

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97-04-11 Air Tractor, Inc.: Amendment 39-9935; Docket No. 96-CE-48-AD.

*Applicability:* Models AT-802 and AT-802A airplanes (serial numbers 0001 through 0038), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of a tail landing gear spring before the life limit of the part is achieved, which could result in loss of control of the airplane, accomplish the following:

(a) Incorporate the revision (dated May 24, 1996) to Section 6, Airworthiness Limitations, of the Air Tractor AT 802/802A Maintenance Manual.

(b) Incorporating the maintenance manual revision as required by paragraph (a) of this AD may be performed by the airplane owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) All persons affected by this directive may obtain copies of the maintenance manual revision referred to herein upon request to Air Tractor Inc., P. O. Box 485, Olney, Texas 76374; or may examine this information at the FAA, Central Region,

Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39-9935) becomes effective on April 4, 1997.

Issued in Kansas City, Missouri, on February 10, 1997.

Henry A. Armstrong,

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97-3839 Filed 2-14-97; 8:45 am]

BILLING CODE 4910-13-U

**DEPARTMENT OF THE TREASURY****Office of the Under Secretary for Domestic Finance****17 CFR Part 404****Government Securities Act Regulations: Recordkeeping**

**AGENCY:** Office of the Under Secretary for Domestic Finance, Treasury.

**ACTION:** Final Rule.

**SUMMARY:** The Department of the Treasury ("Department") is issuing in final form an amendment to the recordkeeping rules in § 404.4 of the regulations issued under the Government Securities Act of 1986 ("GSA"). 17 CFR 404.4 of the GSA regulations requires financial institutions that are government securities brokers or dealers to make and preserve records. Specifically, the Department is amending § 404.4(a)(1) to clarify the applicability of the federal bank regulatory agencies' rules, as adopted by the GSA rules, to financial institutions and to conform with current recordkeeping rule revisions being undertaken by the federal bank regulatory agencies.

**EFFECTIVE DATE:** This amendment is effective April 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kerry Lanham or Kurt Eidemiller, Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, at (202) 219-3632.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Government Securities Act of 1986 ("GSA"), as amended<sup>1</sup> requires, among other things, that a financial institution that is a government securities broker or dealer notify its appropriate regulatory agency ("ARA") of its status as such, thereby providing for the regulation of its government securities business.<sup>2</sup> In 1987, when the

Department developed the GSA regulations affecting financial institutions that are required to file notice as government securities brokers or dealers ("bank broker-dealers"), it decided to adopt the existing recordkeeping regulations of the federal bank regulatory agencies.<sup>3</sup> These rules are similar to the Securities and Exchange Commission's recordkeeping requirements in Rule 17a-3.<sup>4</sup>

The reason for relying on existing bank regulations was that those financial institutions effecting government securities broker-dealer transactions were already subject to a system of federal regulation and supervision, which explicitly included recordkeeping requirements relating to securities activities. Requiring those institutions to follow another set of recordkeeping requirements was viewed as unduly burdensome and did not promote the purposes of the GSA.<sup>5</sup>

Section 404.4 of the GSA regulations provides that, for bank broker-dealers, compliance with the recordkeeping rules of the bank ARAs, together with additional GSA recordkeeping provisions,<sup>6</sup> constitutes compliance with the GSA recordkeeping rules. However, the respective ARAs' regulations provide for certain exemptions from, or exceptions to, most of their recordkeeping rules based on a stated transaction threshold. Specifically, the ARAs' regulations exempt banks from most of the respective recordkeeping requirements if the bank transacts a de minimis annual average number of transactions. The regulations state, with minor variations, the following: "The requirements \* \* \* shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. government and federal agency obligations."<sup>7</sup> The ARAs have interpreted this exemption as excluding government securities transactions, meaning that government securities transactions are not included in the

<sup>3</sup> See 12 CFR Part 12 for national banks, which are regulated by the Office of the Comptroller of the Currency ("OCC"); 12 CFR Part 208 for state member banks of the Federal Reserve System, which are regulated by the Board of Governors of the Federal Reserve System ("Board"); and 12 CFR Part 344 for state banks that are not members of the Federal Reserve System, which are regulated by the Federal Deposit Insurance Corporation ("FDIC").

<sup>4</sup> 17 CFR 240.17a-3.

<sup>5</sup> 52 FR 5675 (February 25, 1987).

<sup>6</sup> In addition to complying with the recordkeeping rules of its ARA, a bank broker-dealer is required to maintain, among other things, records pertaining to securities positions (17 CFR 404.4(a)(3)(i)(A)).

<sup>7</sup> See 12 CFR 12.7(a); 12 CFR 208.8(k)(6)(i); and 12 CFR 344.7(a).

<sup>1</sup> 15 U.S.C. 78o-5.

<sup>2</sup> 15 U.S.C. 78o-5(a)(1)(B).

exempted, or de minimis, transaction count.

However, paragraph 404.4(a)(1) of the GSA regulations, in adopting the bank ARAs' recordkeeping rules for bank broker-dealers, contains the following provision: "\* \* \* *provided however*, that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or Federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a)." Since implementing the GSA regulations, the Department has consistently interpreted this provision to mean that a bank broker-dealer's government securities transactions are included in the 200 securities transaction exemption threshold that is provided by the ARA rules. This provision was intended to permit bank broker-dealers that conduct government securities transactions to take advantage of the de minimis exemption from the ARAs' recordkeeping rules that was available to them for their other securities business. Accordingly, the GSA regulations allow a bank broker-dealer to conduct up to 200 government securities transactions, or a combination of up to 200 government and other securities transactions, per year without having to comply with most of the bank ARAs' recordkeeping rules. It has been the Department's view that, for purposes of this part, a bank broker-dealer falling within these parameters is exempt from paragraph 404.4(a)(1) of the GSA recordkeeping rules.

As a result of the cross-referencing, there has been some confusion about the applicability of the ARAs' exemption threshold to bank broker-dealers' government securities transactions. The interrelationship between the recordkeeping language of the ARAs' rules and the GSA regulations often has been confusing and ambiguous. The ARAs and the Department are working together to eliminate this ambiguity and to provide for a clear, understandable and consistent interpretation of the rules.

The ARAs have proposed revisions to their recordkeeping rules that would conflict, in part, with the GSA recordkeeping requirements as they are presently stated in section 404.4(a).<sup>8</sup>

<sup>8</sup>See 60 FR 66517 (December 22, 1995) for the OCC's proposed revisions and 60 FR 66759 (December 26, 1995) for the Board's proposed revisions. It is the Department's understanding that the FDIC also intends to address this same rule modification to ensure consistent application and interpretation of the rules. The FDIC published an Advance Notice of Proposed Rulemaking on this subject on May 24, 1996 (61 FR 26135).

This amendment to the GSA regulations will help to eliminate any ambiguity or confusion resulting from the interplay of the respective regulations. This final rule amendment is intended to be published within the same timeframe as those final rules that are being adopted by the Board and the OCC.

As stated by the OCC in the preamble section of their proposed rule revisions, "Consistent with the GSA regulations, proposed § 12.1(c)(2)(ii) exempts a national bank that conducts fewer than 500 government securities brokerage transactions per year from complying with the recordkeeping requirements under proposed (and current) § 12.3 \* \* \* This exemption does not apply to government securities dealer transactions by national banks, however."<sup>9</sup>

The Board has proposed a similar rule revision. As stated in the preamble section to its proposed rules, "A new § 208.24(g)(2) would clarify that State member banks that effect up to 500 government securities brokerage transactions and are exempt from registration under Department of the Treasury regulation 401.3(a)(2)(i), 17 CFR 401.3(a)(2), also are exempt from § 208.24. This exemption would not be available if a bank has filed notice or is required to file notice indicating that it acts as a government securities broker or dealer."<sup>10</sup>

In the rule proposals, both agencies also stated that they had been advised by staff at the Bureau of the Public Debt, which is the organization within the Department of the Treasury that is responsible for administering the GSA regulations, that the staff was considering amending the GSA recordkeeping rules. The purpose would be to clarify any ambiguity with respect to the recordkeeping requirements for financial institutions that conduct government securities transactions resulting from the interplay of the GSA regulations with the ARA recordkeeping requirements.

The final rules being adopted by the OCC and the Board, which are virtually unchanged from the proposed rules, will increase the exemption threshold to 500 government securities brokerage transactions, which is consistent with the limited brokerage exemption provided by the GSA regulations in § 401.3 (17 CFR 401.3, Exemption for financial institutions that are engaged in limited government securities brokerage activities). The GSA limited brokerage exemption provision basically states that a financial institution is not

<sup>9</sup>60 FR 66518 (December 22, 1995).

<sup>10</sup>60 FR 66760 (December 26, 1995).

regarded as acting as a government securities broker and is exempt from the requirement to file notice as a government securities broker and from most of the GSA regulations, including the recordkeeping requirements, if it effects fewer than 500 government securities brokerage transactions per year.<sup>11</sup>

However, the OCC's and the Board's final rules contain additional language that we view as contradictory to the intended applicability of 17 CFR 404.4(a) to bank dealers.<sup>12</sup> The final rules state that the de minimis exception does not apply to dealer transactions by national banks (OCC)<sup>13</sup> or noticed financial institution government securities brokers or dealers (Board).<sup>14</sup> As a result, entities engaging in government securities dealer transactions would be subject to the bank ARA recordkeeping rules regardless of how many transactions were conducted. As mentioned earlier, the Department views 17 CFR 404.4(a) as meaning that, for purposes of the GSA, bank broker-dealers are not required to follow most of the ARAs' recordkeeping rules if their annual government securities dealer transactions, or a combination of their government and other securities transactions, are less than 200. Given this difference in application of the GSA and ARAs' rules, section 404.4 of the GSA regulations is being amended to conform with the ARAs' rules and to make clear its intended applicability.

The Department is therefore amending paragraph 404.4(a)(1) of the GSA regulations (17 CFR 404.4, Records to be made and preserved by government securities brokers and dealers that are financial institutions) with respect to bank broker-dealers that are subject to bank regulatory agency recordkeeping rules by deleting the current provision, "*provided however*, that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or Federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a)." As a result, in order to be in compliance with the GSA recordkeeping rules at 17 CFR 404.4(a)(1), all bank

<sup>11</sup>The GSA requirements of Part 450 (17 CFR Part 450) concerning custodial holdings of government securities for customers apply to all financial institutions.

<sup>12</sup>The OCC published its final rule on December 2, 1996. See 61 FR 63958 (December 2, 1996). The Board intends to publish its final rule in January 1997.

<sup>13</sup>12 CFR 12.1(c)(2)(ii).

<sup>14</sup>12 CFR 208.24(g)(2).

broker-dealers will be required to follow the ARAs' recordkeeping rules if even a single government securities dealer transaction is conducted.

**II. Special Analyses**

This final rule amendment does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. The Administrative Procedure Act ("APA") (5 U.S.C. 553) generally requires that prior notice and opportunity for comment be afforded before the adoption of rules by federal agencies. Inasmuch as this final rule merely involves changes to conform with the rule revisions currently being adopted by the federal banking regulatory agencies, while not involving any substantive changes to the regulations, the notice and comment provisions of the APA are unnecessary pursuant to 5 U.S.C. 553(b)(B).

As no notice and public comment are required for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), do not apply.

The Paperwork Reduction Act (44 U.S.C. 3504(h)) requires that collections of information be submitted to the Office of Management and Budget for review and approval. Since this rule revision does not include any new collection of information given the ARAs' current interpretation and application of their recordkeeping requirements, the Paperwork Reduction Act is inapplicable.

**List of Subjects in 17 CFR Part 404**

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR Part 404 is amended as follows:

**PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS**

1. The authority citation for Part 404 continues to read as follows:

Authority: 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

2. Section 404.4 is amended by revising paragraph (a)(1) to read as follows:

**§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.**

(a) \* \* \*

(1) Is subject to 12 CFR part 12 (relating to national banks), 12 CFR part 208 (relating to state member banks of the Federal Reserve System) or 12 CFR part 344 (relating to state banks that are not members of the Federal Reserve System), or is a United States branch or

agency of a foreign bank and complies with 12 CFR part 12 (for federally licensed branches and agencies of foreign banks) or 12 CFR part 208 (for uninsured state-licensed branches and agencies of foreign banks) or 12 CFR part 344 (for insured state licensed branches and agencies of foreign banks);

\* \* \* \* \*

Dated: January 16, 1997.  
John D. Hawke, Jr.,  
*Under Secretary for Domestic Finance.*  
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**Internal Revenue Service**

**26 CFR Part 1**

[TD 8708]

RIN 1545-AL98

**Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final income tax regulations which were published in the Federal Register on Tuesday, January 7, 1997 (62 FR 923) relating to the computation of foreign taxes deemed paid under section 902.

**EFFECTIVE DATE:** January 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Caren S. Shein, (202) 622-3850 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction are under section 902 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 8708), which are the subject of FR Doc. 97-153, is corrected as follows:

**§ 1.902-3 [Corrected]**

On page 940, column 3, § 1.902-3(l), the sixth line from the bottom of the paragraph, the language "See § 1.902-

1(a)(13)(iii). For" is corrected to read "See § 1.902-1 (a)(13)(i). For".

Michael L. Slaughter,  
*Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*  
[FR Doc. 97-3812 Filed 2-14-97; 8:45 am]  
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**26 CFR Part 1**

[TD 8701]

RIN 1545-AC06

**Treatment of Shareholders of Certain Passive Foreign Investment Companies; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations (TD 8701) which were published in the Federal Register on Friday, December 27, 1996 (61 FR 68149). The final regulations provide rules for making a deemed sale or deemed dividend election to purge a shareholder's holding period of stock of a PFIC of those taxable years during which the PFIC was not a QEF.

**EFFECTIVE DATE:** December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Gayle Novig (202) 622-3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are subject to this correction is under section 1291 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 8701) contains an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of final and temporary regulations (TD 8701) which is the subject of FR Doc. 96-32246 is corrected as follows:

**§ 1.1291-9 [Corrected]**

On page 68152, column 3, § 1.1291-9, paragraph (d)(2)(i), line 9, the language "taxable year of inclusion of each" is corrected to read "taxable year or years of inclusion of each".

Michael L. Slaughter,  
*Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*  
[FR Doc. 97-3950 Filed 2-14-97; 8:45 am]  
BILLING CODE 4830-01-U