

at 202–942–4400, or Paula Dubberly, Chief Counsel of the Division of Corporation Finance, at 202–942–2900.

**SUPPLEMENTARY INFORMATION:** As we approach year end, we believe it is appropriate to sound a warning to public companies and other registrants who present to the public their earnings and results of operations on the basis of methodologies other than Generally Accepted Accounting Principles (“GAAP”). This presentation in an earnings release is often referred to as “pro forma” financial information. In this context, that term has no defined meaning and no uniform characteristics. We wish to caution public companies on their use of this “pro forma” financial information and to alert investors to the potential dangers of such information.

“Pro forma” financial information can serve useful purposes. Public companies may quite appropriately wish to focus investors’ attention on critical components of quarterly or annual financial results in order to provide a meaningful comparison to results for the same period of prior years or to emphasize the results of core operations. To a large extent, this has been the intended function of disclosures in a company’s Management’s Discussion and Analysis section of its reports. There is no prohibition preventing public companies from publishing interpretations of their results, or publishing summaries of GAAP financial statements.

Moreover, as part of our commitment to improve the quality, timeliness, and accessibility of publicly available financial information, we believe that—with appropriate disclosures about their limitations—accurate interpretations of results and summaries of GAAP financial statements taken as a whole can be quite useful to investors.

Nonetheless, we are concerned that “pro forma” financial information, under certain circumstances, can mislead investors if it obscures GAAP results. Because this “pro forma” financial information by its very nature departs from traditional accounting conventions, its use can make it hard for investors to compare an issuer’s financial information with other reporting periods and with other companies.

For these reasons, we believe it is appropriate to alert public companies and their advisors of the following propositions:

First, the antifraud provisions of the federal securities laws apply to a company issuing “pro forma” financial

information. Because “pro forma” information is information derived by selective editing of financial information compiled in accordance with GAAP, companies should be particularly mindful of their obligation not to mislead investors when using this information.

Second, a presentation of financial results that is addressed to a limited feature of a company’s overall financial results (for example, earnings before interest, taxes, depreciation, and amortization), or that sets forth calculations of financial results on a basis other than GAAP, raises particular concerns. Such a statement misleads investors when the company does not clearly disclose the basis of its presentation. Investors cannot understand, much less compare, this “pro forma” financial information without any indication of the principles that underlie its presentation. To inform investors fully, companies need to describe accurately the controlling principles. For example, when a company purports to announce earnings before “unusual or nonrecurring transactions,” it should describe the particular transactions and the kind of transactions that are omitted and apply the methodology described when presenting purportedly comparable information about other periods.

Third, companies must pay attention to the materiality of the information that is omitted from a “pro forma” presentation. Statements about a company’s financial results that are literally true nonetheless may be misleading if they omit material information. For example, investors are likely to be deceived if a company uses a “pro forma” presentation to recast a loss as if it were a profit, or to obscure a material result of GAAP financial statements, without clear and comprehensible explanations of the nature and size of the omissions.

Fourth, we commend the earnings press release guidelines jointly developed by the Financial Executives International and the National Investors Relations Institute and we encourage public companies to consider and follow those recommendations before determining whether to issue “pro forma” results, and before deciding how to structure a proposed “pro forma” statement. A presentation of financial results that is addressed to a limited feature of financial results or that sets forth calculations of financial results on a basis other than GAAP generally will not be deemed to be misleading merely due to its deviation from GAAP if the company in the same public statement discloses in plain English how it has

deviated from GAAP and the amounts of each of those deviations.

Fifth, as always, and especially in light of the disclosure that we expect to see accompanying these presentations, we encourage investors to compare any summary or “pro forma” financial presentation with the results reported on GAAP-based financials by the same company. Read before you invest; understand before you commit.

Companies with questions about the use of “pro forma” financial presentations in earnings releases are encouraged to call John M. Morrissey, Deputy Chief Accountant, at 202–942–4400, or Paula Dubberly, Chief Counsel of the Division of Corporation Finance, at 202–942–2900. Investors are encouraged to read our investor alert on “pro forma” financial statements (available at <http://www.sec.gov/investor.shtml>).

By the Commission.  
Dated: December 4, 2001.

**Jonathan G. Katz,**  
*Secretary.*  
[FR Doc. 01–30414 Filed 12–7–01; 8:45 am]  
**BILLING CODE 8010–01–P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3378]**

**State of Texas; Disaster Loan Areas**

Medina County and the contiguous counties of Atascosa, Bandera, Bexar, Frio, Uvalde and Zavala in the State of Texas constitute a disaster area as a result of severe storms and tornadoes that occurred on October 12, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 1, 2002 and for economic injury may be filed until the close of business on September 3, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	(Percent)
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	6.500
Homeowners without Credit Available Elsewhere .....	3.250
Businesses with Credit Available Elsewhere .....	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere .....	4.000

	(Percent)
Others (Including Non-Profit Organizations) with Credit Available Elsewhere .....	6.375
<i>For Economic Injury:</i> Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 337811 and for economic injury is 9N6700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 3, 2001.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 01-30427 Filed 12-7-01; 8:45 am]

**BILLING CODE 8025-01-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determinations Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative has determined that Namibia has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act. Therefore, imports of eligible products from Namibia qualify for the textile and apparel benefits provided under the AGOA.

**EFFECTIVE DATE:** December 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Chris Moore, Director for African Affairs, Office of United States Trade Representative, (202) 395-9514.

**SUPPLEMENTARY INFORMATION:** The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Public Law 106-200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries (1) have

adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Namibia as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the Office of United States Trade Representative (USTR) the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Namibia has taken, I have determined that Namibia has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Namibia" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

**Robert B. Zoellick,**

*United States Trade Representative.*

[FR Doc. 01-30460 Filed 12-7-01; 8:45 am]

**BILLING CODE 3190-01-M**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed During the Week Ending November 23, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

*Docket Number:* OST-2001-11027.

*Date Filed:* November 19, 2001.

*Parties:* Members of the International Air Transport Association.

*Subject:*

Telex Mail Vote A105 dated October 2, 2001

Resolution 832 (to defer implementation of the weekly remittance procedures in Malaysia until 1 April 2002)

Telex dated November 6, 2001—

Declaration of Approval

Intended effective date: 23 October 2001.

*Docket Number:* OST-2001-11035.

*Date Filed:* November 20, 2001.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC23 AFR-TC3 0136 dated 29 October 2001

Mail Vote 0177—TC23/TC123 Africa-Japan/Korea

Expedited Resolution 010k

PTC23 AFR-TC3 0147 dated 23 November 2001 (Affirmative)

PTC23 AFR-TC3 0137 dated 29 October 2001

Mail Vote 0178—TC23/TC123 Africa-South East Asia Expedited

Resolution 010L

PTC23 AFR-TC3 00148 dated 23

November 2001 (Affirmative)

Intended effective date: 1 December 2001.

*Docket Number:* OST-2001-11044.

*Date Filed:* November 23, 2001.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC COMP 0879 dated 23 November 2001

Mail Vote 182—Resolution 010n

TC2/12/23/123 Special Passenger

Amending Resolution from Latvia

Intended effective date: 1 February 2002.

*Docket Number:* OST-2001-11045.

*Date Filed:* November 23, 2001.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC23 ME-TC3 0128 dated 16 November 2001

(Mail Vote 172)

TC23/TC123 Middle East-South East Asia Resolutions r1-r15

MINUTES—PTC23 ME-TC3 0124 dated 30 October 2001 filed with Docket OST-2001-10978

TABLES—PTC23 ME-TC3 Fares 0057 dated 16 November 2001

Intended effective date: 1 April 2002.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 01-30421 Filed 12-7-01; 8:45 am]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Advisory Circular 33.17-1, Fire Prevention

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

**ACTION:** Notice of availability of proposed advisory circular.