

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 15 and 15d

Nondiscrimination in USDA Conducted Programs and Activities

AGENCY: Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA or the Department) is proposing to revise its regulations governing nondiscrimination in programs and activities conducted by the Department. The proposal would remove the current regulation on this subject found at 7 CFR part 15, subpart B (Subpart B), and place it in a new part 15d; clarify that the regulation applies to all Department-conducted programs and activities, not just to direct assistance programs; add familial status and marital status to the protected classes contained in the regulation; add a provision on Department agencies' compliance efforts; reflect that the Assistant Secretary for Administration has been delegated the authority to make final determinations as to whether prohibited discrimination occurred and the correction action required to resolve complaints; remove the Appendix to the regulation that lists the Department programs subject to these provisions; and make other clarifications to the regulation.

DATES: Comments must be received by May 23, 1996.

ADDRESSES: Send comments to Director of Civil Rights, Department of Agriculture, Washington, DC 20250. Comments will be available for public inspection at Room 1322, South Building, Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Andrew Johnson, Director, Policy and Planning, Civil Rights, 202-720-1130; or Ron Walkow, Attorney-Advisor, Office of General Counsel, 202-720-6056.

SUPPLEMENTARY INFORMATION: The Department in 1964 first adopted regulations to cover nondiscrimination in all programs and activities directly administered by USDA (29 FR 16966). At that time, the regulations were intended to complement the newly enacted Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) by covering those programs and activities not subject to Title VI; that is, programs and activities in which USDA or an agency thereof made available a benefit directly to persons rather than through a recipient. However, these regulations were made a part of the Department's Title VI regulations; specially, they were issued at Subpart B where they have remained to this day. Since then, subpart B has been amended on several occasions to include a variety of protected classes in addition to race, color, and national origin. (38 FR 22465; 42 FR 65202; 47 FR 25458). Subpart B also was amended to provide that individuals who believe they were subject to discrimination under the regulations may file a complaint with the Department (50 FR 25687; 54 FR 31164).

Since Title VI is not the authority for the regulations, having these regulations codified as part of the Department's Title VI regulations has resulted in some confusion over the years. Accordingly, the Department is proposing to remove the regulations from subpart B of part 15 and reissue them in a new regulation, part 15d of Title 7. Along these same lines, the authority provision of the regulation would be revised to clarify that the authority for the regulation is 5 U.S.C. 301, not Title VI.

In addition to removing and reissuing the regulation, the Department is proposing to make some minor substantive changes to the regulation. First, the regulation will be reworded to clarify that it applies to discrimination in all Department-conducted programs and activities; that is, to any allegation that a USDA employee discriminated against a member of the public—whether in a direct assistance program or in any other manner.

Second, the Department is also proposing to add familial status and marital status to the protected classes covered by the regulation. Over the years, the Department has added protected classes to the regulation in order to reflect those classes protected

by the various Federal civil rights laws. Two of those classes not currently included are familial status (which is included in the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and marital status (which is included in the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*). Accordingly, the proposed rule would include these classes.

The proposed regulation would delete the provision now contained in subpart B at § 15.51(b). The Department believes that the broad language used in proposed § 15d.2 is sufficient to make clear that the Department will not discriminate in any of its conducted programs, without having to provide specific examples, of prohibited discriminatory acts. By this action, the Department does not intend to substantively affect the scope of the protections currently covered by § 15.51(b).

The Department is also proposing to add a new section on the efforts of the Department to ensure compliance with this part since it is as crucial to have an ongoing evaluation of Department agencies' compliance with this section as it is to have a complaint process. Therefore, the enforcement sections, i.e. proposed §§ 15d.3 and 15d.4, provide for the Department engaging in compliance activities and in complaint resolution. Specific provisions noting how these efforts will be implemented within the Department will be set forth in internal regulations and guidelines.

The proposed regulation would reflect that the authority to make final determinations for the Department as to (1) whether discrimination occurred and the corrective action required by the Department to resolve complaints and (2) whether Department agencies' efforts to comply with nondiscrimination requirements are sufficient will no longer be delegated to the Director, Office of Civil Rights Enforcement,¹ but instead has been delegated to Assistant Secretary for Administration (ASA). This delegation already has been effectuated in 7 CFR part 2, and that change would be reflected in the proposed regulation. The Department believes that determinations of this magnitude should be elevated to the sub-cabinet level. In addition, this

¹ The Office of Civil Rights Enforcement has been reorganized into two entities within Departmental Administration, i.e., Civil Rights and Civil Rights Adjudication and Enforcement.

change would make the determining official in program discrimination complaints the same official, i.e. the ASA, who makes final determinations on employment discrimination complaints within the Department. Civil Rights Adjudication and Enforcement (AE) will be responsible for conducting the investigations on complaints and evaluating agencies' efforts to comply with the discrimination prohibition provisions of this new Part.

The Department is also proposing to remove the provisions in § 15.52(a) that require covered agencies of the Department to provide notice of the public's right to file a complaint under that Subpart. Under the proposed new Part 15d, this requirement will be transferred to the Department's internal regulations. The Department now believes that internal instructions such as the notice requirement now in § 15.52(a) are more appropriate in such a regulatory setting. However, until such internal regulations are issued, agencies of the Department will continue to follow the procedures currently required in § 15.52(a).

The Department is next proposing to remove the appendix to the regulation (currently "Appendix to Subpart B"), which purports to list the programs and activities conducted by the Department. The Department has found that it is difficult to maintain the accuracy of this list on a regular basis when it is contained in the Code of Federal Regulations. Additionally, having the Appendix in the Code of Federal Regulations does not contribute to the effectiveness of the regulation. Accordingly, the Department would remove the Appendix and maintain such a list of programs and activities in internal guidelines to be maintained by Civil Rights (CR).

The proposed regulation would contain a new provision that would state that nothing in the regulation shall be construed as making unlawful any program or activity conducted by the Department that is otherwise lawful. The purpose of this provision is to make clear the intent of the regulation. That is, this regulation is not intended to prohibit the Department from doing anything that it is not already prohibited from doing by the Constitution and various Federal statutes. The regulation merely states the nondiscrimination policy of the Department; it does not create any additional rights for individuals and entities that deal with the Department. The proposed language would make clear this intention as well as the legal effect of the regulation.

Finally, the Department proposes to add a provision stating that complaints

filed under the regulation that are subject to a Department complaint process that is implemented under specific statutory authority will be processed under the statutory complaint process. Thus, for example, a complaint alleging that the Department discriminated on the basis of disability in a conducted program will be processed under 7 CFR part 15e, which implements the Rehabilitation Act.

In conclusion, the proposed regulation would set forth the nondiscrimination policy of the Department, provide for compliance efforts by the Department, notify the public that it may file complaints with the Department alleging discrimination, and provide that complainants will be notified of the final determinations on their complaints. The Department believes that the detailed internal procedures on the processing of these complaints should be contained in internal regulations rather than in the Code of Federal Regulations. These internal regulations will address such matters as the duties of Department agencies under the regulation, guidelines on what constitutes a proper investigation, and the standards for "good-cause" extension of the 180-day filing period. The Department will issue these internal regulations as soon as is practicable after this proposed rule has been made final. Once completed, the internal regulations will be available for public inspection.

This proposed rule has been determined to be "not-significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget. USDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). USDA also certifies that this proposed rule would not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

USDA is providing a 30-day comment period for this rule. Comment is invited on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of USDA as outlined in the proposal.

List of Subjects in 7 CFR Parts 15 and 15d

Nondiscrimination.

In consideration of the foregoing, the Department proposes to amend Title 7 of the Code of Federal Regulations, Subtitle A, as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

2. Part 15, subpart B (§§ 15.50–15.52) and the appendix thereto would be removed; and

3. A new Part 15d would be added as follows:

PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

15d.1 Purpose.

15d.2 Discrimination prohibited.

15d.3 Compliance.

15d.4 Complaints.

15d.5 Effect of regulation.

Authority: 5 U.S.C. 301.

§ 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

§ 15d.2 Discrimination prohibited.

No agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, age, national origin, marital status, familial status, or disability under any program or activity conducted by such agency, officer, or employee.

§ 15d.3 Compliance.

The Office of the Director of Civil Rights shall evaluate each agency's efforts to comply with this part and report to the Assist Secretary for Administration the results of such evaluations, including recommendations for improving such efforts. The Assistant Secretary shall make a final determination as to the merits of such recommendations and the actions to be taken to improve such efforts.

§ 15d.4 Complaints.

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file on his or her own, or through an authorized representative, a written complaint alleging such

discrimination. No particular form of complaint is required. The complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the Assistant Secretary for Administration or his designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of Civil Rights Adjudication and Enforcement, United States Department of Agriculture, Washington, DC 20250, who will investigate the complaints. The Assistant Secretary for Administration will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve the complaints. The complainant will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part that is subject to a Department complaint process that is implemented under specific statutory authority will be processed under the statutory complaint process.

§ 15d.5 Effect of regulation.

Nothing in this part shall be construed as making unlawful any program or activity conducted by the Department that is otherwise lawful.

Dated: April 16, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96-9900 Filed 4-22-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-192-AD]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-120 series airplanes. This proposal would

require repetitive inspections to detect cracks in the wing rib-to-skin support brackets (shear clips), and replacement of cracked brackets with new or serviceable brackets. This proposal also would require the eventual replacement of certain brackets with new brackets, which would terminate the requirement for the inspections. This proposal is prompted by reports of cracks in the wing rib-to-skin support brackets in both the lower and upper skin of the wings. The actions specified by the proposed AD are intended to prevent cracking of those support brackets, which can subsequently lead to the loosening of the rivets in the wing skin, leakage of fuel through the rivet holes, and, ultimately, the reduction of the structural integrity of the wing.

DATES: Comments must be received by June 3, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-192-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from EMBRAER, Empresa Brasileira De Aeronautica S/A, Sao Jose dos Campos - SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7358; fax (404) 305-7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-192-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-192-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-120 series airplanes. The DAC advises that it has received reports of cracks in the rib-to-skin fitting brackets (shear clips) both in the lower and upper skin of the wings on Model EMB-120 series airplanes. The development of cracking of the shear clips can occur in the wing skin riveting line and can cause the complete failure of the ledge of the shear clips, resulting in separation of the skin from the shear clip on the affected area. Although there are several shear clips per rib, the simultaneous occurrence of cracking in several shear clips will affect the wing's structural integrity. The cause of the cracking is attributed to fatigue. Cracking of those support brackets can cause rivets in the wing skin to loosen and, consequently, permit fuel to leak into the wing through the rivet holes. Propagation of such cracking, if not corrected, could reduce the structural integrity of the wing and permit fuel leakage into the wing.

EMBRAER has issued Service Bulletin (SB) 120-57-0031, dated July 6, 1995, which describes procedures for repetitive internal visual inspections to detect cracks in the wing rib-to-skin support brackets (shear clips), and replacement of cracked brackets with new or serviceable parts. The service