North Kingstown, RI—Quonset State, VOR Rwy 34, Amdt. 2

. . . Effective July 10, 1980

Troy, AL—Troy Muni, VOR Rwy 7, Amdt. 1
Howell, MI—Livingston County, VOR Rwy 31, Amdt. 5

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

. . . Effective August 7, 1980

Fresno, CA—Fresno Air Terminal, LOC BC Rwy 11L, Amdt. 4
El Paso, TX—El Paso Intl, LOC BC Rwy 4, Amdt. 3

. . . Effective July 24, 1980

Waukegan, IL—Waukegan Memorial, LOC Rwy 23, Amdt. 5

. . . Effective July 10, 1980

Minot, ND—Minot Intl, LOC BC Rwy 13, Amdt. 4
Martinsburg, WV—Eastern WV Regional Airport/Shepherd Field, LOC BC Rwy 8, Original
Martinsburg, WV—Eastern WV Regional Airport/Shepherd Field, LOC Rwy 8, Amdt. 1, cancelled
Martinsburg, WV—Eastern WV Regional Airport/Shepherd Field, LOC (BC) Rwy 26, Amdt. 3, cancelled

Note.—The FAA published an amendment in Docket No. 20368, Amdt. No. 1165 to part 97 of the Federal Aviation Regulations (Vol 45 FR No. 107 page 37182; dated June 2, 1980) under section 97.25 effective July 10, 1980, which is hereby amended as follows: Sheboygan, WI—Sheboygan County Memorial VOR Rwy 3, amdt. 2 is changed to Sheboygan, WI—Sheboygan County Memorial VOR Rwy 3, Amdt. 3.

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

. . . Effective August 7, 1980

Harrison, AR—Boone County, NDB Rwy 18, Original
Fresno, CA—Fresno Air Terminal, NDB Rwy 29R, Amdt. 19
Thomson, GA—Thomson-McDuffie County, NDB Rwy 27, Amdt. 2
Atlantic, IA—Atlantic Muni, NDB Rwy 12, Amdt. 5
Audubon, IA—Audubon Muni, NDB Rwy 32, Amdt. 2
Creston, IA—Creston Muni, NDB Rwy 34, Amdt. 3
Maquoketa, IA—Maquoketa Muni, NDB Rwy 15, Amdt. 1
Garden City, KS—Garden City Muni, NDB Rwy 12, Amdt. 8
Haskell, TX—Haskell Muni, NDB Rwy 18, Amdt. 1

. . . Effective July 24, 1980

Ontario, CA—Ontario Intl, NDB Rwy 25R, Amdt. 29
San Bernardino, CA—Tri-City, NDB Rwy 7, Amdt. 2
Augusta, GA—Bush Field, NDB Rwy 17, Amdt. 11
Waukegan, IL—Waukegan Memorial, NDB Rwy 23, Amdt. 5
Ottawa, KS—Ottawa Muni, NDB Rwy 35, Original
Tewksbury, MA—Tew-Mac, NDB-A, Amdt. 1
Cambridge, MN—Cambridge Muni, NDB Rwy 34, Amdt. 2
Amityville, NY—Zahns, NDB Rwy 36, Amdt. 7, cancelled
Pulaski, TN—Abernathy Field, NDB Rwy 15, Amdt. 1

. . . Effective July 10, 1980

Troy, AL—Troy Muni, NDB Rwy 7, Amdt. 3
Greenville, ME—Greenville Municipal, NDB Rwy 3, Amdt. 3, cancelled
Greenville, ME—Greenville Seaplane Base, NDB-A, Amdt. 2, cancelled

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

. . . Effective August 7, 1980

Fresno, CA—Fresno Air Terminal, ILS Rwy 29R, Amdt. 24

. . . Effective July 24, 1980

Ontario, CA—Ontario Intl, ILS Rwy 7L, Amdt. 1
Ontario, CA—Ontario Intl, ILS Rwy 25R, Amdt. 30
Farmingdale, NY—Republic, ILS Rwy 14, Amdt. 4
Green Bay, WI—Austin-Straubel Field, ILS Rwy 36, Amdt. 1

. . . Effective July 10, 1980

Troy, AL—Troy Muni, ILS Rwy 7, Amdt. 3
Kailua-Kona, HI—Ke-ahole, ILS/DME Rwy 17, Amdt. 4
Minot, ND—Minot Intl, ILS Rwy 3L, Amdt. 4
Smyrna, TN—Smyrna, ILS Rwy 32, Original
Martinsburg, WV—Eastern WV Regional Airport/Shepherd Field, ILS Rwy 26, Original

5. By amending § 97.31 RADAR SIAPs identified as follows:

. . . Effective July 24, 1980

Caribou, ME—Caribou Muni, RADAR-1, Original
Dayton, OH—James M. Cox, Dayton International, RADAR-1, Amdt. 3
North Kingstown, RI—Quonset State, RADAR-1, Original
Greer, SC—Greenville-Spartanburg, RADAR-1, Amdt. 3

. . . Effective July 10, 1980

Troy, AL—Troy Muni, RADAR-1, Amdt. 3

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . Effective August 7, 1980

Lake Charles, LA—Lake Charles Muni, RNAV Rwy 5, Original
Lake Charles, LA—Lake Charles Muni, RNAV Rwy 23, Original

. . . Effective July 24, 1980

Ann Arbor, MI—Ann Arbor Muni, RNAV Rwy 24, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on June 6, 1980.

John S. Kern,

Acting Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the **Federal Register** on May 12, 1969.

[FR Doc. 80-17712 Filed 6-11-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-16859; File No. S7-793]

Reports by National Securities Exchanges and Registered National Securities Associations

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules to eliminate the exemption from filing notice when a change occurs in the status of a broker-dealer's membership in a self-regulatory organization and to modify the provision regarding when the self/regulatory organization files the notice. These amendments are necessary to clarify ambiguities regarding the timing of the required reports and to prevent duplicative reporting by the self-regulatory organizations. The Commission is also amending its rules to make a financial filing requirement currently applicable to registered national securities exchanges applicable to all registered national securities associations and their members as well. This amendment is necessary to allow the Commission to monitor a registered broker-dealer's compliance with financial and operational rules when the broker-dealer ceases to be a member in good standing of a registered national securities association.

EFFECTIVE DATE: July 14, 1980.

FOR FURTHER INFORMATION CONTACT: Ellen C. Kerrigan, Division of Market Regulation, Securities and Exchange

Commission, Washington, D.C. 20549, (202) 272-3113.

SUPPLEMENTARY INFORMATION:

Background

In 1974 the Commission adopted Rule 17a-19 (17 CFR 240.17a-19) and Form X-17A-19 (17 CFR 249.635) under the Securities Exchange Act of 1934 to require the exchanges and the National Association of Securities Dealers ("NASD") to notify the Commission and the Securities Investor Protection Corporation ("SIPC") promptly (i) upon learning that the membership status of any of their members would change, or (ii) when the change occurred, unless notice had been previously given.[1] This rule was one of many adopted to implement proposals submitted in the "SEC Advisory Committee Study on Broker-Dealer Reports and Registration Requirements."

One of the recommendations of the Study was that, in regard to financial responsibility and related recordkeeping, a broker-dealer should be examined by and report to only one self-regulatory organization ("SRO"). Prompt notification of any change in membership status that affects a firm's relationship with its examining authority or any other SRO of which it is a member was intended to expedite designation of a new examining authority, if necessary, as well as to provide a means to maintain a record of such relationships to facilitate the performance of the Commission's oversight responsibilities.[2]

In 1977, the Commission amended Rule 17a-19 to eliminate ambiguities with respect to the timing of the filing of the reports by requiring that reports on Form X-17A-19 be filed "within 5 business days" after the change actually occurs. The Commission added a requirement that the designated examining authority also give telegraphic notice (i) upon learning that a change in membership status would occur or (ii) within 24 hours of a change in membership status, unless notice was previously given. In addition, the rule was amended to provide that these notices be filed with the appropriate regional offices as well as with Commission headquarters.

Since that time the Commission has reexamined the function and operation of those requirements in light of its experience with the designation of examining authorities, especially in conjunction with related Commission programs. In particular, it reviewed Rule 17a-19 in connection with the reporting requirements of Rule 17a-5(b) (17 CFR § 240.17a-5(b)), which is part of the FOCUS Report program. That rule requires the exchanges and their members to inform the Commission when a broker-dealer ceases to be a member in good standing[3] and provides for the submission of current financial information about such members.[4] Last fall, as a result of the review, the Commission adopted amendments rescinding the requirement to give telegraphic notice contained in Rule 17a-19; eliminating the requirement to file Form X-17A-19 at the Regional Office of the Commission; conforming § 249.635 and Form X-17A-19 to Rule 17a-19; and revising Form X-17A-19 to incorporate technical modifications to facilitate the reporting of information.[5] Also, as a result of this review, the Commission proposed for comment amendments to Rule 17a-5(b), Rule 17a-19 and § 249.635.[6] In particular, the amendment to Rule 17a-5(b) would require the NASD and its members to comply with the reporting requirements of Rule 17a-5(b).

The Commission has now adopted (1) the proposed amendment to Rule 17a-5(b) and a conforming amendment to Rule 17a-19, which requires the NASD and its members to comply with the reporting requirements of rule 17a-5(b); (2) the proposed amendment to Rule 17a-19 and § 249.635 which eliminates the exemption from filing Form X17A-19 if previous notice had been filed; and (3) the amendment to Rule 17a-19 and § 249.635 which eliminates the necessity to file promptly upon learning that one or more of such events will occur.

Amendment of Rule 17a-5(b)

As amended, Rule 17a-5(b), requires the NASD to report promptly to the Commission whenever there is any action that causes a member to cease to be a member in good standing. In addition, a broker-dealer will be required under Rule 17a-5(b)(1) to file with the Commission either Part II or IIA of FOCUS Form X-17A-5 within two days after it ceases to be a member in good standing of the NASD.

As noted above, every exchange and its members are currently required to comply with Rule 17a-5(b).[7] At the time the rule was promulgated, the NASD and its members were exempted from compliance with the rule because of the capital rules then in force. Since then, however, Rule 17a-5(b) has evolved into a useful early warning and surveillance tool and has proven to be of value in monitoring those broker-dealers who cease to be members of self-regulatory organizations.

In a comment letter on the proposed amendment, the NASD asserted that extension of the requirement would impose an unnecessary burden on the NASD and its members. The NASD stated that it believes that the intent of the rule is to provide the Commission with current financial information on the broker-dealer in order to facilitate redesignation of the firm to another self-regulatory organization. The NASD pointed out that a broker-dealer might not need to be redesignated when its membership is terminated or when it voluntarily withdraws its registration or goes out of business following expulsion. Consequently, the NASD argued, there is no need for the Commission to ask for financial information pursuant to Rule 17a-5(b) in those instances where there is no need to redesignate the broker-dealer's examining authority.

The NASD is correct when it states that the information requested by Rule 17a-5 is needed in order to redesignate examination responsibilities. However, the financial information requested upon the broker-dealer's ceasing to be a member in good standing is also useful to the Commission's early warning and surveillance program, particularly regarding broker-dealers that are experiencing financial or operational difficulty. Commission experience indicates that there is a continuing need

[1] Securities Exchange Act Release No. 10959, August 9, 1974 (39 FR 30483, August 23, 1974). Changes in status are the initiation, suspension or termination of membership or any other similar change in status which affects the firm's relationship with the self-regulatory organization. Termination includes resignation, withdrawal and expulsion.

[2] The Commission designates the examining authority for SIPC members belonging to more than one self-regulatory organization pursuant to Section 13(c) of the Securities Investor Protection Act of 1970 and Rule 17d-1 under the Securities Exchange Act of 1934. The Commission designates the exchanges and the NASD as examining authorities. Registered clearing agencies have not been designated because their statutory authority to enforce compliance by their participants extends only to each clearing agency's own rules and not to the Securities Exchange Act or the rules thereunder. Section 19(g)(1)(C) of the Securities Exchange Act.

[3] For purposes of that rule, a broker-dealer ceases to be a member in good standing when it resigns or withdraws, is suspended or expelled, or sells or agrees to sell its membership interest. Rule 17a-5(b)(4).

[4] Rule 17a-5(b)(5) has required each exchange to report promptly to the Commission whenever there is action that causes a member to cease to be a member in good standing. In addition, under Rule 17a-5(b)(1), the broker-dealer is required to file with the Commission either Part II or IIA of Form X-17A-5 within two days after it ceases to be a member in good standing. The exchange has also been required to notify the broker-dealer of its responsibilities under Rule 17a-5(b).

[5] Securities Exchange Act Release No. 16286, October 22, 1979 (44 FR 61942, October 29, 1979).

[6] Securities Exchange Act Release No. 16287, October 22, 1979 (44 FR 61974, October 29, 1979).

[7] *See* n. 4 *supra.*

for the Commission to monitor a registered broker-dealer's compliance with financial and operational rules, even at the point when a broker-dealer ceases to be a member in good standing of an SRO.[8] Moreover, Rule 17a–5(b)(6) provides that a broker or dealer may request an exemption from the filing requirements of 17a–5(b) if it is terminating its membership interest in a self-regulatory organization other than its designated examining authority. Thus, in many instances the broker-dealer may not have to submit the financial information required by Rule 17a–5(b). Furthermore, Rule 17a–19 as amended provides that the exchange or association is not required to submit a separate report pursuant to Rule 17a–5(b) if it promptly files Form X–17A–19 with sufficient information to satisfy Rule 17a–5(b). Consequently, the NASD should not be subject to any additional burden than it currently has pursuant to Rule 17a–19.

Revision and Clarification of Language Found in Rule 17a–19 and Section 249.635

A. *Elimination of Exemption from Filing Form X–17A–19.* Prior to the Commission adopting the present amendment, Rule 17a–19 and § 249.635 required that the exchanges and the NASD file Form X–17A–19 (i) promptly upon learning that a change in membership status will occur or, (ii) *unless notice has been previously filed,* within five business days of the change. [Emphasis added.] The Commission concluded that submission of Form X–17A–19 at the time a change in membership status occurs is necessary for the Commission to be certain that its information is accurate and current. This is particularly important for early warning and surveillance purposes. Therefore, the italicized provision is eliminated by this amendment.

B. *Elimination of Provision Providing for Filing Upon Learning That a Change in Membership Status Will Occur.* Since Rule 17a–19 and § 249.635 were worded in an unnecessarily confusing fashion and, in effect, may have required that self-regulatory organizations file the same information twice,[9] the Commission is rescinding the provision that provides for filing "promptly upon learning that one or more of such events will occur."

The rescission of the above provision will still permit the Commission to receive timely information and will prevent duplicative reporting by the self-regulatory organizations.

Statutory Basis and Competitive Considerations

The amendment of Rule 17a–19, with the conforming amendment to § 249.635, rescinding the provision requiring filing upon learning that a change in membership will occur relieves the national securities exchanges and registered national securities associations of a regulatory burden by eliminating the duplicative requirement of filing upon learning that a change will occur in addition to filing within five days of the occurrence of such event. Consequently, the Commission finds, in accordance with the provisions of 5 U.S.C. 553(b)(B), that prior notice and public procedure are unnecessary or contrary to the public interest.

The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, particularly Sections 17(a) and 23(a) thereof, hereby amends §§ 240.17a–5(b), 17a–19 and 249.635 as set forth below. These amendments will be effective July 14, 1980.

It appears to the Commission that no burden on competition will be imposed by these amendments.

Text of Amendments

Accordingly, 17 CFR Chapter II is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising paragraphs (b) (1), (3), (4) and (5) of § 240.17a–5 to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(b) *Report filed upon termination of membership interest.* (1) If a broker or dealer holding any membership interest in a national securities exchange or registered national securities association ceases to be a member in good standing of such exchange or association, such broker or dealer shall, within two business days after such event, file with the Commission Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(2)(ii) and (iii) of this section as of the date of such event. The report shall be filed at the Commission's principal office in Washington, D.C., and with the regional office of the Commission for the region in which the broker or dealer has its principal place of business: *Provided, however,* That such report need not be made or filed if the Commission, upon written request or upon its own motion, exempts such broker or dealer, either unconditionally or on specified terms and conditions, from such requirement: *Provided, further,* That the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

* * * * *

(3) For the purposes of this paragraph (b) "membership interest" shall include the following: full membership, allied membership, associated membership, floor privileges, and any other interest that entitles a broker or dealer to the exercise of any privilege on an exchange or with an association.

(4) For the purposes of this prargraph (b), any broker or dealer shall be deemed to have ceased to be a member in good standing of such exchange or association when he has resigned, withdrawn, or been suspended or expelled from a membership interest in such exchange or association, or has directly or through any associated person sold or entered into an agreement for the sale of a membership interest which would on consummation thereof result in the termination of the broker's or dealer's membership interest in such exchange or association.

(5) Whenever any national securities exchange or registered national securities association takes any action which causes any broker or dealer which is a member of such exchange or association to cease to be a member in good standing of such exchange or association or when such exchange or association learns of any action by such member of any other person which causes such broker or dealer to cease to be a member in good standing of such exchange or association, such exchange or associaton shall report such action promptly to the Commission, furnishing information as to the circumstances surrounding the event, and shall send a copy of such notification to the broker or dealer and notify such broker or dealer of its responsibilities under this paragraph (b).

* * * * *

2. By revising § 240.17a–19 to read as follows:

[8] When a member of the NASD ceases to be a member, it becomes a SECO broker-dealer until it files a Form BDW.

[9] Rule 17a–19 may have been interpreted to require that a self-regulatory organization file notice of a change in membership status promptly upon learning that such a change will occur as well as within five business days of the occurrence of the event, if those times were not the same.

§ 240.17a-19 Form X-17A-19 Report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.

Every national securities exchange and every registered national securities association shall file with the Commission at its principal office in Washington, D.C., and with the Securities Investor Protection Corporation such information as is required by § 249.635 of this chapter on Form X-17A-19 within 5 business days of the occurrence of the initiation of the membership of any person or the suspension or termination of the membership of any member. Nothing in this section shall be deemed to relieve a national securities exchange or a registered national securities association of its responsibilities under § 240.17a-5(b)(5) except that, to the extent a national securities exchange or a registered national securities association promptly files a report on Form X-17A-19 including therewith, inter alia, information sufficient to satisfy the requirements of § 240.17a-5(b)(5), it shall not be required to file a report pursuant to § 240.17a-5(b). Upon the occurrence of the events described in this paragraph, every national securities exchange and every registered national securities association shall notify in writing such member of its responsibilities under § 240.17a-5(b).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. By revising § 249.635 as follows:

§ 249.635 Form X-17A-19, report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.

This form shall be completed and filed by each national securities exchange or registered national securities association as required by § 240.17a-19 of this chapter within 5 business days of the occurrence of the initiation of the membership of any person or the suspension or termination of the membership of any of its members.

By the Commission.

George A. Fitzsimmons,

Secretary.

May 30, 1980.

[FR Doc. 80-17828 Filed 6-11-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 897-80]

Delegation of the Attorney General's Authority To Initiate Litigation Under Section 707 of Title VII of the Civil Rights Act of 1964

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order delegates to the Assistant Attorney General in charge of the Civil Rights Division authority to initiate litigation in pattern or practice suits under Section 707 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-(6). The authority for the delegation derives from Section 5 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, 5 U.S.C. App. II (1978 Supp.). Section 5 transferred to the Attorney General all functions of the Equal Employment Opportunity Commission in connection with the initiation of pattern or practice suits against State and local government or political subdivisions under Section 707 of Title VII.

It also authorizes the Attorney General to delegate any of his functions under Section 707 to any officer or employee of the Department of Justice. This order implements that authority.

EFFECTIVE DATE: June 4, 1980.

FOR FURTHER INFORMATION CONTACT: David Rose, Civil Rights Division, Department of Justice, Washington, D.C. 20530 (202-633-3831).

By virtue of the authority vested in me by Section 5 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, 5 U.S.C. App. II (1978 Supp.), and by 28 U.S.C. 510, the first sentence of paragraph (a) of § 0.05 of Title 28 of the Code of Federal Regulations is hereby amended to read as follows:

§ 0.50 General functions.

* * * * *

(a) Enforcement of all Federal statutes affecting civil rights, including those pertaining to elections and voting, public accommodations, public facilities, school desegregation, employment (including 42 U.S.C. § 2000e-(6)), housing, and the constitutional and civil rights of Indians arising under 25 U.S.C. 1301 et seq., and authorization of litigation in such enforcement including criminal prosecutions and civil actions and proceedings on behalf of the Government and appellate proceedings in all such cases.

* * * * *

Dated: June 4, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-17690 Filed 6-11-80; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 43

[Order No. 896-80]

Recovery of Cost of Hospital and Medical Care and Treatment Furnished by the United States; Denial of Access to Personal Medical Records

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order deletes language which permits the denial of access to personal medical records to persons who do not cooperate in the assertion of a federal claim.

EFFECTIVE DATE: June 4, 1980.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 (202/724-6810).

§ 43.2 [Amended]

By virtue of the authority vested in me by 28 U.S.C. 2652, and Executive Order 11060, 27 FR 10925, Title 28 of the Code of Federal Regulations is amended by deleting paragraph (b) of § 43.2.

Dated: June 4, 1980.

Benjamin R. Civiletti.

Attorney General.

[FR Doc. 80-17691 Filed 6-11-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 15

Post Employment Conflict of Interest

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The rule implements the application of Title V of the Ethics in Government Act of 1978 addressing post employment conflicts of interest by former officers and employees of the Department of the Treasury. It establishes the procedure to impose administrative restrictions for violation of the post employment laws by such former officers and employees.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice, 202-376-0767.

SUPPLEMENTARY INFORMATION: The Department of the Treasury (Department) is publishing final regulations to implement the application of restrictions on post employment activity to former officers and employees of the Department established by Title V of the Ethics in Government Act of 1978 (See Subsection (j) of 18 U.S.C. 207). After consultation with the Office of Government Ethics, the proposed rule was published in the **Federal Register** on March 18, 1980 (45 FR 17160–17164). Written comments were requested by April 17, 1980. None were received. The rule was proposed as Part 14 to Title 31 CFR. Because Part 14 had been assigned these regulations in error, the final rule is being published as Part 15 to Title 31 CFR. In addition, Section 15.737–23, as proposed, has been amended to provide that transcripts of hearings under this Part may be obtained from the Department at actual cost of duplication pursuant to the requirement of Section 11(a) of the Federal Advisory Committee Act, 86 Stat. 770.

It has been determined that the regulation does not meet Treasury criteria for a significant regulation.

Accordingly, a new Part 15 is added to Subtitle A of 31 CFR to read as follows:

PART 15—POST EMPLOYMENT CONFLICT OF INTEREST

Authority: 92 Stat. 1864 (18 U.S.C. 207), as amended, except as otherwise noted.

Subpart A—General Provisions

§ 15.737-1 Scope.

This part contains rules governing discipline of a former officer or employee of the Department of the Treasury because of a post employment conflict of interest. Such discipline may include prohibition from practice before the Department or a separate statutory agency thereof as those terms are defined in this part.

§ 15.737-2 Definitions.

For the purpose of this part—(a) The term "Department" means the Department of the Treasury and includes the separate statutory agencies thereof.

(b) The term "Director" means the Director of Practice.

(c) The term "General Counsel" means the General Counsel of the Department.

(d) The term "practice" means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department or, where applicable, to a separate statutory agency thereof on a pending matter of business on behalf of any other person (except the United States).

(e) The term "separate statutory agency thereof" means an agency or bureau within the Department designated by rule by the Director, Office of Government Ethics, as a separate agency or bureau. The Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, United States Secret Service, Bureau of the Mint, United States Customs Service, Bureau of Engraving and Printing, and Comptroller of the Currency were so designated effective July 1, 1979.

§ 15.737-3 Director of Practice.

There is, in the Office of the Secretary of the Treasury, the Office of Director of Practice. The Director shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

§ 15.737-4 Other Discipline.

For activity alleged to violate 18 U.S.C. 207 (a), (b) or (c), the Director may also bring a disciplinary proceeding pursuant to the regulations governing practice before the Bureau of Alcohol, Tobacco and Firearms or the Internal Revenue Service as found in 31 C.F.R. Part 8 and 31 C.F.R. Part 10, respectively. Such proceeding may be consolidated with any proceeding brought pursuant to this part.

§ 15.737-5 Records.

There are made available to public inspection at the Office of Director of Practice the roster of all persons prohibited from practice before the Department. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

Subpart B—Rules Applicable to Post Employment Practice by Officers and Employees of the Department

§ 15.737-6 Interpretative Standards.

A determination that a former officer or employee of the Department violated 18 U.S.C. 207 (a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated by the Office of Government Ethics and published at 5 C.F.R. Part 737.

Subpart C—Administrative Enforcement Proceedings

§ 15.737-7 Authority to prohibit practice.

Pursuant to 18 U.S.C. 207(j), if the General Counsel finds, after notice and opportunity for a hearing, that a former officer or employee of the Department violated 18 U.S.C. 207 (a), (b) or (c), the General Counsel in his/her discretion may prohibit that person from engaging in practice before the Department or a separate statutory agency thereof for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 15.737-8 Special orders.

The General Counsel may issue special orders as he/she may consider proper in any case within the purview of this part.

§ 15.737-9 Receipt of information concerning former Treasury employee.

If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated 18 U.S.C. 207 (a), (b) or (c), or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Department of the Treasury. If any other person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Department. The Inspector General shall refer any information he/she deems warranted to the Director.

§ 15.737-10 Conferences.

(a) *In general.* The Director may confer with a former officer or employee concerning allegations of misconduct irrespective of whether an administrative disciplinary proceeding has been instituted against him/her. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Voluntary suspension.* A former officer or employee, in order to avoid the institution or conclusion of a proceeding, may offer his/her consent to suspension from practice before the Department or a separate statutory agency thereof. The Director in his/her discretion, may suspend a former officer or employee in accordance with the consent offered.

§ 15.737-11 Institution of proceeding.

(a) Whenever the Director has reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207 (a), (b) or (c), he/she may reprimand such person or institute an administrative disciplinary proceeding for that person's suspension from practice before the Department or a separate statutory agency thereof. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

(b) The Director shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

§ 15.737-12 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer as required.

§ 15.737-13 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to him/her at the last address known to the Director. If service is made upon the respondent or his/her attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Department of the Treasury, Washington, D.C. 20220. All papers shall be filed in duplicate.

§ 15.737-14 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Director or the Administrative Law Judge. The answer shall be filed in duplicate with the Director.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact he/she possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

§ 15.737-15 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director may file a reply in his/her discretion or at the request of the Administrative Law Judge.

§ 15.737-16 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 15.737-17 Motions and requests.

Motions and requests may be filed with the Director or with the Administrative Law Judge.

§ 15.737-18 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director may be represented by an attorney or other employee of the Department.

§ 15.737-19 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the administrative disciplinary proceedings under this part.

(b) *Power of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Assess the responsible party extraordinary costs attributable to the location of a hearing;

(10) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(11) Make initial decisions.

§ 15.737-20 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension of a former officer or employee from practice before the Department. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Public access to hearings.* Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties (such as tax information) is likely to be adduced at the hearing, it will remain closed. A request for an open hearing must be included in the answer to be considered.

(c) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make a decision against the absent party by default.

§ 15.737-21 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension of a former officer or employee from practice before the Department. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 15.737-22 of this part may be admitted.

(c) *Proof of documents.* Official documents, records and papers of the Department shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Department.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 15.737-22 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the Administrative Law Judge, be taken by either the Director or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Department who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 15.737-23 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter or from the Department at actual cost of duplication. Where the hearing is stenographically reported by a regular employee of the Department, a copy thereof will be supplied to the respondent either without charge or upon payment of a reasonable fee. Copies of exhibits introducted at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

§ 15.737-24 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 15.737-25 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension from practice before the Department or separate statutory agency thereof or other appropriate disciplinary action, or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director and shall transmit a copy thereof to the respondent or his/her attorney of record. In the absence of an appeal to the General Counsel or review of the decision upon motion of the General Counsel, the decision of the Administrative Law Judge shall without further proceedings become the decision of the General Counsel 30 days from the date of the Administrative Law Judge's decision.

§ 15.737-26 Appeal to the General Counsel.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the General Counsel. The appeal shall be filed with the Director in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director. If the reply brief is filed by the Director, he/she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director shall transmit the entire record to the General Counsel.

§ 15.737-27 Decision of the General Counsel.

On appeal from or review of the initial decision of the Administrative Law Judge, the General Counsel will make the agency decision. In making his/her decision, the General Counsel will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the General Counsel's decision shall be transmitted to the respondent by the Director.

§ 15.737-28 Notice of disciplinary action.

(a) Upon the issuance of a final order suspending a former officer or employee from practice before the Department or a separate statutory agency thereof, the Director shall give notice thereof to appropriate officers and employees of the Department. Officers and employees of the Department shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Department or separate statutory agency thereof during the period of suspension.

(b) The Director shall take other appropriate disciplinary action as may be required by the final order.

Subpart D—Other Departmental Proceedings

§ 15.737-29 Review by the General Counsel.

In my proceeding before the Department, if an initial decision is made with respect to the disqualification of a representative or attorney for a party on the grounds of 18 U.S.C. 207(a), (b) or (c), such decision may be appealed to the General Counsel, who will make the agency decision on the issue.

Dated: June 4, 1980.

G. William Miller,

Secretary of the Treasury.

[FR Doc. 80-17831 Filed 6-11-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 79-088]

Drawbridge Operation Regulations; Mission Creek and Islais Creek, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City and County of San Francisco, the Coast Guard is changing the regulations governing the Third Street and Fourth Street bridges across Mission Creek, and the Third Street bridge across Islais Creek by requiring that 60 minutes advance notice be given at all times. This change is being made because of limited requests for openings. This action will relieve the bridge owner of the burden of having three persons constantly available to open the draws while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on July 9, 1980.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Aids to Navigation Branch, Twelfth Coast Guard District (oan), Room 936, Appraisers Building, 630 Sansome Street, San Francisco, CA 94126 (415-556-8668).

SUPPLEMENTARY INFORMATION: On 21 June 1979, the Coast Guard published a proposed rule (44 FR 36206) concerning this amendment. The Commander, Twelfth Coast Guard District, also published the proposal as Public Notices dated June 21, 1979 and November 9, 1979. Interested persons were given until July 21, 1979 and February 29, 1980, respectively, to submit comments.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Wayne R. Till, Project Manager and Chief, Bridge Section, and Lieutenant Commander Richard E. Peyser, Project Attorney and Assistant Legal Officer, Twelfth Coast Guard District.

Discussion of Comments

The Coast Guard received 12 comments concerning this rule: nine were opposed and 3 offered no objection.

Most of those opposed did not want to see any reduction in bridgetender service. The Coast Guard finds that the waterway users can be provided reasonably prompt service under this rule. There are an average of three bridge openings per day at each of the bridges over the Channel Street waterway and one per day at the bridge over Islais Creek. The operator will be stationed at the Third and Channel Street Bridge which is the busiest bridge. The operator will be able to respond to requests for openings of that bridge immediately and openings of the other bridges within one hour of receiving notice.

The remaining objections addressed difficulty in giving notice for openings. The bridge operator's station is now equipped with a marine radiotelephone and a landline telephone. The City and County of San Francisco has requested the telephone company to install a public phone near the Mission Creek Harbor, where the largest number of waterway users are berthed. These steps should make it reasonably convenient for mariners to give advance notice.

The Coast Guard has made some changes to the original proposal. Some