List of Subjects in 12 CFR Parts 701, 707, 708, and 745

Credit unions.

Rosemary Brady,
Secretary of the Board.
June 16, 1982.

[FR Doc. 82-16805 Filed 6-21-82; 8:45 am]
BILLING CODE 7535-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 323

[Docket Nos. 39722 & 39632]

Terminations, Suspensions, and Reductions of Service

AGENCY: Civil Aeronautics Board.

ACTION: Temporary waiver of rule by Order 82-4-87.

SUMMARY: The CAB is exempting all U.S. certificated carriers from notice requirements on carriers planning to reduce or terminate service at points for which no essential air service determination is required. The CAB is granting this exemption on its own initiative, based on a recent court decision.

DATES: Adopted: April 15, 1982.

Effective: Waiver in effect until review of Part 323 is completed.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Rules & Legislation Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION:

In the matter of emergency air transportation requirements, Docket 39722 and rulemaking on terminations, suspensions and reductions of service, PR-244, Docket 39632; order granting exemption.

By Order 81-11-57 (November 10, 1981) and Regulation PR-244, 47 FR 7393, February 19, 1982 (adopted January 7, 1982) amending 14 CFR Part 323, the Board imposed notice requirements on carriers planning to reduce or terminate service at all eligible points in circumstances where a point's essential service needs could be affected by the carrier's action. The Board then believed that the Act's essential service provisions, section 419, 49 U.S.C. 1389, empowered us to insure that all eligible points, including those points for which no essential service determination was required by section 419(a)(2), received their essential air service. However, the U.S. Court of Appeals for the District of Columbia Circuit has now ruled that the Board's powers to preclude a suspension of service without a prior notice may be used only at those points where the Board must make an essential service determination under section 419(a)(2), *i.e.*, those eligible points which on October 24, 1978, were served by only one certificated carrier or which thereafter have become served by no more than one certificated carrier. Under the Court's interpretation of section 419, one of the notice requirements of Order 81-11-57 and Regulation PR-244 may be invalid. As a result, we will exempt the carriers from complying with that requirement pending our reexamination of the *Delta* decision's impact on the notice requirements set forth in Part 323.

The Court decision, *Delta Air Lines* v. *Civil Aeronautics Board*, D.C. Cir. No. 80-2339 (decided February 26, 1982), was precipitated by Eastern's plan to terminate all its service at Montgomery, Alabama, a point served by two other certificated carriers, Delta and Republic Airlines. As the Board determined that the loss of all Eastern's service reasonably appeared to deprive the community of its essential air service, the Board temporarily required Eastern under section 419(a)(10) to maintain one round-trip flight a day, ordered Delta and Republic to give 90 days notice before reducing their own service at Montgomery, and directed all three carriers to file traffic and load factor reports, Orders 80-5-170 (May 23, 1980), 80-6-147 (June 24, 1980), 80-7-75 (July 11, 1980), and 80-8-180 (August 29, 1980). The Court held that section 419(a)(10) did not allow the Board to require a carrier to maintain service at a point like Montgomery where no essential service determination is required by section 419(a)(2). While the Court upheld the Board's reporting requirements imposed under section 407(a) of the Act, 49 U.S.C. 1377(a), the Court invalidated the 90-day notice requirement imposed on Delta and Republic for service reductions as section 401(j), 49 U.S.C. 1371(j), allowed advance notice requirements only for service reductions which affected a point's essential air service.

The notice requirement whose validity has been placed in doubt by the Court's decision is the "33 percent notice," required by § 323.3(a)(5) of our rules. That section requires certificated carriers to file a 90 day notice before reducing or terminating service at a point if the total available seats of all carriers linking the point to hubs will then be reduced by one-third or more within a 90-day period. As explained in PR-244, this requirement has not yet taken effect pending compliance with the Paperwork Reduction Act of 1980, which requires the approval of the Office of Management and Budget. In the meantime, the comparable provision of Order 81-11-57 remains in effect. In that order, as a condition to exempting the carriers from other notice requirements imposed by sections 401(j) and 419, we required 90 days notice when a carrier's reduction or termination of service would reduce a point's total service to all hubs by one-fourth or more.

As a result of the Court's decision in *Delta*, however, it appears doubtful that the Board may require every carrier to file advance notice whenever a point may lose 33% (or 25%) of all its service to hubs, unless this loss of service affects a point for which the Board has been required by section 419(a)(2) to make an essential service determination. We consider it unfair and unduly burdensome to the carriers to continue enforcing the "25 percent" and "33 percent" rules when their validity is in doubt, pending our forthcoming review of Part 323 in light of the *Delta* decision. Accordingly, we find that granting the certificated carriers an exemption from those rules is in the public interest. Delta, moreover, has filed a petition for judicial review of the "25 percent" and "33 percent" notice requirements, *Delta Air Lines* v. *CAB*, D.C. Cir. No. 82-1253 (filed March 9, 1982). By exempting Delta and other carriers from most of these requirements, we will also avoid any need for an early consideration of the rule's validity by the Court.

We will not, however, exempt the carriers entirely from these requirements, for we find that they may be necessary for the implementation of the Act's essential service guarantee at those points where we have been required to make an essential service determination. Many of these points have essential air service definitions which provide the maximum guarantee of 160 seats provided by our regulations, § 398.6(a). However, we recognize that there may be come transitional situations where the 160-seat maximum will not be adequate to ensure essential service. Consequently, our regulations also provide that if an eligible point suffers an abrupt and significant reduction in service, we may temporarily increase that guarantee. This provision was adopted because a significant portion of that community's traffic may be unaccommodated even though the point would still be receiving more than the 160-seat maximum provided for by our rules. See 14 CFR 398.6(b)(4); PS-87, 44 FR 52646, 52648 (September 7, 1979). Therefore, we reserve the right to increase temporarily the point's guarantee so that we could prevent the incumbent carrier from reducing service below the interim level. Notice of the carrier's intention to reduce its service is necessary for us to know when a major reduction in service is planned, determine whether an interim definition will be required, and act to hold in the carrier to preserve that interim level of service. Without such notice, our ability to protect these communities would be sharply reduced because the carrier will have reduced its service before we can issue a revised definition. Accordingly, we will retain the "25 percent" and "33 percent" notice requirements at those points for which the Act requires an essential service determination.

We are granting this exemption on our own initiative. Our decision to do so is based on the Court's acceptance in the *Delta* case of the legal arguments made by Delta both there and in the rulemaking proceeding. The exemption is intended to be temporary, for it will end when we complete our review of Part 323.

Accordingly, we exempt all U.S. certificated carriers from § 323.3(a)(5) of our Procedural Regulations as amended by PR-244 and from ordering paragraph 1(d) of Order 81-11-57, except where the point at which service is being reduced or terminated is one for which the Board was or is required to make an essential air service determination by section 419(a)(2) of the Act.

List of Subjects in 14 CFR Part 323.

Air carriers, Essential air service.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-16856 Filed 6-21-82; 8:45 am]

BILLING CODE 6320-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its Code of Conduct for Commission members and employees and former Commission members and employees. One purpose of the revision is to conform the Code to the requirements of certain provisions of the Ethics in Government Act of 1978, particularly those provisions which place restrictions on the representational activities of former Commission members and employees. In addition, certain provisions of the Code are being modified to lessen the burden of their administration and to enhance the ease of compliace therewith. Futher, various technical amendments are being made to conform the Code to the Commodity Exchange Act, as amended by the Futures Trading Act of 1978. The Commission's action relates solely to agency organization, procedure and practice.

EFFECTIVE DATE: June 22, 1982.

FOR FURTHER INFORMATION CONTACT: Helen Blechman, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: The Commision's Code of Conduct, 17 CFR 140.735-1 *et seq.* (1981), generally establishes ethical standards for Commission members and employees and former Commission members and employees.[1] Various sections of the Code are modeled on conflict-of-interest statutes and regulatory provisions, which also prescribes ethical standards for present and former federal officers and employees. Enactment of the Ethics in Government Act of 1978, amendment of the Commodity Exchange Act in 1978 and the decision otherwise to amend certain provisions of the Code of Conduct necessitate revision of various sections of the Code. Accordingly, after consulting with and obtaining the approval of the Office of Government Ethics of the Office of Personnel Management, the Commission has adopted the following amendments to its Code of Conduct.

Practice Before the Commission by Former Commission Members and Employees

The Commission is revising section 10 of the Code, 17 CFR 140.735-10, to conform that provision generally to 18 U.S.C. 207 (Supp. III 1979), as amended by Title V of the Ethics in Government Act of 1978.[2] Section 10 of the Code places limitations on appearances before and communications with the Commission by former Commission members and employees. Section 10 is based, in part, on 18 U.S.C. 207, which places certain restrictions on practice before federal departments, agencies and courts by former federal officers and employees, restrictions which are designed to avoid conflicts of interest.

Section 10(a) of the Code is derived, in part, from 18 U.S.C. 207(a).[3] As amended, section 207(a) generally prohibits former federal officers and employees permanently from knowingly representing any other person (except the United States) in an appearance before or a communication with a federal (or District of Columbia) department, agency or court, or other enumerated entities, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties [4] in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government. While the current version of section 10(a) of the Code of Conduct generally conforms with 18 U.S.C. 207(a), as amended (the prior version of 18 U.S.C. 207(a) contained a nearly identical permanent bar on representation in such particular matters), the Commission has determined to revise that provision of its Code to eliminate certain apparent variations.

For example, section 10(a), as revised, will apply only to particular matters "involving a specific party or parties." While this is consistent with the Commission's interpretation of the scope of the present section 10(a), the amendment will make that express. In addition, section 10(a), as amended, will expressly apply to communications with the Commission, as well as appearances before the Commission. While the present section 10(c) of the Code makes clear that appearance before the Commission has always included communication with the Commission, as well as its members and employees, the

[1] The Commission's Code of Conduct was adopted in 1976. 41 FR 27510 *et seq.* (July 2, 1976), as amended by 42 FR 15902 (March 24, 1977) and 45 FR 70441-70442 (October 24, 1980).

[2] Pub. L. 95-521, 92 Stat. 1864-1867 (1978), as amended by Pub. L. 96-28, 93 Stat. 76-77 (1979).

[3] Section 10(a) of the Code presently provides: No person shall ever appear in a representative capacity before the Commission in a particular matter if such person, or one participating with him in the particular matter, personally considered it or gained nonpublic knowledge of the facts thereof while he was a member or employee of the Commission. [Footnotes omitted].

[4] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 737.5(c)(1) of the regulations of the Office of Government Ethics, Office of Personnel Management, 5 CFR 737.5(c)(1) (1981); *cf.* memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (which memorandum is reproduced in material following 18 U.S.C. 201 (1976 Edition)).

language of new section 10(a) is being revised to parallel the wording of 18 U.S.C. 207(a), as amended. Finally, again in conformance with section 207(a), as amended, the wording of section 10(a) is being amended to apply to matters in which the former Commission member or employee participated personally and substantially while with the Commission, as opposed to matters which he or she "personally considered." This change is also consistent with the Commission's interpretation of the application of the current version of section 10(a). The Commission is retaining the portion of section 10(a) which permanently bars representation on matters about which the former member or employee gained nonpublic knowledge while employed by the Commission.[5]

Section 10(b) of the Code is also being revised to conform it generally to 18 U.S.C. 207(b)(i), as amended.[6] Section 207(b)(i) generally prohibits former federal officers and employees, within two years after their federal employment has ceased, from knowingly representing any other person (except the United States) in an appearance before or a communication with a federal (or District of Columbia) department, agency or court, or other enumerated entities, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of that responsibility.[7]

The present version of section 10(b) of the Code is consistent with 18 U.S.C. 207, as amended, in many respects. However, there are certain differences between the present rule and statute as amended. Thus, section 10(b) is being amended to impose a two-year post-Commission employment ban on representative appearances before or communications with the Commission, in place of the present one-year ban. In addition, the revised provision will specify that it covers matters which were "actually pending" under the official responsibility of the former member or employee. The definition of "official responsibility," presently found in section 10(b) is being moved to new section 10(f), which sets forth various definitions (see the discussion below). As is presently the case, the term "official responsibility" will have the meaning assigned in 18 U.S.C. 202, namely, direct administrative or operating authority, whether intermediate or final, which is exercisable alone or in conjunction with others to direct government action.

The Commission is also adding a new section 10(c) to the Code to implement the restrictions which 18 U.S.C. 207(b)(ii) and (c), as amended, place on former federal officers and empoyees who occupied certain senior positions. Section 207(b)(ii) basically makes it unlawful for a former federal officer or employee who occupied a position specified in 18 U.S.C. 207(d)(1)(A), as amended, or designated pursuant to 18 U.S.C. 207(d)(1)(C), as amended,[8] within two years after leaving that position, knowingly to represent, or assist in the representation of, any other person (except the United States) by personal presence at an appearance before a federal (or District of Columbia) department, agency or court, or other enumerated entities, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government. In addition, section 207(c) generally prohibits the same officers and empoyees[9] from knowingly appearing before or communicating with the department or agency in which the former officer or employee served, or any member or employee thereof, on behalf of any other person (except the United States) in connection with any particular matter, including a rulemaking proceeding, pending before that department or agency or in which the department or agency has a direct and substantial interest for a period of one year following the departure of the former officer or employee from the department or agency.[10]

Accordingly, new section 10(c)(1) of the Code will prohibit all former Commission members, as well as former Commission employees whose positions are specified in section 207(d)(1)(A) or designated pursuant to section 207(d)(1)(C), for a period of two years after their departure from such positions, from knowingly representing, or assisting in the representation of, any other person (except the United States) by personal presence at an appearance before the Commission, or any of its members or employees, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former member or employee participated personally and substantially while with the Commission. In addition, section 10(c)(2) will prohibit the same former Commission members and employees for a period of one year after their departure from the Commission from knowingly representing any other person in an appearance before or a communication with the Commission, or any of its members or employees, in connection with any particular matter, including a rulemaking proceeding, pending before the Commission or in which the Commission has a direct and substantial interest. This latter restriction applies regardless of whether

[5] This part of section 10(a) of the Commission's Code of Conduct extends beyond the criminal prohibition of 18 U.S.C. 207(a) and establishes as a matter of policy a standard of conduct to which former Commission members and employees are required to adhere.

[6] Section 10(b) of the Code presently provides, in pertinent part: No person who has been a member or an employee shall, within one year after his employment has ceased, appear in a representative capacity before the Commission in any matter which was under his official responsibility as a member or employee of the Commission at any time within a period of one year prior to the termination of such responsibility. [Footnote omitted].

[7] The prior version of 18 U.S.C. 207(b) contained a similar bar on representation in such particular matters, but for a period of only one year.

[8] At the Commission, these restrictions apply to Commission members, Executive Level employees and most Senior Executive Service employees. The statutory restrictions contained in Sections 207(b)(ii) and (c) became effective as to Commission members and Executive Level employees by operation of law on July 1, 1979. As to those Senior Executive Service employees who were initially designated by the Office of Government Ethics under the Ethics in Government Act, these restriction became effective February 28, 1980.

[9] Although the Director of the Office of Government Ethics, Office of Personnel Management, in accordance with 18 U.S.C. 207(d)(1)(C) and (e), has the authority to limit the applicability of the prohibition of section 207(c) as to senior employees in departments and agencies having unrelated or separate statutory agencies and bureaus, no such limitation is in effect with respect to the Commission, nor is one contemplated.

[10] Attention is also directed to section 2(a)(7)(B) of the Commodity Exchange Act, as added by the Futures Trading Act of 1978, 7 U.S.C. 4a(f)(2) (Supp. IV 1980). That section basically prohibits former Commission members, as well as former Commission employees who occupied positions classified at the GS-16 level or higher excepted from the competitive service by reason of their policymaking or confidential character, for a period of one year after they cease to occupy those positions, from making any appearance before the Commission or making any written or oral communication to the Commission, or any member or employee thereof, on behalf of any other person (except the United States) in connection with any particular matter that is before the Commission. Appearances and responses with respect to Commission subpoenas and solely personal and individual matters are excluded from this prohibition.

the Commission member or employee concerned participated in the matter while with the Commission and applies to matters which arise after the member or employee leaves the Commission.

The Commission notes that several subsections of 18 U.S.C. 207 limit the extent of the prohibitions in subsections (a), (b) and (c) thereof. Thus, in accordance with subsection (f), communications solely for the purpose of furnishing scientific or technological information in accordance with agency directives are permissible. In addition, a former government officer or employee may give testimony under oath or make a statement which is subject to penalty of perjury without regard for the prohibitions in subsection (a), (b) and (c) pursuant to 18 U.S.C. 207(h).

Moreover, pursuant to 18 U.S.C. 207(d)(2), the one-year bar in 18 U.S.C. 207(c) on contact with a former senior officer's or employee's agency is not applicable to representation by elected state or local government officials or those principally employed by state or local governments, accredited degree-granting institutions of higher education or certain tax exempt hospitals and medical research organizations on behalf of such entities. Nor does that bar apply to appearances or communications concerning matters of a personal and individual nature or to an uncompensated statement by such a former officer or employee in a particular area within his or her own special knowledge, in accordance with 18 U.S.C. 207(i).

A new section 10(d) is being added to the Code of Conduct to encompass these limiations on the prohibitions which generally apply.

Because of the addition of new sections 10(c) and 10(d), the existing section 10(c) of the Code of Conduct is being redesignated section 10(e). Like the present section 10(c), new section 10(e) will require former Commission members and employees who, within two years after their departure from the Commision, are employed or retained to represent persons in connection with matters which might require appearances before or communications with the Commission, or its members or employees, to file a written statement with the Commission's General Counsel setting forth the nature thereof. One clarifying change is being made. As revised, new sections 10(e) will apply to representation of any person (except the United States) rather than just to persons "outside the government." Thus, representation of individual Commissioners and Commission employees will now be clearly covered.

The last two sentences of the present section 10(c), which define certain terms used in section 10, has been made, with modification, a separate section 10(f). The definition of the phrase "appearance before the Commission" is being reworded to refer to formal or informal representative appearance (except on behalf of the United States) before the Commission, or any of its members or employees. Moreover, in order to conform further to the new wording of 18 U.S.C. 207, a new phrase—"communication with the Commission"—is being defined, which will mean oral or written communication with the Commission, or any of its members or employees, on behalf of another person (except the United States) with an intent to influence. These modifications represent no substantive change in the Commission's interpretation of what constitutes an appearance or a communication. Finally, as noted above, the definition of "official responsibility" is being moved to this section.

The present section 10(d), which provides that persons in doubt as to the applicability of any of the provisions of section 10 may request an advisory ruling by the Commission's General Counsel, is being redesignated section 10(g). The wording of that provision is being modified to make it clear that it is the General Counsel who issues an advisory ruling thereunder.

The Commission is also adding a new section 10(h) to the Code to implement 18 U.S.C. 207(j), as amended. Section 207(j) generally provides that if the head of a government department or agency finds, after notice and opportunity for hearing, that a former officer or employee of that department or agency has violated 18 U.S.C. 207(a), (b) or (c), as amended, he or she may prohibit the former officer or employee 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, the department or agency on a pending matter of business for a period of up to five years, or may take other appropriate disciplinary action.[11] Section 207(j) further requires government departments and agencies to establish procedures to carry out its provisions.[12]

Under the new section 10(h)(2) of the Code of Conduct, the Commission's General Counsel, or his or her designee, will have authority to conduct such investigations as he or she deems appropriate to determine whether a former Commission member or employee may have violated 18 U.S.C. 207 (a), (b) or (c). This provision will also require that the General Counsel report the results of any investigations which he or she conducts to the Commission and recommend to the Commission such action as he or she deems appropriate.[13]

If the Commission elects to initiate a proceeding to determine whether any of the statutory prohibitions has been violated, that proceeding will be conducted in accordance with the rules of practice which the Commission has prescribed for adjudicatory proceedings (17 CFR Part 10), except to the extent that those adjudicatory procedures are inconsistent with the provisions of the new section 10(h). The General Counsel will prosecute all administrative proceedings brought pursuant to the new section, and all hearings required to be held by the section will be presided over by a Commission Administrative Law Judge. See section 10(h)(3) of the Code.

If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may, pursuant to section 10(h)(4) of the Code of Conduct, prohibit that former member or employee 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 the Commission on any pending matter of business for a period of up to five years, or may take other appropriate disciplinary action. See 18 U.S.C. 207(j) and section 10(h)(4) of the Code. In determining whether a violation has occurred, the Commission will be guided by the language and

[11] Section 207(j) also provides that any disciplinary action taken pursuant to the provisions will be subject to review in an appropriate United States district court.

[12] Section 207(j) requires that the implementing procedures be developed in consultation with the Director of the Office of Government Ethics of the Office of Personnel Management. The Commission has complied with this requirement.

[13] In addition to requiring administrative enforcement, section 207 prescribes criminal penalties for violations of its subsections (a), (b) and (c). Thus, if the General Counsel makes a preliminary determination that a former member or employee may have violated one of these provisions, or the Commission, upon his or her recommendation, finds that such a violation has occurred, the matter will be referred to the Criminal Division of the Department of Justice. See 28 U.S.C. 535 (1976). In such a case, the General Counsel will thereafter conduct his investigation of the matter in coordination with the Department of Justice, in order to avoid the possibility of prejudicing any criminal proceeding which might result, unless the Department informs the Commission that it does not intend to initiate criminal prosecution.

legislative history of 18 U.S.C. 207, as amended, as well as by the regulations which the Office of Government Ethics, Office of Personnel Management, has promulgated thereunder. See 45 FR 7402 *et seq.* (February 1, 1980), 45 FR 8544 *et seq.* (February 8, 1980) and 45 FR 75500 *et seq.* (November 14, 1980), now codified at 5 CFR Part 737 (1981).

Notification of Farm and Other Similar Interests and Outside Employment

The Commission is amending footnote 3 of section 4(b)(2) of the Code of Conduct, 17 CFR 140.735–4(b)(2), n. 3, to modify the requirement that a Commission member or employee who owns a farm or ranch or engages in certain permitted livestock transactions seek Commission clearance. In place of that requirement, the new provision will require that any member or employee who owns a farm or ranch or engages in permitted livestock transactions notify the Commission. In the view of the Commission, this modification will sufficiently implement the notice requirement set forth in section 9(d) of the Commodity Exchange Act, 7 U.S.C. 13(d) (Supp. IV 1980), with respect to such transactions. The written notification should set forth all pertinent facts with respect to the farm or other interests and the submissions will, in accordance with the above-cited provision of the Commodity Exchange Act, be publicly available.

The Commission is also amending section 5(e)(1) of its Code of Conduct, 17 CFR 140.735–5(e)(1), to change the requirement that an employee who intends to accept or perform any outside or private employment or professional work must obtain authorization in advance from the Director of Personnel, in consultation with his or her division or office head. Instead, under the amendment, an employee must submit a notification in advance of such acceptance or performance. The notification is to be submitted to the division or office head who will forward it, together with any comments he or she may have, to the Executive Director. The Executive Director will review the notification and comments in order to determine whether such employment or professional work is consistent with concurrent Commission employment in accordance with the standards set forth in section 5(a) of the Code. In the event that the Executive Director determines that the outside work is inconsistent with concurrent Commission employment, he or she shall attempt to resolve the matter or, if unable to do so, shall refer it to the General Counsel who shall resolve the matter or forward it to the Commission for consideration.

The Commission is adopting these new procedures to reduce the administrative burden caused by the present requirements of Commission clearance for farm and other similar interests and of advance authorization by the Director of Personnel for outside employment. The notification requirements should decrease the amount of time devoted, respectively, by the Commission and supervisory personnel for compliance with these provisions. Moreover, the new procedures should enhance the ease of compliance by employees.

Financial Reporting by Commission Members and Employees

The Commission is also amending section 7 of the Code of Conduct, 17 CFR 140.735–7, to conform it to Title II of the Ethics in Government Act which requires separate reporting for high-level Commission officials.[14] Under the Ethics Act, Commissioners and Commission employees who occupy Senior Executive Service positions, positions compensated at the basic rate of pay of GS–16 or above, administrative law judge positions or Schedule C positions which entail advising as to or determining Commission policy are required to file the detailed, publicly-available Standard Form 278 financial statement promulgated by the Office of Government Ethics, Office of Personnel Management. This requirement has recently been reflected in a revised paragraph (j) of section 7 of the Code which the Commission has already separately published in the **Federal Register.**[15]

[14] Pub. L. 95–521, 92 Stat. 1836–1850 (1978), as amended by Pub. L. 96–19, 93 Stat. 37–44 (1979).

[15] In addition to amending section 7(j) of the Code, the Commission, in response to recommendations by the Comptroller General and after obtaining the approval of the Office of Government Ethics, Office of Personnel Management, adopted other amendments to section 7 of the Code of Conduct, the reporting provision, to expand reporting by the Commission's professional employees and to establish a certification of compliance system for the other Commission employees. See new sections 7(c)(3) and 7(k) of the Code, 45 FR 70441–70442 (October 24, 1980). One of the new provisions, section 7(c)(3), is being redesignated herein as section 7(c)(2) in light of the deletion of present section 7(c)(1) of the Code. See the text.

Moreover, the Commission is now amending the text and title of Section 7 to indicate that the provision covers, in addition to financial statements, certifications of compliance with the provisions of the Code concerning financial interests and outside employment and to more accurately track the title of the statement form—statement of financial interests and outside employment. The Commission is also amending section 7(g) of the Code to reflect that the certifications of compliance, as well as the statements of financial interests and outside employment, will generally be treated confidentially.

With these changes, section 7(c) of the Code, which lists those at the Commission required to file statements of employment and financial interests by category of positions held, is being amended. First, with the enactment of the Ethics Act, the present section 7(c)(1) has become obsolete and is now being deleted. The present section 7(c)(2) is being modified in light of the new law and redesignated as section 7(c)(1). Recently adopted section 7(c)(3), see footnote 15, is being redesignated as section 7(c)(2) and is being republished herein for the sake of clarity. Present section 7(c)(4), with modification to mention the Office of Government Ethics, Office of Personnel Management, instead of the Civil Service Commission, is being redesignated as section 7(c)(3). The Commission is also amending paragraph (i) of Section 7 of the Code, concerning the effect of filing of financial statements, to mention the reports referred to in paragraph (j)—the Ethics Act statements required of high-level Commission officials.

Employment Negotiation Expenses

The Commission has traditionally interpreted section 8(a) of its Code of Conduct, 17 CFR 140.735–8(a), to bar reimbursement by a person who is regulated by the Commission or who is a representative of such a person of expenses incurred by a Commission member or employee who is negotiating for employment with that person. In light of its continuing experience with this interpretation and the increasing number of employees who, after their tour of service with the Commission, are leaving for employment in the private sector, the Commission has determined to change its policy on such expense reimbursement. Thus, a new clause (8) is being added to the exceptions provision, section 8(b), to indicate that henceforth Commission members and employees may accept reasonable travel and subsistence expense reimbursement from any person, even if that person is subject to Commission regulation or is a representative of such a person, provided that the General Counsel approves in advance and that the member or employee is engaged in bona fide post-Commission employment negotiations with that person and is not on official business at the time. By this means, the Commission will avoid unduly impeding the mobility of Commission members and employees and its conduct provision will not operate in favor of local versus more distant potential employers as to which greater travel and subsistence expenses would have to be incurred in connection with employment negotiations. Moreover, the Commission believes that authorizing Commission members and employees to receive reasonable expense reimbursement in the case of bona fide employment discussions while not on official business will not present any real or apparent conflicts of interest and hence is also consistent with the payment of expense clause of section 5(a)(3) of the Code, 17 CFR 140.735-5(a)(3). In this regard, the Commission notes that its members and employees must still adhere to the requirements of 18 U.S.C. 208 (Supp. III 1979) of the conflict-of-interest laws and section 6 of the Code of Conduct, 17 CFR 140.735-6, which taken together bar them from negotiating for employment or having a prospective arrangement concerning future employment with any person who would be directly or indirectly affected by any particular official matters on which they are working.

Travel and Subsistence Expense Reimbursement

The Commission is amending section 8(c) of the Code, 17 CFR 140.735-8(c), to reflect current Commission practice with respect to travel and subsistence expense reimbursement. Although the present wording of section 8(c) is restrictive and generally bars such reimbursement by any outside organization while a Commission member or employee is on official active duty status and is authorized to receive government expense reimbursement, the Commission for some time has followed a more liberal practice similar to that of the Securities and Exchange Commission. Therefore, the Commission is amending section 8(c) of its Code of Conduct to provide that, if the General Counsel approves in advance, reasonable travel and subsistence expenses of Commission members and employees who are on official active duty status may be reimbursed by academic or other nonprofit organizations determined by the Secretary of the Treasury to be tax exempt pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) (1976), provided that they are not composed predominantly of persons subject to Commission regulation. The Commission believes this amendment is authorized in accordance with 5 U.S.C. 4111 (1976 and Supp. IV 1980) concerning acceptance by federal officers and employees from such organizations of contributions and awards for outside training and payment for travel, subsistence and other expenses related to attendance at meetings. Furthermore, the amendment will enable Commission members and employees to speak to appropriate groups at distant locations without depleting the Commission's limited travel funds. In addition, section 8(c) is being further amended to provide that Commission employees (but not members), while not on official active duty, may accept reasonable travel and subsistence reimbursement from other organizations when asked to speak on matters within their Commission expertise if the General Counsel approves the reimbursements in advance. Both in the case of section 501(c)(3) and other organizations, the General Counsel, in deciding whether to approve private reimbursement, will consider the availability of Commission funds for the proposed travel, the benefit to the government, the appearance of acceptance of reimbursement from the private organization and any other relevant factors.

Miscellaneous Amendments

The Commission is making technical amendments to various sections of the Code to conform them to the Commodity Exchange Act, as amended by the Futures Trading Act of 1978. These amendments reflect the redesignation of section 2(a)(7) of the Act as section 2(a)(7)(A) and of section 217 of the Commodity Futures Trading Commission Act of 1974 as section 19 of the Act (that section was also substantively amended to expand its coverage to include leverage transactions in any commodity, section 4(b)(1)(iii) of the Code, 17 CFR 140.735-4(b)(1)(iii), is being similarly expanded to reflect that amendment), and the increase of the criminal money penalty for violation of sections 9(d) and 9(e) of the Act from $10,000 to $100,000.

In addition, in accordance with a government reorganization and the Civil Service Reform Act of 1978,[16] as well as the Ethics in Government Act, references to the Office of Government Ethics, Office of Personnel Management, are being inserted in the Code in place of the Civil Service Commission, since that Office is the successor to the Civil Service Commission for government ethics matters.

The reference in footnote 10 to section 5(c) of the Code, 17 CFR 140.735-5(c), n. 10, to the restrictions on receipt of honoraria contained in the Federal Election Campaign Act is being amended to indicate the new section number and to state that that law "generally" prohibits receipt of honoraria over a certain amount in order to reflect certain modifications of the strictures effected by changes in the law.[17]

The Commission is amending footnote 17 to section 9 of the Code, 17 CFR 140.735-9, which deals with confidential and nonpublic official information, to make express mention of section 8 of the Commodity Exchange Act, 7 U.S.C. 12 (Supp. IV 1980), which in pertinent part sets forth particular kinds of business information that are generally confidential.

In section 12 of the Code, 17 CFR 140.735-12, listing statutory conduct provisions applicable to Commission members and employees, references to section 8 of the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*, and to the recently-enacted Code of Ethics for Government Service are being added.[18]

Furthermore, in section 14(b) of the Code, 17 CFR 140.735-14(b), which concerns gifts from foreign governments, a cross reference is being added to the new § 140.735-8A of the Commission's rules and regulations, 17 CFR 140.735-8A, which implements amendments to the Foreign Gifts and Decorations Act.[19]

Finally, the Commission is adding a second sentence to Section 16(a) of the Code to codify the designation of the Commission's General Counsel as its designated agency ethics official to review the financial reports filed by high-level Commission officials under Title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

The Commission has determined that these amendments to the Code of Conduct relate solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation are not applicable. The Commission further finds that, because of the need promptly to update its Code of Conduct in light of the enactment of the Ethics in Government Act and the Futures Trading Act of 1978, as well to effect other desirable changes, there is good cause to make these amendments effective upon publication in the Federal

[16] Pub. L. 95-454, 92 Stat. 1111 *et seq.* (1978).

[17] Title V, section 502(a) of Pub. L. 95-216, 91 Stat. 1565 (1977), renumbered in Title I, section 105(5) of Pub. L. 96-187, 93 Stat. 1354 (1980).

[18] Pub. L. 96-303, 94 Stat. 855-856 (1980).

[19] That rule, which deals with the receipt and disposition of foreign gifts and decorations by Commission members and employees and has been adopted in accordance with State Department guidance, was separately published in the Federal Register. See 47 FR ——— *et seq.* (——— —, 1982).

Register. Therefore, the amendments will become effective on June 22, 1982.

List of Subjects in 17 CFR Part 140

Authority delegations, Commodity futures, Conflict of interests, Organizations and functions.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

Accordingly, the Commission, pursuant to the authority contained in sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), Executive Order 11222, 3 CFR, 1964–1965 Comp., as amended, 5 CFR 735.104 and 18 U.S.C. 207(j), hereby amends Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

1. The table of sections of Subpart C of Part 140 is amended as follows:

* * * * *

140.735–7 Statement of financial interests and outside employment; certification of compliance.

* * * * *

§ 140.735–1 [Amended]

2. Section 140.735–1 is amended by removing the words "Civil Service Commission" and inserting in place thereof the words "Office of Government Ethics, Office of Personnel Management,".

§ 140.735–4 [Amended]

3. In § 140.735–4(b)(1), clause (iii) is amended by removing the words "silver bullion, gold bullion, bulk silver coins or bulk gold coins" and inserting in place thereof the words "any commodity" and footnote 2 is amended by removing the reference to "$10,000" and inserting in place thereof "$100,000", by inserting the letter "(A)" after "2(a)(7)" and by deleting the words "Section 217 of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. 15(a)," and inserting in place thereof the words "Section 19 of the Commodity Exchange Act,".

4. In § 140.735–4(b)(2), the third sentence of footnote 3 is amended by removing the word "explanation" and inserting in place thereof the word "notification", by inserting a "." after the word "facts" and by removing the words "and requesting Commission clearance therefor." and the fifth sentence of footnote 3 is amended by inserting the letter "(A)" after "2(a)(7)".

5. In § 140.735–4(b)(3), footnote 5 is amended by inserting the letter "(A)" after "2(a)(7)".

§ 140.735–5 [Amended]

6. In § 140.735–5(a), footnote 7 is amended by inserting the letter "(A)" after "2(a)(7)".

7. In § 140.735–5(c), the text and footnote 10 are amended by deleting the words "Civil Service Commission" and inserting in place thereof the words "Office of Government Ethics, Office of Personnel Management," and footnote 10 is further amended by inserting "323" in place of "328" and by inserting the word "generally" between the words "Act" and "prohibits" in the first sentence of paragraph two.

8. Section 140.735–5(e)(1) is revised to read as follows:

§ 140.735–5 Non-Governmental employment and other outside activity.

* * * * *

(e)(1) *Notification required.* An employee who intends to accept or perform any outside or private employment or professional work shall submit a written notification in advance of such acceptance or performance. The notification shall be submitted to the division or office head concerned, together with all pertinent facts regarding the forthcoming employment or professional work, such as the name of the employer, the nature of the work to be performed, its estimated duration and the fee or compensation to be received. The division or office head shall forward all notifications, together with any comments he or she may have thereon, to the Executive Director who shall review them and determine whether such employment or professional work is consistent with concurrent Commission employment.[20] In the event that the Executive Director determines that the forthcoming outside employment or professional work is inconsistent with concurrent Commission employment, he or she shall attempt to resolve the matter, or, if unable to do so, shall refer the matter to the General Counsel who shall resolve it or forward it to the Commission for consideration

* * * * *

9. Section 140.735–5(g) is amended by removing the words "Civil Service Commission" and inserting in place thereof the words "Office of Government Ethics, Office of Personnel Management,".

10. The title of § 140.735–7 is revised to read as follows:

[20] Office heads in Commission Regional Offices receiving notifications shall forward them to the Regional Deputy Counselor, § 140.735–16(c), *Infra*, who shall attempt to resolve the matter, or, if unable to do so, shall forward the matter to the Executive Director.

§ 140.735–7 Statement of financial interests and outside employment; certification of compliance.

* * * * *

11. Section 140.735–7 is amended by removing the words "statement(s) of employment and financial interests" wherever they appear and inserting in place thereof the words "statement(s) of financial interests and outside employment".

12. Sections 140.735–7 (c) and (g) are revised to read as follows:

§ 140.735–7 Statement of financial interests and outside employment; certification of compliance.

* * * * *

(c) *Employees who are required to submit statements.* Statements of financial interests and outside employment are required of the following:

(1) Employees in classified positions of Grade GS–13, GS–14 or GS–15, under Section 5332 of Title 5, United States Code, or the equivalent thereof, unless they are required to file financial reports under the Ethics in Government Act;

(2) Employees occupying positions as attorney, auditors, economists, futures trading specialists or investigators in any classified positions under section 5332 of Title 5, United States Code; and

(3) Such other employees as the Commission, in consultation with the Office of Government Ethics, Office of Personnel Management, may specify.

* * * * *

(g) *Confidentiality.* Statements of financial interests and outside employment and certifications of compliance shall be sent to the Director of Personnel in a sealed envelope marked "Confidential" and shall be maintained in a confidential file. Only those officials of the Commission whose participation is necessary for the carrying out of the purpose of this Conduct Regulation may have access to such statements and certifications and no information therefrom may be disclosed by them except as the Commission by formal order or the Office of Government Ethics, Office of Personnel Management, may determine for good cause shown.

* * * * *

13. In § 140.735–7(i), the first sentence is amended by inserting the words "pursuant to this section, as well as the reports referred to in subsection (j)," between the words "employees" and "are".

14. Section 140.735–7(k)(2) is amended by redesignating footnote "13a" as footnote "14".

15. Section 140.735–8(b) is amended by removing the word "or" immediately preceding clause (7), by inserting a ";" in place of the "." after the end of clause (7) and by adding the following additional language thereafter "or (8) if the General Counsel approves in advance, to reasonable travel and subsistence expense reimbursement by potential employers provided the Commission member or employee is engaged in bona fide post-Commission employment negotiations and is not on official business at the time.".

16. Section 140.735–8(c) is revised to read as follows:

§ 140.735–8 Acceptance of things of value.

* * * * *

(c) *Travel and subsistence expense reimbursement.* (1) Except as specifically authorized by paragraph (c)(2) of this section or as otherwise authorized by law, Commission members and employees are not authorized to accept on behalf of the United States voluntary donations from private sources for travel expenses in the form of cash, or services in kind, such as hotel accomodations. An employee who is officially directed to participate in a convention, seminar or similar meeting of an outside organization on an active duty basis and is authorzed to receive per diem and other travel expenses from the Government, shall not accept travel, subsistence, or payment of other expenses from the outside organization, except as specifically authorized by paragraph (c)(2) of this section or as otherwise authorized by law.

(2) If the General Counsel approves in advance, Commission members and employees may, while on official active duty, accept, pursuant to 5 U.S.C. 4111, reasonable travel and subsistence expense reimbursement from academic or other nonprofit organizations which have been determined by the Secretary of the Treasury to be tax exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, 26 U.S.C. 501(c)(3), provided that they are not predominantly composed of persons subject to regulation by the Commission. While not on official active duty, Commission employees may accept reasonable travel and subsistence expense reimbursement from other organizations when asked to speak on matters within their Commission expertise if the General Counsel approves the reimbursement in advance. Both in the case of section 501(c)(3) and other organizations, the General Counsel, in deciding whether to approve private reimbursement, will consider the availability of Commission funds for the proposed travel, the benefit to the government, the appearance of acceptance of reimbursement from the private organization and any other relevant factors.

§ 140.735–9 [Amended]

17. In § 140.735–9, footnote 15 is amended by removing the reference to "$10,000" and inserting in place thereof "$100,000" and footnote 17 is amended by adding a "s" to the end of the word "section" and inserting immediately thereafter and before "9(e)" the words "8 and".

18. Section 140.735–10 is revised to read as follows:

§ 140.735–10 Practice by former members and employees of the Commission.

(a) *Personal and substantial participation or nonpublic knowledge of a particular matter.* No person who has been a member or employee of the Commission shall ever knowingly represent any other person (except the United States) in an appearance before or a communication with the Commission in connection with any particular matter involving a specific party or parties [21] in which such person, or one participating with him or her in the particular matter, participated personally and substantially, [22] or gained nonpublic knowledge of facts thereof, while with the Commission.

(b) *Particular matter under an individual's official responsibility.* No person who has been a member or employee of the Commission shall, within two years after that employment has ceased, knowingly represent any other person (except the United States) in an appearance before or a communication with the Commission in connection with a particular matter involving a specific party or parties [23] which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of that responsibility.[24]

(c) *Restrictions on former members and senior employees.* A former member or employee of the Commission who occupied a position specified in 18 U.S.C. 207(d)(1)(A), as amended, or designated pursuant to 18 U.S.C. 207(d)(1)(C), as amended, shall not:

(1) Within two years after such employment has ceased, knowingly represent, or assist in the representation of, any other person (except the United States) by personal presence at an appearance before the Commission in connection with a particular matter involving a specific party or parties [25] in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former Commission member or employee participated personally and substantially while with the Commission; or

(2) Within one year after such employment has ceased, knowingly represent any other person (except the United States) in an appearance before or a communication with the Commission in connection with any particular matter, including a rulemaking proceeding, which is pending before the Commission or in which the Commission has a direct and substantial interest.[26]

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[21] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 737.5(c)(1) of the regulations of the Office of Government Ethics, Office of Personnel Management, 5 CFR 737.5(c)(1); *cf.* memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (which memorandum is reproduced in material following 18 U.S.C. 201 (1976 Edition)).

[22] Attention is directed to 18 U.S.C. 207(a), as amended by the Ethics in Government Act. Section 207(a) generally prohibits former Federal officers and employees permanently from knowingly representing any other person (except the United States) in an appearance before or a communication with any Federal (or District of Columbia) department, agency or court, or other enumerated entities, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.

[23] See n. 18 *supra*.

[24] Attention is directed to 18 U.S.C. 207(b)(i), as amended by the Ethics in Government Act. Section 207(b)(i) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly representing any other person (except the United States) in an appearance before or a communication with any Federal (or District of Columbia) department, agency or court, or other enumerated entities, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of that responsibility.

[25] See footnote 18, *supra*.

[26] Attention is directed to 18 U.S.C. 207 (b)(ii) and (c), as amended by the Ethics in Government Act, which place restrictions on the representational activities of certain senior officers and employees after their departure from the government. Section 207(b)(ii) generally makes it unlawful for a former federal officer or employee who occupied a position specified in 18 U.S.C. 207(d)(1)(A), as amended, or designated pursuant to 18 U.S.C. 207 (d)(1)(C), as amended, within two years after leaving that position, knowingly to represent, or assist in the representation of, any other person (except the United States) by personal presence at an appearance before any federal (or District of

(d) *Exceptions.* The prohibitions contained in paragraphs (a), (b) and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or to giving testimony under oath or making a statement which is subject to penalty or perjury.[27] Further, the prohibition contained in paragraph (c)(2) of this section does not apply to representation by elected state or local government officials or those whose principal occupation or employment is with a state or local government agency or instrumentality, an accredited degree-granting institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965 or a hospital or medical research organization which is exempted from taxation and defined under section 501(c)(3) of the Internal Revenue Code of 1954, 26 U.S.C. 501(c)(3), if the representation is on behalf of such an entity. Nor does the paragraph (c)(2) prohibition herein apply to appearances or communications concerning matters of a personal and individual nature or to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.[28]

Columbia) department, agency or court, or other enumerated entities, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government. In addition, section 207(c) generally prohibits such former officers and employees, for a period of one year following their departure from their department or agency, from knowingly making any appearance before or any communication with the department or agency in which they served, or any officer or employee thereof, on behalf of any other person (except the United States) in connection with any particular matter, including a rulemaking proceeding, pending before that department or agency, or in which the department or agency has a direct and substantial interest.

Attention is also directed to section 2(a)(7)(B) of the Commodity Exchange Act which applies to former Commission members, as well as former Commission employees who occupied positions classified at the GS-16 level or higher excepted from the competitive service by reason of their policymaking or confidential character. That provision generally prohibits such persons, for a period of one year after they cease to occupy their positions, from making any appearance before the Commission or making any written or oral communication to the Commission, or any member or employee thereof, on behalf of any other person (except the United States) in connection with any particular matter before the Commission. Appearances and responses relating to Commission subpoenas and solely personal and individual matters are excluded from this prohibition.

[27] Attention is directed to 18 U.S.C. 207(f) and (h), as amended by the Ethics in Government Act.

[28] Attention is directed to 18 U.S.C. 207(d)(2) and (i), as amended by the Ethics in Government Act.

(e) *Reporting requirement.* Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first contemplated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) *Definitions.* As used in this section, the phrase "appearance before the Commission" means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof. As used in this section, the phrase "communication with the Commission" means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence. As used in this section, the term "represent" shall include not only the usual type of representation by an attorney, but also representation of a corporation in the capacity of an officer, director or controlling stockholder thereof. As used in paragraph (b) of this section, the term "official responsibility" has the meaning assigned to it in 18 U.S.C. 202, namely, the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

(g) *Advisory ruling.* Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

(h) *Procedures for administrative enforcement of statutory restrictions on post-Government employment conflicts of interest.*—(1) *Scope.* The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b) and (c), as amended, place on appearances before or communications with federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) *Investigations.* The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to determine whether any former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) *Hearings.* Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR Part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) *Sanctions.* If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person 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, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 140.735-12 [Amended]

19. Section 140.735-12 is amended by redesignating footnote "22" as footnote "26", by inserting the letter "(A)" immediately following "2(a)(7)" in paragraph (a), by inserting the number "8" between the reference to "2(a)(7)(A)" and "9(d)" in paragraph (a), by adding a comma and the words "as amended" following the "Commodity Exchange Act" in paragraph (a), and by deleting the period at the end of paragraph (b) and inserting immediately thereafter "and Pub. L. 96-303, 94 Stat. 855-856, 5 U.S.C. 7301 note, the 'Code of Ethics for Government Service.' "

§ 140.735-13 [Amended]

20. Section 140.735-13(b) is amended by removing the words "(obtaining prior approval for outside employment)" after the reference to § 140.735-5(e) and inserting in place thereof the words "(notification of outside employment)", removing the words "(filing of statement of employment and financial interests)" after the reference to § 140.735-7 and inserting in place thereof the words "(filing of statement of financial interests and outside employment and certification of compliance)", by redesignating footnote "23" as footnote "27" and by inserting the letter "(A)" after "2(a)(7)" in redesignated footnote 27.

§ 140.735-14 [Amended]

21. Section 140.735-14(b) is amended by removing the "." at the end of the sentence and inserting thereafter ", see § 140.735-8A.".

22. Section § 140.735-16(a) is revised to read as follows:

§ 140.735-16 Interpretative and advisory service.

(a) *Counselor for the Commission.* The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, Office of Personnel Management, on matters covered by this subpart. The General Counsel will also serve as the Commission's designated agency ethics official to review the financial reports filed by high-level Commission officials under Title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

* * * * *

23. Section 140.735-16(d) is amended by redesignating footnote "24" as footnote "28".

Issued by the Commission in Washingon, D.C. on May 27, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-16781 Filed 6-21-82; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 230, 239, 249, 259, 260, 269, 274 and 279

[Release Nos. 33-6408, 34-18804, 35-22531, 39-732, IC-12475, and IA-808]

Relocation of Headquarters Offices; Miscellaneous Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Miscellaneous amendments.

SUMMARY: The Securities and Exchange Commission plans to relocate its Headquarters offices from 500 North Capitol Street, 1100 L Street, NW., and 320 First Street, NW., Washington, D.C. to 450 Fifth Street, NW., Washington, D.C. 20549. These amendments are administrative in nature and will update references to the Commission's new location.

EFFECTIVE DATE: July 23, 1982.

Text of Amendments

Accordingly, 17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising paragraph (a)(1) of § 200.11 to read as follows:

§ 200.11 Headquarters Office—Regional Office Relationship.

(a)(1) Division and Office Heads in the Headquarters Office (450 Fifth Street, NW., Washington, D.C. 20549) have Commission-wide responsibility to the Commission for the overall development, policy and technical guidance, and policy direction of the operating programs under their jurisdiction.

* * * * *

2. By revising paragraphs (a)(2), (c)(1) introductory text, (c)(2), (d)(1), (d)(6)(ii), (e)(7)(i), and (e)(7)(iii) of § 200.80 to read as follows:

§ 200.80 Commission records and information.

(a)(1) * * *

(2) *Records available for public inspection and copying; documents published and indexed.* Except as provided in paragraph (b) of this section, the following materials are available for public inspection and copying during normal business hours at the public reference room located at 450 Fifth Street, NW., Room 1024, Washington, D.C. and at the Regional Offices of the Commission, and, except for indices, they are published weekly in a document entitled "SEC Docket" (see paragraph (f)(2) of this section):

* * * * *

(c)(1) *Public reference facilities.* The Commission has a specially staffed and equipped public reference room located at 450 Fifth Street, NW., Room 1024, Washington, D.C. (202-523-5506) and public reference facilities in its regional offices. Coin-operated machines, which are available to requesters on a do-it-yourself basis, can be used to make immediate copies up to 8½ by 14 inches in size of materials that are available for inspection in the Washington, D.C., New York City, Chicago and Los Angeles offices.

(i) * * *

(2) *Public reference inquiries.* Inquiries concerning the nature and extent of records available at the Commission's public reference room in Washington or at its other public reference facilities may be made in person or by telephone. The addresses and telephone numbers of all Commission Regional and Branch Offices are set forth at paragraph (c)(1) of this section. Written inquiries may be addressed to the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, D.C. 20549, or to a particular regional office.

(d) *Requests for Commission records and copies thereof*—(1) *Time and place of request for inspection of records.* Requests for inspection of Commission records may be made in person during normal business hours at the public reference room located at 450 Fifth Street, NW., Room 1024, Washington, D.C. Requests for inspection of Commission records located in a regional office may be made in person during normal business hours at that regional office.

(6) * * *

(ii) The application should be delivered to the Public Reference Branch, Room 1024, 450 Fifth Street, NW., Washington, D.C., or sent by mail addressed to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, D.C. 20549.

* * * * *

(e) * * *

(7) * * *

(i) *Facsimile copies.* All requests for facsimile copies may be made either in person at the Commission's public reference room, 450 Fifth Street, NW., Room 1024, Washington, D.C., or by mail addressed to Securities and Exchange Commission, Public Reference Branch, Washington, D.C. 20549. Copies when authorized will be sent directly to the purchaser by the contractor unless attestation is requested. A person who has been provided with facsimile copies of records upon request will be billed by the contractor for his copying services at the rates shown in the Commission's current schedule of fees, plus postage, if any, and will be billed separately by the Commission for attestation and searching fees, if any. Special classes of copying services, including expedited delivery, to the extent available under the current contract, are described in the

Commission's current schedule of fees. Cost estimates with respect to facsimile copying will be supplied upon request.

(ii) * * *

(iii) *Transcripts of public hearings.* Copies of the transcripts of recent public hearings may be obtained from the reporter subject to the fees established annually by contract between the Commission and the reporter. Copies of that contract, which contains tables of charges, may be inspected in the public reference room, 450 Fifth Street, NW., Room 1024, Washington, D.C. and in each regional and branch office. Copies of other public transcripts may be obtained, in the manner of other Commission records, subject to the charges referred to in paragraph (e)(7)(i) of this Section.

* * * * *

3. By revising paragraphs (a) introductory text and (a)(2) of § 200.303 to read as follows:

§ 200.303 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to the records pertaining to them.

(a) *Place to make request.* Any request by an individual to be advised whether any system of records maintained by the Commission and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the Commission, shall be submitted by the individual in person during normal business hours at the Commission's Public Reference Room which is located at 450 Fifth Street, N.W., Room 1024, Washington, D.C., or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked "Privacy Act Request."

(1) * * *

(2) *Verification of identity.* When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the Commission's Public Reference Room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C., during normal business hours of 9 a.m. to 4:30 p.m. e.s.t., Monday through Friday, or at one of the Commission's Regional or Branch Offices. The addresses and business hours of those offices are listed below:

* * * * *

4. By revising paragraph (a) of § 200.306 to read as follows:

§ 200.306 Requests for amendment or correction of records.

(a) *Place to make requests.* A request by an individual to amend or correct records pertaining to him or her may be made in person during normal business hours at the Commission's Public Reference Room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C., or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549.

* * * * *

5. By revising paragraphs (a)(2) and (b)(1) of § 200.308 to read as follows:

§ 200.308 Appeal of initial adverse agency determination as to access or as to amendment or correction.

(a) * * *

(2) The application shall be delivered to the Securities and Exchange Commission, Public Reference Branch, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549.

* * * * *

(b) * * *

(1) Such statement of disagreement shall be delivered to the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, or mail to the Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549, within 30 days after receipt by the individual of the Commission's order denying the amendment or correction. For good cause shown this period can be extended for a reasonable time.

* * * * *

(6) By revising paragraph (a) of § 200.310 to read as follows:

§ 200.310 Fees.

(a) A request by an individual for copies of a record pertaining to him or her that is maintained by the Commission may be made in person during normal business hours at the Public Reference Room at 450 Fifth Street, N.W., Room 1024, Washington, D.C., or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, D.C. 20549. There will be no charge assessed to the individual for the Commission's expense involved in searching for or reviewing the record. Copies of the Commission's records will be provided by a commercial copier or by the Commission at rates established by a contract between the copier and the Commission. In addition, copying machines are provided for public use in the public reference facilities in the Commission's Washington, D.C., New York City, Los Angeles and Chicago offices.

* * * * *

7. By revising paragraph (b) of § 200.554 to read as follows:

§ 200.554 Public availability of information.

* * * * *

(b) The location of publicly available environmental impact statements will be 450 Fifth Street, N.W., Room 1024, Washington, D.C.

* * * * *

PART 201—RULES OF PRACTICE

1. By revising § 201.5 to read as follows:

§ 201.5 Business hours.

The principal office of the Commission, at 450 Fifth Street, N.W., Washington, D.C. 20549, is open each day, except Saturdays, Sundays, and legal holidays, from 9 a.m. to 5:30 p.m., eastern standard time or eastern daylight saving time, whichever is currently in effect in Washington. Legal holidays consist of New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday in the District of Columbia by the President or the Congress of the United States.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising § 230.110 to read as follows:

§ 230.110 Business hours of the Commission.

The principal office of the Commission, at 450 Fifth Street, N.W., Washington, D.C. 20549, is open each day, except Saturdays, Sundays and holidays, from 9:00 a.m. to 5:30 p.m., eastern standard time or eastern daylight saving time, whichever is currently in effect in Washington, D.C.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. By revising paragraph (b) of § 239.0-1 to read as follows:

§ 239.0-1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Any persons may inspect the forms at this address and at the Commission's regional offices. (See § 200.11 of this chapter for the addresses of SEC regional offices.)

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By revising paragraph (b) of § 249.0-1 to read as follows:

§ 249.0-1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional offices.

(See § 200.11 of this chapter for the addresses of SEC regional offices)

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. By revising paragraph (b) of § 259.0-1 to read as follows:

§ 259.0-1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional offices.

(See § 200.11 of this chapter for the addresses of SEC regional offices)

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

1. By revising § 260.0-5 to read as follows:

§ 260.0-5 Business hours of the Commission.

The principal office of the Commission, at 450 Fifth Street, NW., Washington, D.C. 20549, is open each day, except Saturdays, Sundays and holidays, from 9:00 a.m. to 5:30 p.m eastern standard time or eastern daylight saving time, whichever is currently in effect in Washington, D.C.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

1. By revising paragraph (b) of § 269.0-1 to read as follows:

§ 269.0-1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional offices.

(See § 200.11 of this chapter for the addresses of SEC regional offices)

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By revising paragraph (b) of § 274.0-1 to read as follows:

§ 274.0-1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional offices.

(See § 200.11 of this chapter for the addresses of SEC regional offices)

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. By revising paragraph (b) of § 279.0-1 to read as follows:

§ 279.0-1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional offices.

(See § 200.11 of this chapter for the addresses of SEC regional offices)

Since these amendments are administrative in nature, the Commission finds that notice and comment procedures are unnecessary and therefore the amendments may become effective immediately.

Dated: June 10, 1982.

By the Commission.

George A Fitzsimmons,

Secretary.

[FR Doc. 82-16849 Filed 6-21-82; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 200, 202, and 203

[Release Nos. 33-6409, 34-18810, 35-22536, 39-733, IC-12490, and IA-810]

Amendment of Rules Concerning Access to Files

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its rules concerning access to investigative files to codify the staff's authority to grant requests for access to such files by receivers, special counsels, and other similar persons appointed by the court in enforcement proceedings brought by the Commission, and by the Securities Investor Protection Corporation ("SIPC"), trustees appointed in proceedings brought by SIPC for the protection of customers of broker-dealers, and counsel for SIPC trustees.

EFFECTIVE DATE: June 22, 1982.

FOR FURTHER INFORMATION CONTACT: Alan Rosenblat, Assistant General Counsel, Office of the General Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 ((202) 272-2428).

SUPPLEMENTARY INFORMATION: The Commission frequently receives requests, from domestic and foreign governmental authorities and self-regulatory organizations, for access to investigative files. The Director of the Division of Enforcement has authority to grant such access. But in matters in which the Commission has entered a formal order of investigation, the concurrence of the General Counsel is also required. In addition, senior officials in the Division of Enforcement and the Regional Offices are authorized to engage in discussions with representatives of domestic or foreign governmental authorities and self-regulatory organizations concerning information obtained in individual investigations.

In addition to requests by law enforcement authorities, the Commission receives requests for access to investigative files by receivers and other similar persons appointed by the court in Commission enforcement proceedings, by SIPC, and by trustees appointed in proceedings brought under

Section 5 of the Securities Investor Protection Act. Receivers, special masters, special counsels, trustees, and other similar persons, as well as SIPC, may require access to the Commission's files in order to perform the tasks for which they have been appointed. For example, information gathered during the Commission's investigation may be useful in efforts to preserve the assets of a company or to locate customer property in the custody of a broker-dealer.

In the past the Commission itself has considered and acted on requests for access to the Commission's files by receivers and similar persons, SIPC, and SIPC trustees. The Commission is now amending its rules to codify the authority of the Director of the Division of Enforcement to grant or deny such requests in appropriate cases, and of officials in the Division of Enforcement and Regional Offices to discuss information obtained in the course of investigations with receivers and similar persons, SIPC, and SIPC trustees.

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) of the Administrative Procedure Act ("APA"), that these amendments relate solely to agency organization, procedure, or practice, and that notice and public procedure in accordance with the APA are not necessary. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

Statutory Authority

The Commission is adopting these amendments pursuant to its authority under sections 19 and 20 of the Securities Act of 1933 (15 U.S.C. 77s and 77t); sections 21 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78u and 78w); sections 18 and 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r and 79t); sections 319 and 321 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss and 77uuu); sections 38 and 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-37 and 80a-41); sections 209 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9 and 80b-11); and the Act of August 20, 1962, Pub. L. 87-592, 76 Stat. 344 (15 U.S.C. 78d-1, 78d-2), as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 163 (June 4, 1975).

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

17 CFR Parts 202 and 203

Administrative practice and procedure, Investigations securities.

Text of Amendments

Parts 200, 202, and 203 of chapter II of Title 17 of the Code of Federal Regulations are amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. Section 200.19b is revised to read as follows:

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for the supervision and conduct of all of the enforcement activities under each of the acts administered by the Commission and the investigations relating thereto. The Director is responsible also for recommending the institution of administrative and injunctive actions arising out of such investigations and enforcement activities and for the determination of whether the available evidence supports the allegations in the proposed complaint. In addition, the Director is responsible, in collaboration with the General Counsel, for the review of cases to be referred to the Department of Justice with a recommendation for criminal prosecution, and for granting or denying requests by domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, for access to the Commission's files concerning non-public investigations.

2. In § 200.21 paragraph (a) is revised to read as follows:

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution, and for the review of requests by domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, for access to materials contained in Commission files concerning non-public investigatory proceedings in which formal orders of investigation have been entered. In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for reviewing and advising the Commission upon the legal aspects and policy implications of pre-argument memorandums and draft Commission opinions prepared by the Office of Opinions and Review; for the conduct of adminstrative proceedings relating to the disqualification of professional persons from practice before the Commission; for the preparation of Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. The General Counsel is also responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission and is responsible for investigating any claims of staff improprieties. Additionally, he or she has responsibility with the Office of Opinions and Review for dealing with general problems arising under the Administrative Procedure Act, including (with the Office of Opinions and Review) the revision or adoption of rules of practice. He or she is responsible (with the Director of Personnel) for administering and interpreting the Commission's Conduct Regulation. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Personnel Management and the Department of Justice. The General Counsel also is responsible for coordinating and reviewing the interpretive positions of the various divisions and offices. In addition, he or she is responsible for appropriate disposition of all Freedom of Information Act appeals pursuant to the authority delegated in § 200.30-14, and is the Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

* * * * *

3. In § 200.30-4 paragraph (a)(7) is revised to read as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(7) To grant requests for access to, or copies of, materials in the Commission's files concerning a non-public investigation upon written request for such access submitted by domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act; *Provided* That, in matters in which the Commission has entered a formal order of investigation, such access shall be granted only with the concurrence of the General Counsel or his or her delegate.

* * * * *

PART 202—INFORMAL AND OTHER PROCEDURES

1. In § 202.5 paragraph (b) is revised to read as follows:

§ 202.5 Enforcement activities.

* * * * *

(b) After investigation or otherwise the Commission may in its discretion take one or more of the following actions: institution of administrative proceedings looking to the imposition of remedial sanctions, initiation of injunctive proceedings in the courts, and, in the case of a willful violation, reference of the matter to the Department of Justice for criminal prosecution. The Commission may also, on some occasions, refer the matter to, or grant requests for access to its files made by, domestic and foreign governmental authorities, self-regulatory organizations such as stock exchanges or the National Association of Securities Dealers, Inc., and other persons or entities.

* * * * *

PART 203—RULES RELATING TO INVESTIGATIONS

1. Section 203.2 is revised to read as follows:

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Division of Enforcement at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Administrator or higher, may engage in, and may authorize members of the Commission's staff to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, concerning information obtained in individual investigations, including examinations and formal investigations conducted pursuant to Commission order.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 10, 1982.

[FR Doc. 82-16850 Filed 6-21-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority regarding approval of new drug applications (NDA's) by redelegating to the Directors of Divisions conducting new drug evaluations authority to approve an additional class of NDA's to expedite the approval process. Published elsewhere in this issue of the **Federal Register** is a notice reorganizing the Bureau of Drugs and Bureau of Biologics into the National Center for Drugs and Biologics. This document also updates organizational references in accordance with the reorganization.

EFFECTIVE DATE: June 22, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.80 (21 CFR 5.80) by changing references to the Bureau of Biologics and the Bureau of Drugs as appropriate to conform to the new organization nomenclature and organizational placement in the new organization.

Section 5.80(a)(1) is amended to redelegate to the Directors of the Divisions of Anti-Infective Drug Products, Cardio-Renal Drug Products, Surgical-Dental Drug Products, Metabolism and Endocrine Drug Products, Neuropharmacological Drug Products, and Oncology and Radiopharmaceutical Drug Products of the newly created Office of New Drug Evaluation in the National Center for Drugs and Biologics, the authority to approve new drug applications for drug products that contain the identical active drug ingredient (e.g., the same salt of the same therapeutic moiety), or identical combination of active drug ingredients, in the same dosage form and strength, of an approved drug product already marketed in the United States by another firm, and that has, in its labeling, at least some of the therapeutic uses already approved for the marketed product(s). This supplements their previous authority to approve supplemental applications to approved new drug applications for drugs for human use.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52