

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for

adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Dassault Aviation Mystere-Falcon 50 airplanes modified by ElectroSonics.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 7, 2001.

Ali Bahrani,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231 and 241

[Release Nos. 33-8005A; 34-44820A; FR-58A]

Calculation of Average Weekly Trading Volume Under Rule 144 and Termination of a Rule 10b5-1 Trading Plan

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: This release expresses the Commission's view on how to calculate

the average weekly reported volume of trading in securities under Rule 144(e), given the lack of trading during the week of September 10, 2001. This release also expresses the Commission's view that termination of a Rule 10b5-1 trading plan during the period between September 11, 2001 and September 28, 2001, inclusive, does not, by itself, suggest that the plan was not "entered into in good faith and not as part of a plan or scheme to evade" the insider trading rules within the meaning of Rule 10b5-1(c).

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT:

Robert Plesnarski, Special Counsel, or Paula Dubberly, Chief Counsel, Office of the Chief Counsel, Division of Corporation Finance, at (202) 942-2900, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0402.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

In light of the emergency closure of the U.S. equity and options markets from September 11, 2001 through September 14, 2001, law firms and registrants have asked the Commission how to calculate the average weekly reported volume of trading in an issuer's securities for purposes of Rule 144¹ under the Securities Act of 1933.² Because the markets were open for only one day during the week beginning on September 10, 2001, the Commission believes that it is appropriate to use weeks preceding and subsequent to the week of September 10, 2001, but to not include that calendar week, in determining the average weekly reported volume of trading under Rule 144(e).

The Commission also believes that termination of a written Rule 10b5-1³ plan between September 11, 2001 and September 28, 2001, inclusive, will not, by itself, call into question whether the plan was "entered into in good faith and not as part of a plan or scheme to evade" the insider trading rules.

II. Discussion

A. Average Weekly Reported Volume of Trading for Rule 144

Rule 144 defines specific circumstances in which a person will be deemed not to be engaged in a distribution and, therefore, not to be an underwriter as defined in Section 2(a)(11) of the Securities Act.⁴ The

¹ 17 CFR 230.144.

² 15 U.S.C. 77b(a) *et seq.*

³ 17 CFR 240.10b5-1.

⁴ 15 U.S.C. 77b(a)(11).

amount of securities that may be sold under this safe harbor is limited to a percentage of the shares outstanding or a percentage of the average weekly trading volume of an issuer's securities. Rule 144(e) prescribes that the average weekly trading volume for a class of securities will be calculated using the average weekly reported volume of trading in such securities on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the dates outlined in Rule 144(e). The markets were open for only one day during the week beginning on September 10, 2001. Accordingly, that week will not provide a representative trading volume. Therefore, the Commission believes that the week of September 10, 2001 should be excluded from the calculation of the average weekly reported volume of trading in an issuer's securities under Rule 144(e) during a four calendar week period, and an additional prior week should be included, for a total of four calendar weeks.

B. Rule 10b5-1 Plans

In May 2001, the Commission staff issued interpretations regarding the termination of a written plan for trading securities that satisfies the affirmative defense conditions of Rule 10b5-1(c).⁵ The affirmative defense is available only for plans that are "entered into in good faith and not as part of a plan or a scheme to evade" the insider trading rules. Questions 15(b) and 15(c) of the staff's interpretations make clear that a written plan may be terminated through either the affirmative termination of the plan itself or the deemed termination of the plan through the cancellation of one or more plan transactions. Therefore, for example, if a plan previously had specified that sales be made during the week of September 17, 2001, a security holder would be terminating the plan if he or she cancelled that sale in order to continue to hold the securities. The interpretations also state that termination of a plan could affect the availability of the Rule 10b5-1(c) defense for prior plan transactions if the termination calls into question whether the plan was "entered into in good faith and not as part of a plan or scheme to evade" the insider trading rules within the meaning of Rule 10b5-1(c)(1)(ii). The absence of good faith or presence of a scheme to evade would eliminate the

Rule 10b5-1(c) defense for prior transactions under the plan.

Due to the tragic events of September 11, 2001 and the subsequent closure of the U.S. equity and options markets, the Commission believes that termination of a written plan established prior to September 11, 2001 will not, by itself, call into question whether the plan was "entered into in good faith and not as part of a plan or scheme to evade" the insider trading rules within the meaning of Rule 10b5-1(c)(1)(ii) if the plan is terminated between September 11, 2001 and September 28, 2001, inclusive. Thus, the Commission believes that availability of the Rule 10b5-1(c) defense for transactions under the written plan would not be affected solely by termination of that plan between September 11, 2001 and September 28, 2001.

List of Subjects in 17 CFR Parts 211, 231 and 241

Securities.

Amendment of the Code of Federal Regulations

For the reasons set forth in the preamble, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

1. Part 211, Subpart A, is amended by adding Release No. FR-58A and the release date of September 21, 2001 to the list of interpretive releases.

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 231, is amended by adding Release No. 33-8005A and the release date of September 21, 2001, to the list of interpretive releases.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 241, is amended by adding Release No. 34-44820A and the release date of September 21, 2001, to the list of interpretive releases.

Dated: September 21, 2001.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24187 Filed 9-26-01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 01-69]

Name Change of User Fee Airport in Ocala, FL

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the list of user fee airports in the Customs Regulations to reflect that the name of the user fee airport located in Ocala, Florida, has been changed from Ocala Regional Airport to Ocala International Airport. User fee airports are those which, while not qualifying for designation as an international or landing rights airport because of insufficient volume or value of business, have been approved by the Commissioner of Customs to receive the services of Customs officers on a fee basis for the processing of aircraft entering the United States and their passengers and cargo.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy Bruner, Office of Field Operations, 202-927-2290.

SUPPLEMENTARY INFORMATION:

Background

User fee airports are those which, while not qualifying for designation as an international or landing rights airport because of insufficient volume or value of business, have been approved by the Commissioner of Customs to receive the services of Customs officers on a fee basis for the processing of aircraft entering the United States and their passengers and cargo.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of Customs business at the airport is insufficient to justify the availability of Customs services at the airport and the governor of the State in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

Section 122.15(b), Customs Regulations (19 CFR 122.15(b)), sets forth a list of the user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. Section 122.15(b) was most

⁵ See, Division of Corporation Finance: Manual of Publicly Available Telephone Interpretations, Fourth Supplement (May 30, 2001). These interpretations are available at www.sec.gov/interps/telephone/phonesupplement4.htm.