

means of verifying the accuracy of one-minute execution times.

The legislative history of Section 5a(b)(3) of the Act contemplates that flashed orders can meet the objectives of Section 5a(b)(3)(B) without the additional transmittal timestamp. The same FCM who testified concerning the importance of recording broker receipt times, also testified that it is critical to distinguish between conventional paper orders and flashed orders because flashed orders present few audit trail problems due to the speed at which they are filled. For such orders, the FCM believed that order entry and order fill are likely to occur in the same minute.

The FCM further testified that a second or a few seconds can be critical in a fast-moving market and that an additional timestamping requirement could have a negative impact on customers and the futures market by reducing the speed and liquidity that are well-established advantages of the futures markets.⁶ Section 5a(b)(5)(A)(ii) of the Act, therefore, requires that the Commission afford special treatment to flashed orders to the extent that substantial compliance with the objectives of Section 5a(b)(3) can otherwise be achieved.

B. Immediately Executable Flashed Orders

The Commission has determined that flashed orders that are immediately executable are capable of substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act without an exchange's audit trail recording the transmittal time on an order ticket. Provided that, those exchanges where brokers do not record customer fill information on sequenced trading cards must require that any trade record prepared by a broker or his clerk reflecting the fill for flashed orders and the order ticket be retained together.⁷

Flashed orders permit firms to relay customer orders into, and order fills out of, trading pits in an extremely rapid fashion. In most cases where flashed orders are immediately executable, the entry time, the time the order is flashed and received by the floor broker, and the execution time should be virtually contemporaneous. Thus, the "immediately executable" requirement ensures that the orders are executed within a very narrow time window and

obviates the need for an additional timestamp.⁸

"Immediately executable" is intended to encompass only those flashed orders that are transmitted as a whole to a single broker and are immediately executed. This definition of "immediately executable" is intended to include a flashed order executed opposite multiple brokers or traders, provided that all portions of the order are immediately executed.⁹ Further, a flashed order partially filled according to the customer's original instructions and the remaining portion executed immediately pursuant to new instructions would be within the scope of this Order.¹⁰

Order Relating to Flashed Orders: The Commission's Flashed Order Advisory provides guidance concerning the necessary elements for a flashed order to be deemed in good faith compliance with Section 5a(b)(3). The Commission has now determined that an exchange's audit trail system can demonstrate substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act for immediately executable flashed orders.

Accordingly, the Commission Hereby Orders:

That it is appropriate to find that an exchange subject to Section 5a(b)(3) of the Act is in substantial compliance with the objectives of Section 5a(b)(3)(B), without requiring the additional transmittal timestamp, for those flashed orders that are:

⁸ Both the entry time and the transmittal time for immediately executable flashed orders are analogous to the time that a written order is received by a floor broker for execution.

⁹ Thus, flashed orders that are filled in increments over a period of time will not come within this Order. Without the additional timestamp, the audit trail for such orders would be impaired because it would be difficult to relate particular timestamps to the time at which a broker received a specific portion of the order to execute.

Orders that are held at the trading desk and then flashed when the market reaches the desired price also are excluded from this Order. Of course, for such orders, the initial retention at the trading desk must be in accordance with their terms. The enhanced order ticket timestamping requirement for such orders will be addressed at a later time.

¹⁰ For example, an order for fifty contracts could be flashed into the pit to be purchased at a particular price which is near the prevailing market price. The broker may only fill forty contracts at that price before the market moves. Upon flash of that fill to the desk, the remaining ten contracts are then flashed back into the pit at the new price, executed and flashed back to the desk. If this all occurs virtually instantaneously, these transactions will be within the scope of this Order.

Further, flashed orders that are flashed back to the desk as completely unfilled which are then immediately flashed back to the pit with new instructions also would be considered "immediately executable" for purposes of this Order.

(1) Capable of immediate execution when received at a floor trading desk;

(2) Immediately transmitted from a floor trading desk to a floor broker or floor broker's clerk in a trading pit through hand signals or verbal communication; and

(3) Filled immediately upon receipt by the floor broker receiving the order.

Provided that, the exchange meets the current audit trail standards under Section 5a(b)(2) of the Act, complies with the standards set forth in the Commission's Flashed Order Advisory, and ensures that trade records prepared by a broker or his clerk reflecting order fill are retained together with the order ticket.

The Commission will be providing further guidance concerning the practicability of requiring the additional broker receipt or transmittal timestamp referred to in Section 5a(b)(3)(B) of the Act for types of customer orders other than those addressed by this Order. The Commission's guidance will be based upon its review of exchange practices, as well as information the Commission expects to obtain concerning the current status of order routing systems and practicability as a result of the exchanges' good faith implementation of the October 1995 enhanced audit trail standards.¹¹

Dated: November 16, 1995.

By the Commission:

Jean A. Webb,

Secretary to the Commission.

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DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96-517, the Department of the Air Force announces its intention to grant Lawrence Systems, Inc., a corporation of the State of Ohio, an exclusive license under: United States Patent Application Serial No. 08/481,945 filed in the name of Lawrence Jacknin et al for a "Virtual Navigator, An Inertial Angular Measurement System."

The license described above will be granted unless an objection thereto,

¹¹ As part of the Commission's effort to implement Section 5a(b)(3) of the Act, it has already gathered information on order routing systems and the progress of the exchanges towards implementing those systems.

⁶ Hearings on S. 1729, *supra* note 4 to 4.

⁷ Retaining such trade records together with the order ticket will provide a complete record of how the order was filled and will assist exchanges, as well as Commission staff, in reconstructing trades as needed for trade practice investigations.

together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209-2403, telephone (703) 696-9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

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Department of the Army

Proposal To Change Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP-1A) Governing Carrier's Entitlement to Detention Charges

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed change.

SUMMARY: The Military Traffic Management Command is proposing changes to Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP-1A) governing carrier's entitlement to detention charges. The changes increase the amount of free time available for loading or unloading and state when free time shall begin and how detention is properly documented.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: All comments concerning the proposed rule changes should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP-T-NI, Room 621, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Leon N. Patton, Jr., or John Alexander, (703) 681-6871.

SUPPLEMENTARY INFORMATION: Military shippers have requested that detention rules require detention to be documented by the carrier and the installation. The purpose of this is to avoid billing problems. Military shippers have also requested that carriers provide more free time, up to 7

hours, to reduce the number of detention instances. The proposed rules below implement these changes. New material is marked between left and right arrows (↔). Deleted material is marked between left and right brackets ([]). The proposed rule changes, if finalized, will be published in a future revision of MFTRP-1A.

ITEM 85 DETENTION: VEHICLES WITH POWER UNITS (DP)

(See NOTES 1 and 2 herein and NOTE 2, ITEM 90)

When carrier's vehicle with power unit (straight truck, tractor-trailer combination, or dromedary box) is delayed or detained for loading or unloading on the premises of consignor, consignee, or other premises approved by them, and such delay or detainment is attributable to the consignor or consignee, the shipment (or the combined weight of multiple shipments) being loaded or unloaded will be subject to the following provisions:

1. Free time: Carriers will allow the free time periods listed below for loading or unloading carrier's vehicle:

Type of shipment(s)	Free time
a. Vehicles loaded on Motor Vehicle Transport Trailers (Equipment Code A20)	1 hour (waiting time to begin loading or unloading).
b. Vehicles loaded on flat-bed equipment	3 hours.
c. Fully palletized shipments, 20,000 lbs. and over	2 hours (Note 1).
Actual weight in pounds per vehicle stop, not palletized, subject to Note 1:	
d. Less than 3,000 lbs.	1 hour.
e. 3,000 lbs. but less than 10,000 lbs.	2 hours.
f. 10,000 lbs. but less than 20,000 lbs.	3 hours.
g. 20,000 lbs. ↔but less than 28,000 lbs.	4 hours.↔
↔h. 28,000 lbs. but less than 36,000 lbs.↔	5 hours.↔
↔i. 36,000 lbs. but less than 44,000	6 hours.↔
↔j. 44,000 lbs. and over	7 hours.↔

[Free time shall begin from the time carrier's employee notifies a responsible representative of the consignor or consignee that the vehicle is available and ready for loading or unloading, and it is within the consignor's or consignee's normal operating hours, or acceptance hours as annotated on the bill of lading.]

↔2. Free time shall begin when the following three conditions are met:↔

↔a. The vehicle is cleared and approved (inspection and administrative) for loading and unloading.↔

↔b. the vehicle is positioned at the loading/unloading dock, and↔

↔c. it is within the consignor's or consignee's normal operating hours as

published or acceptance hours as annotated on the bill of lading.↔

The computation of time, in paragraph (1) above, is to be made within the normal business (shipping) day at the designated premises at the place of pickup or delivery, except if a carrier or its representative is permitted to work beyond this period, such working time shall also be included. When loading or unloading is not completed at the end of such day, time will be resumed at the beginning of the next work day, or when work the next day is actually begun by the carrier or its representative, if earlier.

[A shipment will be considered as "fully palletized" when at least 90% of

the shipment weight (exclusive of pallet weight) is loaded on pallets.]

↔When a scheduled time has been designated for the carrier's equipment to begin loading and the carrier arrives late, without prior notification to the consignor, the free time will not begin until an equal amount of time has passed; e.g., the carrier was supposed to be there at 0800; arrived at 1100; free time would start at 1400. Maximum detention paid for a late arriving carrier will be limited to 2 hours per day regardless of actual weight of the shipment.↔

↔3. Charges:↔ If loading or unloading extends beyond the allowable free time, the charge will be ↔(in dollar and cents)