

(d) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Westland SB No. W30-62-34 and SB No. W30-62-35, both dated November 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GKN Westland Helicopters Limited, Customer Support Division, Yeovil, Somerset BA20 2YB, England, telephone (01935) 703884, fax (01935) 703905. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 16, 1998.

Note 3: The subject of this AD is addressed in Civil Aviation Administration (United Kingdom) AD 010-11-95 and AD 011-11-95, both dated January 31, 1996.

Issued in Fort Worth, Texas, on March 24, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

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FEDERAL TRADE COMMISSION

16 CFR Part 4

Appearances Before the Commission; Restrictions and Public Disclosure Requirements.

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to make more efficacious the procedures by which the General Counsel reaches determinations on requests by former employees for clearance to participate in Commission matters. The revised procedures are intended to provide for effective review of the propriety of a former employee's participation in a particular matter while reducing the paperwork and resources needed to dispose of clearance requests. These amendments also clarify the rule's terms and procedures, eliminate certain inconsistencies, and correct one provision.

EFFECTIVE DATE: These amendments are effective April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, 202-326-2426, or Laura D.

Berger, 202-326-2471, Attorneys, Office of the General Counsel, FTC, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission is revising paragraph (b) of Commission Rule 4.1, 16 CFR 4.1, to shorten the time for determining a former employee's request for clearance to participate in a Commission matter from 15 to 10 business days, and to provide that either the General Counsel or the General Counsel's designee has the authority to make this determination. Shortening the waiting period from the present 15 business days to 10 business days is designed to benefit filers and their clients, as well as the Commission's ability to resolve administrative actions and investigations promptly.

In addition, the Commission is further revising Rule 4.1(b) to simplify its terms and requirements, to eliminate certain inconsistencies, and to correct one error. Finally, the Commission is modifying the exceptions to the rule in order to make them consistent with the provisions of 18 U.S.C. 207. The Commission also is amending paragraph (c) of the Rule slightly, to make it consistent with revised paragraph (b).

Apart from these revisions, the changes will affect internal procedures only, and are not intended to influence the outcomes of filings made under the Rules. Simplified internal processing procedures are designed to reduce the time and resources expended in disposing of the large number of clearance requests that are not problematic, while continuing to ensure the integrity of Commission investigations and proceedings.

The rule amendments relate solely to agency practice, and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

The submissions required by the amended rule do not generally involve the "collection of information" as that term is defined by the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501-3520. Submission of a request for clearance to participate or a screening affidavit is ordinarily required only during the conduct of an administrative action or investigation involving a specific individual or entity. Such submissions are exempt from the coverage of the PRA. 5 CFR 1320.4(a)(2). To the limited extent that the rule could require a submission outside the context of an investigation or action involving a specific party, the information

collection aspects of the rule have been cleared by the Office of Management and Budget and assigned OMB clearance no. 3084-0047.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 4.1 Appearances.

* * * * *

(b) *Restrictions as to former members and employees*—(1) *General Prohibition.* Except as provided in this section, or otherwise specifically authorized by the Commission, no former member or employee ("former employee" or "employee") of the Commission may communicate to or appear before the Commission, as attorney or counsel, or otherwise assist or advise behind-the-scenes, regarding a formal or informal proceeding or investigation¹ (except that a former employee who is disqualified solely under paragraph (b)(1)(iv) of this section, is not prohibited from assisting or advising behind-the-scenes) if:

(i) The former employee participated personally and substantially on behalf of the Commission in the same proceeding or investigation in which the employee now intends to participate;

¹ It is important to note that a new "proceeding or investigation" may be considered the same matter as a seemingly separate "proceeding or investigation" that was pending during the former employee's tenure. This is because a "proceeding or investigation" may continue in another form or in part. In determining whether two matters are actually the same, the Commission will consider: the extent to which the matters involve the same or related facts, issues, confidential information and parties; the time elapsed; and the continuing existence of an important Federal interest. See 5 CFR 2637.201(c)(4). For example, where a former employee intends to participate in an investigation of compliance with a Commission order, submission of a request to reopen an order, or a proceeding with respect to reopening an order, the matter will be considered the same as the adjudicative proceeding or investigation that resulted in the order. A former employee who is uncertain whether the matter in which he seeks clearance to participate is wholly separate from any matter that was pending during his tenure should seek advice from the General Counsel or the General Counsel's designee before participating.

(ii) The participation would begin within two years after the termination of the former employee's service and, within a period of one year prior to the employee's termination, the proceeding or investigation was pending under the employee's official responsibility;

(iii) Nonpublic documents or information pertaining to the proceeding or investigation in question, and of the kind delineated in § 4.10(a), came to, or would be likely to have come to, the former employee's attention in the course of the employee's duties, and the employee left the Commission within the previous three years (unless Commission staff determines that the nature of the documents or information is such that no present advantage could thereby be derived); or

(iv) The former employee's participation would begin within one year after the employee's termination and, at the time of termination, the employee was a member of the Commission or a "senior employee" as defined in 18 U.S.C. 207(c).

Note: Former Commissioners and certain former "senior" employees who were appointed to those positions on or after January 20, 1993 may be subject to a five year ban on participation in Commission matters pursuant to Executive Order 12834 (58 FR 5911-5916, January 22, 1993), 3 CFR 1993 Comp., p. 580).

(2) *Clearance Request Required.* Any former employee, before participating in a Commission proceeding or investigation (see footnote 1), whether through an appearance before a Commission official or behind-the-scenes assistance, shall file with the Secretary a request for clearance to participate, containing the information listed in § 4.1(b)(4) if:

(i) The proceeding or investigation was pending in the Commission while the former employee served;

(ii) A proceeding or investigation from which such proceeding or investigation directly resulted was pending during the former employee's service; or

(iii) Nonpublic documents or information pertaining to the proceeding or investigation in question, and of the kind delineated in § 4.10(a), came to or would likely have come to the former employee's attention in the course of the employee's duties, and the employee left the Commission within the previous three years.

Note: This requirement applies even to a proceeding or investigation that had not yet been initiated formally when the former employee terminated employment, if the employee had learned nonpublic information relating to the subsequently initiated proceeding or investigation.

(3) *Exceptions.*

(i) Paragraphs (b)(1) and (2) of this section do not apply to:

(A) Making a pro se filing of any kind;

(B) Submitting a request or appeal under the Freedom of Information Act, the Privacy Act, or the Government in the Sunshine Act;

(C) Testifying under oath (except that a former employee who is subject to the restrictions contained in paragraph (b)(1)(i) of this section with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any person other than the United States in that same matter);

(D) Submitting a statement required to be made under penalty of perjury; or

(E) Appearing on behalf of the United States.

(ii) With the exception of subparagraph (b)(1)(iv), paragraphs (b)(1) and (2) of this section do not apply to participating in a Commission rulemaking proceeding, including submitting comments on a matter on which the Commission has invited public comment.

(iii) Paragraph (b)(1)(iv) of this section does not apply to submitting a statement based on the former employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided by law or by § 4.5 for witnesses.

(iv) Paragraph (b)(2) of this section does not apply to filing a premerger notification form or participating in subsequent events concerning compliance or noncompliance with Section 7A of the Clayton Act, 15 U.S.C. 18a, or any regulation issued under that section.

(4) *Request Contents.* Clearance requests filed pursuant to § 4.1(b)(2) shall contain:

(i) The name and matter number (if known) of the proceeding or investigation in question;

(ii) A description of the contemplated participation;

(iii) The name of the Commission office(s) or division(s) in which the former employee was employed and the position(s) the employee occupied;

(iv) A statement whether, while employed by the Commission, the former employee participated in any proceeding or investigation concerning the same company, individual, or industry currently involved in the matter in question;

(v) A certification that while employed by the Commission, the employee never participated personally and substantially in the same matter or proceeding;

(vi) If the employee's Commission employment terminated within the past two years, a certification that the matter was not pending under the employee's official responsibility during any part of the one year before the employee's termination;

(vii) If the employee's Commission employment terminated within the past three years, either a declaration that nonpublic documents or information pertaining to the proceeding or investigation in question, and of the kind delineated in § 4.10(a), never came to the employee's attention, or a description of why the employee believes that such nonpublic documents or information could not confer a present advantage to the employee or to the employee's client in the proceeding or investigation in question; and

(viii) A certification that the employee has read, and understands, both the criminal conflict of interest law on post-employment activities (18 U.S.C. 207) and this Rule in their entirety.

(5) *Definitions.* The following definitions apply for purposes of this section:

(i) *Behind-the-scenes* participation includes any form of professional consultation, assistance, or advice to anyone about the proceeding or investigation in question, whether formal or informal, oral or written, direct or indirect.

(ii) *Communicate to or appear before* means making any oral or written communication to, or any formal or informal appearance before, the Commission or any of its members or employees on behalf of any person (except the United States) with the intent to influence.

(iii) *Directly resulted from* means that the proceeding or investigation in question emanated from an earlier phase of the same proceeding or investigation or from a directly linked, antecedent investigation. The existence of some attenuated connection between a proceeding or investigation that was pending during the requester's tenure and the proceeding or investigation in question does not constitute a direct result.

(iv) *Pending under the employee's official responsibility* means that the former employee had the direct administrative or operating authority to approve, disapprove, or otherwise direct official actions in the proceeding or investigation, irrespective of whether the employee's authority was intermediate or final, and whether it was exercisable alone or only in conjunction with others.

(v) *Personal and substantial participation.* A former employee

participated in the proceeding or investigation personally if the employee either participated directly or directed a subordinate in doing so. The employee participated substantially if the involvement was significant to the matter or reasonably appeared to be significant. A series of peripheral involvements may be considered insubstantial, while a single act of approving or participating in a critical step may be considered substantial.

(vi) *Present advantage.* Whether exposure to nonpublic information about the proceeding or investigation could confer a present advantage to a former employee will be analyzed and determined on a case-by-case basis. Relevant factors include, *inter alia*, the nature and age of the information, its relation and current importance to the proceeding or investigation in question, and the amount of time that has passed since the employee left the Commission.

(vii) *Proceeding or investigation* shall be interpreted broadly and includes an adjudicative or other proceeding; the consideration of an application; a request for a ruling or other determination; a contract; a claim; a controversy; an investigation; or an interpretive ruling. Proceeding or investigation does not include a rulemaking proceeding.

(6) *Advice as to Whether Clearance Request is Required.* A former employee may ask the General Counsel, either orally or in writing, whether the employee is required to file a request for clearance to participate in a Commission matter pursuant to paragraph (b)(2) of this section. The General Counsel, or the General Counsel's designee, will make any such determination within three business days.

(7) *Deadline for Determining Clearance Requests.* By the close of the tenth business day after the date on which the clearance request is filed, the General Counsel, or the General Counsel's designee, will notify the requester either that:

- (i) the request for clearance has been granted;
- (ii) the General Counsel or the General Counsel's designee has decided to recommend that the Commission prohibit the requester's participation; or
- (iii) the General Counsel or the General Counsel's designee is, for good cause, extending the period for reaching a determination on the request by up to an additional ten business days.

(8) *Participation of Partners or Associates of Former Employees.*

(i) If a former employee is prohibited from participating in a proceeding or investigation by virtue of having worked

on the matter personally and substantially while a Commission employee, no partner or legal or business associate of that individual may participate except after filing with the Secretary of the Commission an affidavit attesting that:

(A) The former employee will not participate in the proceeding or investigation in any way, directly or indirectly (and describing how the former employee will be screened from participating);

(B) The former employee will not share in any fees resulting from the participation;

(C) Everyone who intends to participate is aware of the requirement that the former employee be screened;

(D) The client(s) have been informed; and

(E) The matter was not brought to the participant(s) through the active solicitation of the former employee.

(ii) If the Commission finds that the screening measures being taken are unsatisfactory or that the matter was brought to the participant(s) through the active solicitation of the former employee, the Commission will notify the participant(s) to cease the representation immediately.

(9) *Effect on Other Standards.* The restrictions and procedures in this section are intended to apply in lieu of restrictions and procedures that may be adopted by any state or jurisdiction, insofar as such restrictions and procedures apply to appearances or participation in Commission proceedings or investigations. Nothing in this section supersedes other standards of conduct applicable under paragraph (e) of this section. Requests for advice about this section, or about any matter related to other applicable rules and standards of ethical conduct, shall be directed to the Office of the General Counsel.

(c) *Public Disclosure.* Any request for clearance filed by a former member or employee pursuant to this section, as well as any written response, are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter. Information identifying the subject of a nonpublic Commission investigation will be redacted from any request for clearance or other document before it is placed on the public record.

By direction of the Commission.

Donald S. Clark,
Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8765]

RIN 1545-AL24; 1545-AS68

Change From Dollar Approximate Separate Transactions Method of Accounting (DASTM) to the Profit and Loss Method of Accounting/Change From the Profit and Loss Method to DASTM; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8765) which were published in the **Federal Register** on Thursday, March 5, 1998 (63 FR 10772), relating to adjustments required when a qualified business unit (QBU) that used the profit and loss method of accounting (P&L) in a post-1986 year begins to use the dollar approximate separate transaction method of accounting (DASTM) and adjustments required when a QBU that used DASTM begins using P&L.

DATES: This correction is effective April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Wiener of the Office of Chief Counsel (International), (202) 622-3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 985 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8765) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8765), which was the subject of FR Doc. 98-5470, is corrected as follows:

§ 1.985-1 [Corrected]

1. On page 10774, column 2, amendatory instruction 1. under Par. 2. is corrected to read "1. Paragraph (b)(2)(ii)(C) is amended by designating the text following the heading as paragraph (b)(2)(ii)(C)(1) and revising it and by adding a new paragraph (b)(2)(ii)(C)(2).".

2. On page 10774, column 2, in § 1.985-1, correct paragraph (b)(2)(ii)(C)