The obligations under the Order Execution Rules represent a significant change in the order handling practices of OTC market makers and specialists. The Commission, therefore, has chosen to require compliance with the rules over a phased-in period. On January 20, 1997, the Order Execution Rules became effective and compliance with the rules became mandatory for all exchange-traded securities and 50 Nasdaq securities.<sup>6</sup> Subsequently, the Commission provided exemptive relief from compliance with the Order Execution Rules for the Nasdaq securities not phased-in as of February 14, 1997, until April 14, 1997.<sup>7</sup> To date, compliance is mandatory for all exchange-traded securities and 150 of the most actively traded Nasdaq securities.

The Commission has been closely monitoring the implementation of the rules and has found that the implementation appears to be occurring successfully. The success to date is due, in-part, to affording market participants time to adapt to the new regulatory requirements. Moreover, Nasdaq will continue to have capacity limitations that reduce its ability to handle substantial additional quotation traffic until mid-July. The NASD has, therefore, requested that the rules be phased-in on an extended schedule that strikes a reasonable balance between the desire to enhance the benefits of the Rules for investors and the need to ensure that implementation of the Rules does not compromise the integrity or capacity of automated systems operated by Nasdaq, broker-dealers, ECNs, and vendors.<sup>8</sup> Accordingly, the Commission believes it is appropriate to continue the

definition of "subject security", from January 10, 1997, to April 10, 1997.

<sup>6</sup> See Securities Exchange Act Release Nos. 37619A (September 6, 1996), 37972 (November 22, 1996), 38110 (January 2, 1997), 38139 (January 8, 1997), and 38246 (February 5, 1997) outlining previous phase-in schedules for the Order Execution Rules. The Commission notes that a broker-dealer's duty of best execution discussed in the Adopting Release is applicable to all securities and is not based on whether or not the security has been phased-in under the Limit Order Display Rule or the ECN Amendment.

<sup>7</sup> See Securities Exchange Act Release No. 38246 (February 5, 1997). Absent the granted exemptive relief, the Limit Order Display Rule would currently apply to 1000 Nasdaq securities with an additional 1500 Nasdaq securities being required on March 28, 1997. Moreover, the ECN Amendment would currently apply to 1000 Nasdaq securities with the remaining Nasdaq securities being required on March 28, 1997.

<sup>8</sup> See letter from J. Patrick Campbell, Executive Vice President, Trading & Market Services, The Nasdaq Stock Market, Inc., to Richard R. Lindsey, Director, Division of Market Regulation, dated April 8, 1997.

gradual phase-in of both the Limit Order Display Rule and the ECN Amendment for the next 550 most actively traded Nasdaq securities. However, once the most actively traded Nasdaq securities are phased-in, the Commission expects to phase-in the remaining securities on a more accelerated basis.

The new schedule for the next 550 Nasdaq securities is as follows: 50 Nasdaq securities on April 21, 1997; 50 Nasdaq securities on April 28, 1997; 50 Nasdaq securities on May 5, 1997; 50 Nasdaq securities on May 12, 1997; 50 Nasdaq securities on May 19, 1997; 50 Nasdaq securities on May 27, 1997; 50 Nasdaq securities on June 2, 1997; 50 Nasdaq securities on June 9, 1997; 50 Nasdaq securities on June 23, 1997; 50 Nasdaq securities on June 30, 1997; and 50 Nasdaq securities on July 7, 1997.<sup>9</sup> The Commission will not phase-in securities the week of June 16, 1997 to afford Nasdaq an opportunity to effect system upgrades designed to enhance Nasdaq's quote update response time and the capacity of Nasdaq's last sale broadcast. To accommodate this schedule and pursuant to Rule 11Ac1-1(d)<sup>10</sup> of the Exchange Act, the Commission is exempting responsible brokers and dealers, electronic communications networks, exchanges, and associations, until July 28, 1997 from the requirements of: (1) Rule 11Ac1-1(c)(5)(i), the ECN Amendment, with respect to all Nasdaq securities not phased-in as of July 7, 1997; and (2) from the requirements of Rule 11Ac1-1(c)(1), with respect to non-Rule 19c-3 securities.<sup>11</sup> In addition, pursuant to Rule 11Ac1-4(d)<sup>12</sup> of the Exchange Act, the Commission is exemption responsible brokers and dealers, electronic communications networks, exchanges, and associations, until July 28, 1997 from the requirements of Rule 11Ac1-4, the Limit Order Display Rule, with respect to all Nasdaq securities not phased-in as of July 7, 1997.

The Commission has granted this exemptive relief to continue monitoring the operation of the Order Execution Rules, and will announce a phase-in

<sup>9</sup> Nasdaq will continue to identify the specific securities to be phased-in prior to each phase-in date.

<sup>10</sup> 17 CFR 240.11Ac1-1(d).

<sup>11</sup> See 17 CFR 240.19c-3. Exchange Act Rule 19c-3 prohibits the application of off-board trading restrictions to securities that (1) were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c-3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-rule 19c-3 securities.

<sup>12</sup> 17 CFR 240.11Ac1-4(d).

schedule for the Nasdaq securities not phased-in as of July 7, 1997 at the appropriate time. The Commission finds that the exemptive relief provided herein to responsible brokers and dealers, electronic communications networks, exchanges, and associations is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system. Moreover, granting exemptive relief from the requirements of Rule 11Ac1-1(a)(25) until July 28, 1997, will provide the NASD and the Intermarket Trading System Participants further time to resolve their existing limitations on the automated generation of quotations.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-9713 Filed 4-15-97; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR PART 142

RIN 1076 AD66

#### Operation of U.S.M.S. "North Star" Between Seattle, Washington, and Stations of the Bureau of Indian Affairs and Other Government Agencies, Alaska

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is amending 25 CFR part 142 as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of existing regulations.

**EFFECTIVE DATE:** These regulations take effect May 16, 1997.

**SUPPLEMENTARY INFORMATION:** The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

The U.S.M.S. North Star has been decommissioned. However, the need for a resupply operation in Alaska continues. The Juneau Area Office administers the Alaska Resupply Operation through the Seattle Support Center. All accounts receivable and payable are handled by the Seattle

<sup>13</sup> 17 CFR 200.30(a)(28) and (61).

Support Center that also publishes a tariff of rates and conditions.

#### Review of Public Comments

The proposed rule was published on June 20, 1996, 61 FR 31470. The one comment received during the comment period ending August 19, 1996, was considered in drafting this final rule.

One commenter requested that Alaska Tribal Governments be included in Section 142.4(a), the entities for whom the Alaska Resupply Operation is operated.

Response: This recommendation has been incorporated in this rule.

#### Evaluation and Certification

##### Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

##### Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866.

##### Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Discontinuance of the resupply operation in Alaska would adversely impact Alaska Native Tribes, Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization, other Federal agencies and the State of Alaska and its subsidiaries whose beneficiaries are the Alaska Natives or their communities, and Non-Indians and Non-Natives and commercial establishments that economically or materially benefit Alaska Natives or Indians. The Alaska Resupply Operation must make reasonable efforts to restrict competition with private enterprises.

##### Executive Order 12630

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

##### Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and

will not interfere with the roles, rights and responsibilities of states.

#### NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

#### Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

#### Paperwork Reduction Act of 1995

There are no information collection requirements contained in this rule which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Drafting Information: The primary author of this document is Alan E. Mather, Traffic Manager, Seattle Support Center, Juneau Area Office, Bureau of Indian Affairs.

#### List of Subjects in 25 CFR Part 142

Indians—shipping; Indians—maritime carriers.

For the reasons given in the preamble, Part 142, Chapter I of Title 25 of the Code of Federal Regulations is amended as set forth below:

#### PART 142—ALASKA RESUPPLY OPERATION

Sec.

142.1 Definitions.

142.2 What is the purpose of the Alaska Resupply Operation?

142.3 Who is responsible for the Alaska Resupply Operation?

142.4 For whom is the Alaska Resupply Operation operated?

142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?

142.6 How are the rates and conditions for the Alaska Resupply Operation established?

142.7 How are transportation and scheduling determined?

142.8 Is economy of operation a requirement for the Alaska Resupply Operation?

142.9 How are orders accepted?

142.10 How is freight to be prepared?

142.11 How is payment made?

142.12 What is the liability of the United States for loss or damage?

142.13 Information collection.

**Authority:** 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586.

#### § 142.1 Definitions.

*Area Director* means the Area Director, Juneau Area Office, Bureau of Indian Affairs.

*Bureau* means Bureau of Indian Affairs.

*Department* means Department of the Interior.

*Manager* means Manager of the Seattle Support Center.

*Must* is used in place of shall and indicates a mandatory or imperative act or requirement.

*Indian* means any individual who is a member of an Indian tribe.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103-454, 108 Stat. 4791.

*Alaska Native* means a member of an Alaska Native village or a Native shareholder in a corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*

#### § 142.2 What is the purpose of the Alaska Resupply Operation?

The Alaska Resupply Operation provides consolidated purchasing, freight handling and distribution, and necessary transportation services from Seattle, Washington to and from other points in Alaska or en route in support of the Bureau's mission and responsibilities.

#### § 142.3 Who is responsible for the Alaska Resupply Operation?

The Seattle Support Center, under the direction of the Juneau Area Office, is responsible for the operation of the Alaska Resupply Operation, including the management of all facilities and equipment, personnel, and procurement of goods and services.

(a) The Seattle Support Center is responsible for publishing the rates and conditions that must be published in a tariff.

(b) All accounts receivable and accounts payable are handled by the Seattle Support Center.

(c) The Manager must make itineraries for each voyage in conjunction with contracted carriers. Preference is to be given to the work of the Bureau.

(d) The Area Director is authorized to direct the Seattle Support Center to perform special services that may arise and to act in any emergency.

#### § 142.4 For whom is the Alaska Resupply Operation operated?

The Manager is authorized to purchase and resell food, fuel, clothing, supplies and materials, and to order,

receive, stage, package, store and transport these goods and materials for:

(a) Alaska Native Tribes, Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization.

(b) Other Federal agencies and the State of Alaska and its subsidiaries, as long as the ultimate beneficiaries are the Alaska Natives or their communities.

(c) Non-Indians and Non-Natives and commercial establishments that economically or materially benefit Alaska Natives or Indians.

(d) The Manager must make reasonable efforts to restrict competition with private enterprise.

**§ 142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?**

The general authority of the Assistant Secretary—Indian Affairs to establish rates and conditions for users of the Alaska Resupply Operation is delegated to the Area Director.

(a) The Manager must develop a tariff that establishes rates and conditions for charging users.

(1) The tariff must be approved by the Area Director.

(2) The tariff must be published on or before March 1 of each year.

(3) The tariff must not be altered, amended, or published more frequently than once each year, except in an extreme emergency.

(4) The tariff must be published, circulated and posted throughout Alaska, particularly in the communities commonly and historically served by the resupply operation.

(b) The tariff must include standard freight categories and rate structures that are recognized within the industry, as well as any appropriate specialized warehouse, handling and storage charges.

(c) The tariff must specify rates for return cargo and cargo hauled between ports.

(1) The rates and conditions for the Bureau, other Federal agencies, the State of Alaska and its subsidiaries must be the same as that for Native entities.

(2) Different rates and conditions may be established for non-Indian and non-Native commercial establishments, if those establishments do not meet the standard in § 142.4(c) and no other service is available to that location.

**§ 142.6 How are the rates and conditions for the Alaska Resupply Operation established?**

The Manager must develop tariff rates using the best modeling techniques

available to ensure the most economical service to the Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization, without enhancing the Federal treasury.

(a) The Area Director's approval of the tariff constitutes a final action for the Department for the purpose of establishing billing rates.

(b) The Bureau must issue a supplemental bill to cover excess cost in the event that the actual cost of a specific freight substantially exceeds the tariff price.

(c) If the income from the tariff substantially exceeds actual costs, a prorated payment will be issued to the shipper.

**§ 142.7 How are transportation and scheduling determined?**

(a) The Manager must arrange the most economical and efficient transportation available, taking into consideration lifestyle, timing and other needs of the user. Where practical, shipping must be by consolidated shipment that takes advantage of economies of scale and consider geographic disparity and distribution of sites.

(b) Itineraries and scheduling for all deliveries must be in keeping with the needs of the users to the maximum extent possible. Planned itineraries with dates set as to the earliest and latest anticipated delivery dates must be provided to users prior to final commitment by them to utilize the transportation services. Each shipping season the final departure and arrival schedules must be distributed prior to the commencement of deliveries.

**§ 142.8 Is economy of operation a requirement for the Alaska Resupply Operation?**

Yes. The Manager must ensure that purchasing, warehousing and transportation services utilize the most economical delivery. This may be accomplished by memoranda of agreement, formal contracts, or cooperative arrangements. Whenever possible joint arrangements for economy will be entered into with other Federal agencies, the State of Alaska, Alaska Native cooperatives or other entities providing services to rural Alaska communities.

**§ 142.9 How are orders accepted?**

(a) The Manager must make a formal determination to accept an order, for goods or services, and document the

approval by issuing a permit or similar instrument.

(b) The Seattle Support Center must prepare proper manifests of the freight accepted at the facility or other designated location. The manifest must follow industry standards to ensure a proper legal contract of carriage is executed, upon which payment can be exacted upon the successful delivery of the goods and services.

**§ 142.10 How is freight to be prepared?**

All freight must be prepared in accordance with industry standards, unless otherwise specified, for overseas shipment, including any pickup, delivery, staging, sorting, consolidating, packaging, crating, boxing, containerizing, and marking that may be deemed necessary by the Manager.

**§ 142.11 How is payment made?**

(a) Unless otherwise provided in this part, all regulations implementing the Financial Integrity Act, Anti-Deficiency Act, Prompt Payments Act, Debt Collection Act of 1982, 4 CFR Ch. II—Federal Claims Collection Standards, and other like acts apply to the Alaska Resupply Operation.

(b) Payment for all goods purchased and freight or other services rendered by the Seattle Support Center are due and payable upon final receipt of the goods or services. If payment is not received within the time specified on the billing document, interest and penalty fees at the current treasury rate will be charged, and handling and administrative fees may be applied.

(c) Where fuel and other goods are purchased on behalf of commercial enterprises, payment for those goods must be made within 30 days of delivery to the Seattle Support Center Warehouse. Payment for freight must be made within 30 days from receipt of the goods by the shipper.

**§ 142.12 What is the liability of the United States for loss or damage?**

(a) The liability of the United States for any loss or damage to, or non-delivery of freight is limited by 46 U.S.C. 746 and the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*). The terms of such limitation of liability must be contained in any document of title relating to the carriage of goods by sea. This liability may be further restricted in specialized instances as specified in the tariff.

(b) In addition to the standards of conduct and ethics applicable to all government employees, the employees of the Seattle Support Center shall not conduct any business with, engage in trade with, or accept any gifts or items of value from any shipper or permittee.

(c) The Seattle Support Center will continue to function only as long as the need for assistance to Native village economies exists. To that end, a review of the need for the serve must be conducted every five years.

**§ 142.13 Information collection.**

In accordance with Office of Management and Budget regulations in 5 CFR 1320.4, approval of information collections contained in this regulation is not required.

Dated: April 1, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97-9799 Filed 4-15-97; 8:45 am]

BILLING CODE 4310-02-P

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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 4**

**Employees' Personal Property Claims**

**AGENCY:** Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury is amending its regulations to set forth policies and procedures for reimbursing employees for personal items that are lost, stolen, or damaged during the performance of an employee's official duty.

**DATES:** This rule is effective as a final rule on April 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dana Thibeau, Office of Accounting and Internal Controls, Room 2301, 1310 G Street, NW., Washington, DC 20220. Telephone Number (202) 622-0811.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of the Treasury established TD 32-13 and TD P 32-13 to set forth policies and procedures for reimbursing employees for personal items that are lost, stolen, or damaged during the performance of an employee's official duty. Previously, Treasury established the policy and procedures for employee's personal property claims in 31 CFR part 4. The newly established documents supersede part 4.

**Administrative Procedure Act**

Because this rule relates to agency management and personnel, notice and public procedure and a delayed effective date are not required pursuant to 5 U.S.C. 553(a)(2).

**Executive Order 12866, Regulatory Planning and Review**

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

**List of Subjects in 31 CFR Part 4**

Government employees.

Dated: March 19, 1997.

**George Muñoz,**

*Assistant Secretary (Management) and Chief Financial Officer.*

For the reasons set forth in the preamble, 31 CFR part 4 is revised to read as follows:

**PART 4—EMPLOYEES' PERSONAL PROPERTY CLAIMS**

**§ 4.1 Procedures.**

The procedures for filing a claim with the Treasury Department for personal property that is lost or damaged incident to service are contained in Treasury Directive 32-13, "Claims for Loss or Damage to Personal Property," and Treasury Department Publication 32-13, "Policies and Procedures For Employees' Claim for Loss or Damage to Personal Property Incident to Service."

**Authority:** 31 U.S.C. 3721(j).

[FR Doc. 97-9542 Filed 4-15-97; 8:45 am]

BILLING CODE 4810-25-P

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 310**

[DoD Reg. 5400.11-R]

**DoD Privacy Program**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Defense Privacy Office is amending Appendix C to 32 CFR Part 310 by adding a new Department of Defense 'Blanket Routine Use'.

**EFFECTIVE DATE:** April 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vahan Moushegian, Jr., at (703) 607-2943.

**SUPPLEMENTARY INFORMATION:**

The 'Blanket Routine Use' was previously published on February 13, 1987 at 52 FR 4645, and then amended on May 5, 1987 at 52 FR 16431.

**Executive Order 12866.** It has been determined that this Privacy Act rule for

the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

**Regulatory Flexibility Act.** It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

**Paperwork Reduction Act.** It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

**List of Subjects in 32 CFR Part 310**

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

**PART 310—DOD PRIVACY PROGRAM**

1. The authority citation for 32 CFR part 310 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix C to part 310 is amended by adding paragraph N as follows:

**Appendix C to Part 310—DoD Blanket Routine Uses**

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*N. Routine Use—Counterintelligence Purpose*

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Dated: April 10, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense*

[FR Doc. 97-9735 Filed 4-15-97; 8:45 am]

BILLING CODE 5000-04-F