

18 U.S.C. 207(j) which requires each agency to establish such procedures, and the guidelines of the Office of Government Ethics (OGE) which appear at 5 CFR 737.27 (44 FR pp. 19987-88; April 3, 1979).

#### § 1207.735-701 Policy.

Any allegation that a former NASA employee has violated 18 U.S.C. 207 will be thoroughly and impartially investigated following the guidelines of the OGE and the procedural requirements of this subpart before a final agency decision is reached.

#### § 1207.735-702 Procedures for administrative disciplinary hearing.

(a) *Allegations of violations.* Any allegation that a former NASA employee has violated 18 U.S.C. 207 in connection with duties performed while the individual worked for NASA shall be referred to the NASA Inspector General for investigation. The Inspector General shall coordinate, as appropriate, with the Director of the OGE and the Criminal Division of the Department of Justice.

(b) *Initiation of hearing.* When the NASA Inspector General determines after appropriate review that there is reasonable cause to believe that a former NASA employee has violated 18 U.S.C. 207 (a), (b), or (c), or any implementing regulations, the Inspector General shall prepare and issue the notice to the former employee required by 5 CFR 737.27(a)(3).

(c) *Appointment of examiner.* The Associate Deputy Administrator shall appoint an examiner upon issuance of a notice under paragraph (b) of this section. Any duly appointed examiner is hereby delegated authority to conduct an administrative hearing and to make an initial decision under the procedures of this subpart. The examiner shall be impartial and shall not have participated in any manner in the circumstances giving rise to the proceedings or the decision to initiate the proceedings. The examiner shall have a degree in law, be admitted to the bar, and be experienced in the conduct of administrative hearings.

(d) *Time, date and place of hearing.* Upon a request for a hearing by the former employee, the examiner shall schedule a hearing as promptly as possible, with due regard for the former employee's need for adequate time to prepare a defense and expeditious resolution of potentially damaging allegations. The examiner shall observe the procedural requirements of 5 CFR 737.27 and this subpart in conducting the hearing.

(e) *Rights of the former employee.* In connection with a hearing, the former employee shall have the right:

(1) To represent oneself or to be represented by counsel;

(2) To introduce and examine witnesses and to submit evidence;

(3) To confront and cross-examine witnesses;

(4) To present argument;

(5) To request a transcript or recording of the proceedings.

(f) *Burden of proof.* The agency shall have the burden of proof and must establish by substantial evidence that a violation has occurred.

(g) *Initial decision.* (1) The examiner shall make an initial determination based exclusively on matters of record in the proceeding.

(2) When a former employee does not elect a hearing, the examiner shall consider all available evidence, including any documentary evidence submitted by the former employee, together with any written argument submitted by the parties, and shall issue an initial decision based thereon.

(3) The written initial decision shall set forth all findings of fact and conclusions of law relevant to the matter at issue.

#### § 1207.735-703 Appeal from initial decision.

Within 30 days after the date of the initial decision, either party may appeal the initial decision to the Associate Deputy Administrator. The Associate Deputy Administrator will review the pertinent record of the proceedings and any written arguments submitted by the parties concerning the appeal. If the Associate Deputy Administrator modifies or reverses the initial decision, he or she shall specify the findings of fact and conclusions of law that are different than those of the examiner.

#### § 1207.735-704 Administrative sanctions.

(a) The final agency decision shall be (1) the decision of the Associate Deputy Administrator on an appeal under § 1207.735-703, or (2) the decision of the examiner which shall become final if no appeal is taken within the 30 day time limit.

(b) If the final decision of the agency is that a violation of 18 U.S.C. 207 (a), (b), or (c), or of implementing regulations has occurred, the following sanctions may be ordered by the Administrator against the former employee:

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, NASA on any matter

of business for a period not to exceed five years, which may be accomplished by directing NASA employees to refuse to participate in any such appearance or to accept any such communication; or (2) Taking other appropriate disciplinary action.

(c) Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations under the procedures of this subpart may seek judicial review of the administrative determination and shall be notified of the opportunity of such review in the final decision of the agency.

Dated: January 15, 1980.

Robert A. Frosch,  
Administrator.

[FR Doc. 80-2036 Filed 1-22-80; 6:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34-16495]

### Exemption of Nonmember Brokers and Dealers From Certain SECO Fair Practice Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is amending the rule which exempts certain municipal securities brokers and municipal securities dealers from the fair practice requirements of the SECO program. Previously, exemption from regulation under the fair practice rules of the SECO program was based upon the type of broker or dealer effecting the transaction. The rule, as amended, exempts the municipal securities transactions of all SECO brokers and dealers from the requirements of the Commission's SECO fair practice rules.

As a result, the amendment eliminates the current dual regulation of municipal securities transactions effected by SECO brokers and dealers that conduct business in both municipal and corporate securities. It also makes the SECO fair practice rules applicable to transactions in exempted securities effected by all registered SECO brokers and dealers, including those brokers and dealers engaging exclusively in municipal and exempted securities transactions.

**EFFECTIVE DATE:** February 22, 1980.

**FOR FURTHER INFORMATION CONTACT:** D. Michael Lefever, Esq., Office of Self-Regulatory Oversight, Division of

Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2412.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today announced that it has amended Securities Exchange Act Rule 15b10-12 [17 CFR 240.15b10-12] in order to eliminate the current dual regulation of municipal securities transactions effected by Securities and Exchange Commission Only ("SECO") brokers and dealers conducting business in corporate as well as municipal and exempted securities ("mixed product brokers and dealers"). The rule, as amended, also makes the fair practice rules of the Commission's SECO program<sup>1</sup> applicable to the exempted securities transactions of all registered SECO brokers and dealers, including those brokers and dealers engaging exclusively in municipal and exempted securities transactions ("sole municipal brokers and dealers").

The Securities Acts Amendments of 1975 (the "1975 Amendments")<sup>2</sup> established for the first time the requirement that municipal securities brokers and dealers whose business is confined to effecting transactions in municipal and exempted securities register with the Commission. Registered sole municipal brokers and dealers which did not elect to become members of the National Association of Securities Dealers, Inc. (the "NASD") became subject to regulation under the Commission's SECO program. The program includes a series of Commission rules that establish "fair practice" standards governing such matters as general business conduct, suitability of recommendations, discretionary accounts, supervision of employees, record keeping, and fidelity bonds. The Commission, however, anticipated that the Municipal Securities Rulemaking Board (the "MSRB"), as directed by Section 15B(b)(2)(C) of the Act [15 U.S.C. 78o-4(b)(2)(C)], would establish rules of fair practice governing the activities of municipal securities brokers and dealers. Accordingly, the Commission adopted Rule 15b10-12 to relieve SECO sole municipal brokers and dealers of the necessity of developing and implementing compliance procedures for those SECO rules which regulated practices to be

covered by anticipated MSRB fair practice rules.<sup>3</sup>

In contrast, SECO mixed product brokers and dealers, having been required to register with the Commission prior to the 1975 Amendments, had already been required to develop the necessary compliance procedures and, accordingly, continued to be subject to the SECO fair practice rules with respect to their transactions in corporate, municipal, and exempted securities. Consequently, when the Commission approved the MSRB fair practice rules on October 19, 1978,<sup>4</sup> transactions in municipal securities effected by SECO mixed product brokers and dealers became subject to regulation by both the Commission and the MSRB. In order to eliminate duplicative regulation,<sup>5</sup> the Commission proposed and published for comment an amendment to Rule 15b10-12.<sup>6</sup> No comments concerning the proposal were received.

The amendment to Rule 15b10-12 makes two changes. First it eliminates the current fair practice regulation by both the Commission and the MSRB of municipal securities transactions of mixed product brokers and dealers by exempting, with respect to their municipal securities transactions, all SECO brokers and dealers from compliance with SECO fair practice rules that are parallel to rules adopted by the MSRB. Specifically, the rule exempts municipal securities transactions from the requirements of Rules 15b10-2, 15b10-3, 15b10-4, 15b10-5, 15b10-6, and 15b10-11. The municipal securities transactions of both SECO mixed product brokers and dealers and SECO sole municipal brokers and dealers consequently will be subject only to the applicable MSRB rule.

In addition, the amendment makes SECO fair practice rules applicable to transactions in exempted securities effected by SECO sole municipal brokers and dealers.<sup>7</sup> Previously, Rule 15b10-12 exempted SECO sole municipal brokers and dealers from the fair practice requirements of the SECO program. The rule, as amended, converts a class exemption for SECO sole

municipal brokers and dealers into a transactional exemption limited to municipal securities transactions. As a result, the amendment subjects all non-municipal transactions effected by SECO sole municipal brokers and dealers to Commission regulation, whether or not the transactions would have required the broker dealer to register with the Commission. The practical effect of the rule change is to require such persons to comply with the SECO fair practice rules with respect to their transactions in exempted securities.

Transactions in exempted securities effected by SECO mixed product brokers and dealers continue to be subject to the requirements of the SECO rules. By removing the exemption from compliance with such rules previously applicable to sole municipal brokers and dealers effecting transactions in exempted securities, uniformity within the SECO program is achieved. Although the scope of SECO regulation is broader than that of the NASD, which is not permitted to regulate exempted securities transactions of its members,<sup>8</sup> the Commission believes it is appropriate to utilize fully the jurisdiction granted to it in Section 15(b)(9) of the Act to assure that basic standards of fair dealing apply to all securities transactions of SECO brokers and dealers. Accordingly, the Commission has determined, pursuant to Section 23(a)(2) of the Act [15 U.S.C. 78w(a)(2)], that the amendment of Rule 15b10-12 does not impose any burdens on competition not necessary or appropriate in the furtherance of the purposes of the Act.

#### Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, as amended [15 U.S.C. 78a *et seq.*], and particularly Sections 2, 15, and 23 [15 U.S.C. 78b, 78o and 78w], hereby amends § 240.15b10-12 of Title 17 of the Code of Federal Regulations. Rule 15b10-12, as amended, becomes effective on February 22, 1980.

§ 240.15b10-12 is revised to read as follows:

#### § 240.15b10-12 Exemption for municipal securities transactions of non-member brokers and dealers.

The following rules of the Commission adopted pursuant to section 15(b) of the Act shall not apply to transactions in

<sup>8</sup> Section 15A(f) of the Act [15 U.S.C. 78o-3(f)], in limiting the statutory authority of the NASD, provides: "Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security."

<sup>1</sup> The SECO fair practice rules consist of Securities Exchange Act Rules 15b10-1 through 15b10-11 [17 CFR 240.15b10-1 through 15b10-11] adopted pursuant to authority granted by Section 15(b)(9) of the Securities Exchange Act of 1934 (the "Act") [15 U.S.C. 78o(b)(9)].

<sup>2</sup> Pub. L. No. 94-29 (June 4, 1975).

<sup>3</sup> Securities Exchange Act Release No. 11876 (Nov. 26, 1975) and Release No. 12468 (May 20, 1976).

<sup>4</sup> Securities Exchange Act Release No. 15247 and Release No. 15248 (Oct. 19, 1978).

<sup>5</sup> For example, both the SECO rules and the MSRB rules concern general business conduct, suitability of investment recommendations, supervision of persons associated with brokers and dealers, and discretionary accounts.

<sup>6</sup> Securities Exchange Act Release No. 16018 (July 11, 1979).

<sup>7</sup> Section 15(b)(9) of the Act grants the Commission rulemaking authority over any security, including exempted securities.

municipal securities effected by brokers and dealers: Rule 15b10-2, Rule 15b10-3, Rule 15b10-4, Rule 15b10-5, Rule 15b10-6, Rule 15b10-11.

By the Commission.

George A. Fitzsimmons,  
Secretary.

January 15, 1980.

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[Directive No. 71]

#### Redelegation of Authority to Deputy Assistant Attorneys General and Director of the Office of Legal Support Services to Authorize Production or Disclosure of Material or Information

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** This directive redelegates to the Director of the Office of Legal Support Services the Assistant Attorney General's authority to approve production of material and disclosure of information contained in the files of the Department in response to a subpoena, order, or other demand of a court or other authority. Until now, this authority has been redelegated only to each of the Deputy Assistant Attorneys General of the Criminal Division.

**EFFECTIVE DATE:** January 14, 1980.

**FOR FURTHER INFORMATION CONTACT:** Philip T. White, Director, Office of Legal Support Services, Criminal Division, Department of Justice, Washington, D.C. 20530 (202-724-7042).

#### Appendix to Subpart B [Amended]

By virtue of the authority vested in me by § 16.23(b)(1) of Title 28 of the Code of Federal Regulations, the Appendix to Subpart V is amended by deleting the period after the word "Division" in the first sentence and adding the following:

\*\*\* and to the Director of the Office of Legal Support Services: *Provided however, That if in his judgment unusual circumstances exist which warrant special consideration, the Director of Legal Support Services shall consult with a Deputy Assistant Attorney General prior to approving production of material or disclosure of information.*

\*\*\*  
Dated: January 14, 1980.

Philip B. Heymann,  
Assistant Attorney General, Criminal Division.

[FR Doc. 80-2021 Filed 1-22-80; 8:45 am]

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### 28 CFR Part 16

[Order No. 871-80]

#### Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** This amendment authorizes the Assistant Attorney General of the Criminal Division to redelegate to the Director of the Office of Legal Support Services the authority delegated to him to approve production of material and disclosure of information contained in the files of the Department in response to a subpoena, order or other demand of a court or other authority. Until now, this authority has been authorized to be redelegated only to Deputy Assistant Attorneys General.

**EFFECTIVE DATE:** January 8, 1980.

**FOR FURTHER INFORMATION CONTACT:** Philip T. White, Director, Office of Legal Support Services, Criminal Division, Department of Justice, Washington, D.C. 20530, (202-724-7042).

By virtue of the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, § 16.23 of Chapter I of Title 28 Code of Federal Regulations is amended by adding the following sentence at the end of paragraph (b)(1):

§ 16.23 Procedure in the event of a demand for production or disclosure.

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(b) \*\*\*  
(1) \*\*\* The Assistant Attorney General of the Criminal Division may redelegate this authority to the Director of the Office of Legal Support Services.

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Dated: January 8, 1980.

Benjamin R. Civiletti,  
Attorney General.

[FR Doc. 80-2020 Filed 1-22-80; 8:45 am]

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### 28 CFR Part 16

[AAG/A Order No. 40-80]

#### Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** On October 12, 1979, the Department of Justice published in the Federal Register a proposal to amend 28 CFR 16.96, Exemption of Federal Bureau of Investigation System—Limited Access, as it relates to the Federal Bureau of Investigation Central Records

System (Justice/FBI-002), in order to explain in more clear and concise language the reasons such exemptions are necessary. On the same day, the Department of Justice published a notice in the Notice Section of the Federal Register modifying the system.

The purposes of these exemptions are to maintain the confidentiality and security of information compiled for the purposes of criminal investigations and civil or regulatory law enforcement, or of reports compiled at any stage of the criminal law enforcement process, and to maintain the confidentiality and security of information that is specifically authorized to be kept secret in the interests of national defense or foreign policy.

Some records contained in this system of records may not be subject to exemption. A determination will be made as to the exemption of a specific record or information at the time a request for notification or access is made.

The exemption of this system of records pursuant to the Privacy Act of 1974 is accomplished by the amendment of existing 28 CFR 16.96.

**DATES:** The rule will be effective January 23, 1980.

**ADDRESSES:** Administrative Counsel, Justice Management Division, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

**FOR FURTHER INFORMATION CONTACT:** William J. Snider (202-633-3452).

**SUPPLEMENTARY INFORMATION:** No comments were received regarding the proposed regulations published on October 12, 1979.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a(j)(2) and (k) and delegated to me by the Attorney General Order No. 793-78, the proposed regulations published in the Federal Register on October 12, 1979, are adopted without change as set forth below.

Dated: January 11, 1980.

Kevin D. Rooney,  
Assistant Attorney General for Administration.

Section 16.96 of 28 CFR is revised to read as follows:

#### § 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) and (g).

(1) *Central Records System (CRS) (JUSTICE/FBI-002).* These exemptions apply only to the extent that information

in this system is subject to exemption pursuant to 5 U.S.C. 552(j) and (k). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by the FBI.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From paragraph (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only the FBI, but also by the recipient agency. This would permit the record subject to take appropriate measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2) From paragraphs (d), (e)(4) (G) and (H), (f) and (g) because these provisions concern individual access to investigative records, compliance with which could interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy. In addition, from paragraph (d)(2) because to require the FBI to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(3) From paragraph (e)(1) because:

(i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(iii) In any investigation the FBI might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and

necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(4) From paragraph (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(5) From paragraph (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(6) From paragraph (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

[FR Doc. 80-2019 Filed 1-22-80; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Heritage Conservation and Recreation Service

#### 36 CFR Part 1215

#### Archaeological Resources Protection Act of 1979; Notice of Permitting Procedures Pending Promulgation of New Regulations

**AGENCY:** Heritage Conservation and Recreation Service, Department of the Interior.

**ACTION:** Notice of permitting procedures pending promulgation of new regulations.

**SUMMARY:** This notice is to provide immediate guidance to those persons seeking permits to undertake archaeological excavation and/or exploration on lands administered by the Department of the Interior. This guidance is offered in light of a new act, the Archaeological Resources Protection Act of 1979 (Public Law 96-95) and its requirements for a permit authorizing such activities.

**FOR FURTHER INFORMATION CONTACT:** Charles M. McKinney, Manager, Federal Antiquities Program, Department of the Interior, Heritage Conservation and

Recreation Service, 440 G Street, NW., Washington, D.C. 20243 (202) 343-7105.

**SUPPLEMENTARY INFORMATION:** The Archaeological Resources Protection Act of 1979 (hereafter the Act) was enacted to provide a comprehensive framework for protecting and regulating the use of archaeological resources on public and Indian lands. Formerly these resources came within the ambit of the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431-3) and regulations promulgated thereunder, 43 CFR, Part 3.

The new act provides for all excavation and removal of archaeological resources on public land to be done pursuant to a permit issued by the Federal land manager. Consent of Indian tribes or individual Indians must be obtained before permits may be issued for excavation or exploration of sites on Indian lands. Archaeological resources recovered from public lands remain the property of the United States with custody and final disposition determined by the Secretary of the Interior. Removal, custody, and ultimate disposition of such archaeological resources recovered from Indian lands are determined by the individual Indian or Indian tribal authority which owns or has jurisdiction over such lands in consultation with the Secretary of the Interior.

The Act requires the uniform rules and regulations to carry out its purposes to be promulgated by the Secretaries of Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes and representatives of concerned State agencies, and after public notice and hearing. Each such rule or regulation promulgated must also be sent to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs. The rule or regulation does not take effect for 90 days following its submission to these Committees.

Following the promulgation of uniform rules each Federal land manager must promulgate such rules and regulations, consistent with the uniform rules and regulations, as may be appropriate to carry out his or her function and authorities under the Act. These rules do not need to be submitted to the Congressional Committees for legislative review.

It is clear from the purpose and legislative history of the Act that it was not the intention of the Congress to discontinue legitimate archaeological exploration and excavation pending the implementation of new regulations.