

be insufficient in order to comply with the regulations. Each individual licensee is free to determine whether or not it wants to employ such a concurrence process.

#### Summary of Issue

The decision to depart from the license or a technical specification in an emergency shall be approved, as a minimum, by a licensed senior operator. If more senior licensee personnel are available, the decision to depart from the license in an emergency would pass to them as higher authorities in the chain of command. The rule does not specify that the senior licensee personnel be licensed senior operators or that they obtain the concurrence of a licensed senior operator to make such a decision.

#### Backfit Discussion

This RIS does not represent a new or different staff position regarding the implementation of 10 CFR 50.54(x) and is consistent with the SOC for 10 CFR 50.54(x) and (y), and the staff guidance in the November, 1986 Zwolinski letter. It requires no action or written response. Any action by addressees to implement changes to their security or emergency plans, or procedures in accordance with the guidance in this RIS is strictly voluntary and, therefore, is not a backfit under 10 CFR 50.109, "Backfitting." Consequently, the NRC staff did not perform a backfit analysis.

#### Federal Register Notification

To be done after the public comments period.

#### Congressional Review Act

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. 801-886) and, therefore, is not subject to the Act.

#### Paperwork Reduction Act Statement

This RIS does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### Contact

Please direct any questions about this matter to Jeff Laughlin at 301-415-1113 or by e-mail at [Jeff.Laughlin@nrc.gov](mailto:Jeff.Laughlin@nrc.gov).

#### End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 7th day of August 2008.

For the Nuclear Regulatory Commission.

#### Martin C. Murphy,

Chief, Generic Communications Branch,  
Division of Policy and Rulemaking, Office  
of Nuclear Reactor Regulation.

[FR Doc. E8-18918 Filed 8-14-08; 8:45 am]

BILLING CODE 7590-01-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 219

[Regulation S; Docket No. R-1325]

#### Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is proposing amendments to Subpart A of Regulation S, which implements the requirement under the Right to Financial Privacy Act (RFPA) that the Board establish the rates and conditions under which payment shall be made by a government authority to a financial institution for assembling or providing financial records pursuant to RFPA. These proposed amendments update the fees to be charged and take account of recent advances in electronic document productions.

**DATES:** Comments must be submitted on or before September 29, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1325, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the

instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- *E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include the docket number in the subject line of the message.

- *Fax:* (202) 452-3101.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

#### FOR FURTHER INFORMATION CONTACT:

Jason Gonzalez, Senior Attorney (202/452-3275), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of the Telecommunication Device for the Deaf (TDD), please call (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 1115 of the RFPA (12 U.S.C. 3415) requires the Board to establish, by regulation, the rates and conditions under which payment is made by a Government authority to a financial institution for searching for, reproducing, or transporting data required or requested under the RFPA. Shortly after the RFPA was adopted, the Board issued Regulation S (12 CFR Part 219) to implement this provision (44 FR 55812, September 28, 1979). These provisions were subsequently designated Subpart A of Regulation S. In June 1996, the Board revised Regulation S by updating the fees financial institutions could charge and streamlining the Subpart generally. 61 FR 29638 (June 12, 1996).

In the twelve years since the last revision, the Board has observed two significant changes that now require further amendments to Subpart A of Regulation S. First, increases in salary and benefits have caused the fees chargeable for reproducing financial records to become outdated. Furthermore, in recent years, the

production of electronically stored information during investigations and in litigation has become increasingly common. Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice & Procedure*, § 2218 at 449 (2d ed. 2006). Many government agencies now prefer to receive information in digital formats, thereby easing handling and analysis. Consequently, the amendments proposed below are intended to update the existing rates to be paid and provide a reimbursement scheme that more accurately reflects the costs of producing electronically stored information in digital formats.

### Proposed Amendments

The Board proposes to amend Regulation S in the following manner:

#### *I. Cost Reimbursement*

(a) Fees Payable. This section is being clarified to state specifically that financial institutions are eligible for reimbursement when producing financial records that have been requested pursuant to an administrative agency request, as well as by court order or subpoena. The Board of Governors has received information that some financial institutions and government agencies may be incorrectly limiting reimbursement under the Regulation to compelled court or grand jury subpoenas for customer account information.

(b) Search & Processing Costs. When subpart A was last amended in 1996, document productions were typically made on paper. Consequently, the reimbursement scheme in place since that time does not fully address the question of what costs should be reimbursable when financial institutions retrieve electronically stored records and then produce them in a digital format, rather than on paper. The current regulation permits computer time to be reimbursed, but only if separately itemized. Most financial institutions do not engage in that task, so computer time is typically not charged separately. The amendments proposed below do not change this aspect of the regulation, but instead recognize a new personnel category for computer specialists when more specialized assistance is necessary. The revised fee schedule also updates the fees that a financial institution may charge to account for changes in personnel costs for existing job categories. Finally, the revised fee schedule includes a “per electronic production” flat charge, rather than the “per diskette” charge included in the existing regulation. The amendments also include a provision that would

permit reimbursement on a per page basis for production of information only if the government agency requested production on paper, so that unnecessary costs are not incurred by the financial institution or the government.

Updating the Existing Labor Rates. Under the existing regulation, the personnel fees chargeable in Appendix A, which are intended to cover the cost of searching for, processing and producing financial records stored electronically, on paper or on microfiche, are separated into two labor categories—clerical/technical and manager/supervisory. The fees for these categories were originally derived from the 1994 Bank Cash Compensation Survey (BCCS), which is produced by the Banking Administration Institute. Although the BCCS is still in existence, the Board proposes to update the fees using comparable data maintained by the Bureau of Labor Statistics (BLS) as generated by the Occupational Employment Statistics Program. BLS provides an aggregate of data taken from 2004 to 2007. Unlike the BCCS, the BLS sample size is comprehensive and, therefore, reduces the risk of having an unrepresentative sample.

The Board proposes to update the current managerial/supervisory rate found in Appendix A (\$17.00) using the rate for first-line supervisors/managers of office found in the BLS industry category known as Credit Intermediation and Related Activities (\$22.02) adjusted for benefits using the standard benefit formula set out in the BLS survey (32.2%). This result in a \$30 per hour charge (rounded to the next highest dollar). The Board also proposes to update the rate for the clerical/technical job category found in Appendix A (\$11.00) to the average of the rates established for Information Records Clerk and Computer Operator found within the same BLS industry category (\$16.09), adjusted for benefits (32.2%). This results in a \$22 per hour charge (rounded to the next highest dollar). The Board is interested in receiving comments on the updated rates and the method of calculation.

New Labor Rate for Specialized Computer Support. It is expected that, from time to time, the government will request financial institutions to reproduce electronically stored records in a format that requires more specialized computer expertise than would ordinarily be part of the job responsibilities of a clerical/technical employee, or of a manager/supervisor. Therefore, the Board proposes to add a new job category to the fee schedule that would allow financial institutions to

charge for any additional technical assistance that is needed to locate, retrieve, prepare or reproduce electronically stored financial records. Under this new job category financial institutions may charge a rate of \$28.00 per hour. This figure is based on the labor cost associated with employing a person under the computer support specialist job category found in the BLS industry category known as Credit Intermediation and Related Activities (\$22.03), as adjusted for benefits (32.2%). This results in a charge of \$30 per hour (rounded to the next highest dollar).

The Board is interested in receiving comments on the newly proposed rate for specialized computer support for electronic document productions. It is difficult to establish rates to be applied across all geographic regions and to all depository institutions, regardless of size. While recognizing this difficulty, the Board nevertheless proposes a uniform rate in the belief that administration of a complex fee schedule would be difficult.

Automatic Labor Rate Adjustment. The proposed regulation also includes a mechanism to periodically adjust the Search and Processing reimbursement rates for personnel costs set out in the fee schedule, based on changes in the BLS compensation survey data. The proposed mechanism would adjust the hourly rates contained in the fee schedule at fixed five-year periods, using the most recent data available for each job category. The Board is interested in receiving comments on the mechanism chosen. If the automatic adjustment is adopted, the Board intends to issue a press release setting out the new rates before they become effective and making technical changes to the fee schedule for the convenience of the industry.

(c) Reproduction Costs. The Board believes the reproduction rates for diskettes (\$5.00) should be eliminated. Instead, the Board proposes to allow financial institutions to charge a flat fee of \$5.00 per request to cover cost of all compact disks, other electronic media, or e-mail transmissions necessary to respond to a request. The Board also requests comments on whether the inclusion of fees for microfiche duplication should be eliminated as outdated.

While financial institutions may continue to seek reimbursement for photocopies at the existing rate (\$.25 per page), § 219.3(c), this fee would only be chargeable when: (1) The institution is merely reproducing information that is already stored only in paper form, or (2) where the party making the request has

specifically asked for printed copies of information that is stored electronically.

The Board welcomes comments on the appropriateness of the proposed fees and any suggested alternative methods of determining the fees.

## II. Conditions for Payment

This section is being changed to identify the direct costs that may be charged when a financial institution produces financial records in paper, electronic form or both. As explained above, photocopying and microfiche charges are only applicable if the institution has reproduced financial records that are not maintained electronically (i.e., on paper or in microfiche), or where the government authority making the request has specifically asked for printed copies of electronically stored information.

### Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

### Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605, the Board certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule confers a benefit on financial institutions, including small financial institutions, by providing for reimbursement of certain costs incurred in complying with a requirement to assemble and reproduce financial records.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

### List of Subjects in 12 CFR Part 219

Banks, Banking, Currency, Federal Reserve System, Foreign banking, Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons set out in the preamble, 12 CFR part 219 is proposed to be amended as set forth below.

### PART 219—REIMBURSEMENT FOR PROVIDING FINANCIAL RECORDS; RECORDKEEPING REQUIREMENTS FOR CERTAIN FINANCIAL RECORDS (REGULATION S)

1. The authority citation for part 219 continues to read as follows:

**Authority:** 12 U.S.C. 3415.

2. Section 219.3 is amended as follows:

- a. Revise paragraphs (a) and (b)(2).
- b. Add new paragraph (b)(3).
- c. Revise paragraphs (c) and (d), and Appendix A to § 219.3.

#### § 219.3 Cost reimbursement.

(a) *Fees payable.* Except as provided in § 219.4, a government authority seeking access to financial records pertaining to a customer, by written request, through: A court order, a subpoena issued pursuant to the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure, or other agency administrative procedures, including administrative subpoenas, voluntary requests, or other process shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section. The reimbursement schedule for a financial institution is set forth in Appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

(b) \* \* \*

(2) If itemized separately, search and processing costs may include the actual cost of extracting electronically stored records, based on computer time and necessary supplies; however, personnel time for computer searches may be paid for at the rates set for computer support specialist, specified in Appendix A to this section, but only when compliance with the request for information requires that the financial institution use programming or other higher level technical services of a computer support specialist in order to reproduce electronically stored information in the format requested by the government authority.

(3) Rates for Search and Processing in Appendix A shall be recalculated as

follows on April 1, 2012 and on April 1 of each subsequent five-year period utilizing Bureau of Labor Statistics ("BLS") data by replacing the existing hourly rates with the sum of:

(i) *Base Labor rate recalculation*—Using the most recently available wage data from the Occupational Employment Statistics program (<http://www.bls.gov/oes/home.htm>) for the BLS industry category "Credit Intermediation and Related Activities" (NAICS Code Number 522000) (or successor category):

(A) [Clerical/Technical category] the average of the median hourly rates for the "Information and Records Clerk" and "Computer Operator" job categories (SOC Code Number 43-4199 and 43-9011) (or any successor job categories);

(B) [Manager/Supervisor category] the median hourly rate for the "first-line supervisors/managers of office" job category (SOC Code Number 43-1011) (or successor category), and

(C) [Computer Support Specialist category] the median hourly rate for the "computer support specialist" job category (SOC Code Number 15-1041) (or successor category); plus

(ii) *Benefits Adjustment*—an amount for each hourly rate category that is equal to the product of:

(A) The hourly rates set forth in paragraph (b)(3)(i) of this section, and

(B) The most recently available "percent of total compensation" represented by "total benefits" for the "Credit Intermediation and Related Activities" industry category (private sector) set out in the Employment Cost Trends section of the National Compensation Survey (<http://data.bls.gov/PDQ/outside.jsp?survey=cm>); and

(iii) If the recalculated rates for Search and Processing (including the Base labor rate and the benefits adjustment) are not a multiple of \$1, the recalculated rates shall be rounded up to the next multiple of \$1.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for requested information are set forth in Appendix A to this section, subject to the Conditions for Payment set forth in § 219.5. Copies of photographs, films and other materials not listed in Appendix A to this section are reimbursed at actual cost.

(d) *Transportation costs.* Reimbursement for transportation costs shall be for the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the requested information, and to convey such material to the place of examination.

**Appendix A to § 219.3—Reimbursement Schedule**

## Reproduction:

Photocopy, per page .....	\$0.25
Paper Copies of Microfiche, per frame .....	0.25
Duplicate Microfiche, per microfiche .....	0.50
Electronic Productions, per request .....	5.00

## Search and Processing:

Clerical/Technical, hourly rate	22.00
Computer Support Specialist, hourly rate .....	30.00
Manager/Supervisory, hourly rate .....	30.00

3. Section 219.5 is amended by revising paragraph (a) to read as follows:

**§ 219.5 Conditions for payment.**

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation costs shall be considered separately when determining whether the costs are reasonably necessary. Photocopying or microfiche charges are reasonably necessary only if the institution has reproduced financial records that were not stored electronically (i.e., where the information requested was stored only on paper or in microfiche), or where the government authority making the request has specifically asked for printed copies of electronically stored records.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, August 12, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8-18898 Filed 8-14-08; 8:45 am]

**BILLING CODE 6210-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 121, 125, and 135**

[Docket No. FAA-2006-26135; Notice No. 08-08]

RIN 2120-A179

**Filtered Flight Data**

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

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** The FAA is amending its proposal to prohibit the filtering of some original flight recorder sensor signals. Comments to the NPRM published in

November 2006 and changes in available technology have caused us to reexamine our position on data filtering. We are now proposing that certain critical data parameters may be filtered if a certificate holder can show that the data can be accurately reconstructed. This proposed rule would improve the integrity and quality of the data recorded on digital flight data recorders while giving aircraft designers and operators more flexibility in system design and operation where allowable, including an option to filter data.

**DATES:** Send your comments on or before November 13, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2006-26135 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251. For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket. Or, go to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule contact Brian A. Verna, Avionics Systems Branch, Aircraft Certification Service, AIR-130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385-4643; fax (202) 385-4651; e-mail [brian.verna@faa.gov](mailto:brian.verna@faa.gov). For legal questions concerning this proposed rule contact Karen L. Petronis, Senior Attorney for Regulations, Regulations Division, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; fax 202-267-7971; e-mail [karen.petronis@faa.gov](mailto:karen.petronis@faa.gov).

**SUPPLEMENTARY INFORMATION:** Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. This discussion includes related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

**Authority for This Rulemaking**

The FAA's authority to issue aviation safety rules is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for aircraft movement and flight crew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

**I. Background****A. Statement of the Problem**

During several aircraft accident investigations, the National Transportation Safety Board (NTSB or Board) found that some flight data recorder systems were filtering flight recorder parameter signals before they were recorded. As a result, the recorded data did not accurately reflect the aircraft's performance or the movements