FEDERAL REGISTER: 51 FR 37118 (October 17, 1986)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Part 705
Restriction on Financial Interests of State Employees

ACTION: Final rule.

SUMMARY: OSMRE is adopting a final rule regarding certain portions of its regulations which (1) define the responsibilities of employees of State regulatory authorities performing duties or functions under the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (the Act), concerning financial interests; (2) define "employee" for purposes of 30 CFR Part 705; and (3) set forth requirements applicable to such employees, for filing statements of financial interest. These rules are the final regulatory step in a proceeding which commenced with the filing of a rulemaking petition in 1979.

The amendments require that members of advisory boards and commissions established in accordance with State law or regulation to represent multiple interests, who perform a function or duty under the Act, shall file a statement of employment and financial interest and shall recuse themselves from proceedings which may affect their direct or indirect financial interests. Such members, however, will continue not to be subject to the structures of section 517(g) of the Act regarding proceedings other than those in which they may be directly affected.

EFFECTIVE DATE: This rule is effective November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-5241.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of rules adopted.
III. Procedural matters.

I. BACKGROUND

On August 23, 1977, the Department issued proposed regulations to implement the provision of the Act prescribing financial interest restrictions for State regulatory authority employees under section 517(g) of the Act. Section 517(g) of the Act specifies criminal sanctions for State employees performing any function or duty under the Act knowingly to have a direct or indirect financial interest in any coal mining operation. The Act further directs the Secretary to publish regulations which establish methods for monitoring and enforcing the provision. After publication of proposed rules and a comment period, the final financial interest restriction regulations in Part 705 were published on October 20, 1977 *(42 FR 56060).*

On December 15, 1978, five environmental organizations -- the National Wildlife Federation, Save Our Mountains, Inc., Colorado Open Space Council, Save Our Cumberland Mountains, and Council of Southern Mountains -- jointly petitioned the Office of Surface Mining to amend two definitions contained in 30 CFR 705.5 concerning financial interest restrictions. That petition was published for public comment. *(44 FR 11795,* March 2, 1979).

PETITIONERS PROPOSED TWO CHANGES TO THE DEFINITIONS:

1. Amend the definition of "employee" to eliminate the exception created therein for "members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests * * *"

2. Change the definition of "indirect financial interest."

The proposed change to the definition of "indirect financial interest" was rejected by OSMRE on July 12, 1979, in a letter to Mr. Terrence Thatcher of the National Wildlife Federation.

On July 12, 1979, OSMRE granted in part the petition to amend the definition of "employee" contained in 30 CFR 705.5. A notice of proposed rulemaking was published on September 6, 1979. *(44 FR 52096-52101).* The September 6, 1979 notice contains a summary of the written comments received on the petition during the comment period which closed on April 2, 1979.

The definition of "employee" proposed by OSMRE on September 6, 1979, would have allowed persons with industry or other financially restricted interests to be board members, but not to exceed a majority of the voting members. Under that proposal, all board members would file conflict-of-interest statements to ensure that the majority of the board had no conflict of interest, either direct or indirect, and no board member could act on a matter which related to his or her financial interest.

The public comment period for the September 6, 1979 notice of proposed rulemaking closed on November 5, 1979. Since that time, the Secretary of the Interior has approved 25 programs submitted by States to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands under section 503 of the Act. State programs have been operational for periods ranging from two to five years.

On May 30, 1984, OSMRE reopened and extended the public comment period to seek additional public comment on the proposed definition of "employee," based on experience with the approved programs which utilize the current definition of "employee." *(49 FR 22498).* In the notice reopening the public comment period, OSMRE specifically requested information about States which currently have multiple-interest commissions or boards. OSMRE solicited specific information as to (1) whether the adoption of the proposal or any suggested modification would have the effect of dismembering a substantial number of existing boards; (2) what the effects would be; and (3) whether such results would be justified. In addition, OSMRE requested comments on the proposed revisions and alternative definitions for "employee." OSMRE also sought public comments on two additional alternatives. The first alternative would have deleted the board exemption in its entirety. The final alternative would be to take no action and leave the definition as it presently reads.

In the notice extending the public comment period, OSMRE solicited comments on a modification which would not only prohibit action by board members on matters related to their own financial interests, but would also prohibit participation by board members in proceedings when their financial interests could reasonably cause interested persons to question the impartiality of the proceedings. Comments were requested on the issue of whether impartiality would be assured or best served when boards do not contain a majority of members with similar financial or other interests.

II. DISCUSSION OF RULES ADOPTED

SECTION 705.4(d) - RECUSAL OF MULTI-INTEREST BOARD MEMBERS.

Final Section 705.4(d) has been added which requires multi-interest board members to recuse themselves from any proceeding which may affect their direct or indirect financial interests. This requirement will minimize disruption of existing state multi-interest board functions, but will ensure that board members do not act on those matters in which they might have a conflict of interest. Because board members will be required to recuse themselves from proceedings which may affect their interests, interested persons will now have a basis for requesting recusal by a board member, and ensuring that consideration of matters before the board is not biased by members' financial interests. Several States commented favorably on this approach, likening it to the conflict-of-interest prohibitions found in a number of existing state conflict-of-interest laws concerning state officials.

As proposed, this rule would have included the additional requirement that multi-interest board members with coal-related financial interests could continue to participate in board activities so long as the number of members with coal-related financial interests did not exceed 50 percent of total membership.

This additional feature has not been adopted. A commenter noted that the proposed 50 percent limit might require dismantling some multi-interest boards in which more than 50 percent of members have coal-related interests. Such restructuring could require legislative change, as, for example, in those cases where the board is structured to include

elected officials or representatives of other state agencies. OSMRE agrees and has concluded that, rather than adopt a percentage limitation that could require dismantling or restructuring of boards or commissions, a recusal requirement directed at the individual members will foster impartiality while not having a significant destabilizing effect.

Another commenter asserted that permitting up to 50% of board members to have coal-related interests would allow a situation where members with industry interests could veto any actions not acceptable to industry. Under the amendment that is being adopted, interested board members must recuse themselves from participation in proceedings that may affect their interests. OSMRE finds that the 50% restriction does not appear to be necessary, so long as members recuse themselves as required.

Several commenters expressed concern as to what connection between the multi-interest board member's interests and the member's actions would invoke the requirement to recuse. They indicated that precise, enforceable language was needed, spelling out when a member with a coal-related interest should recuse himself or herself. For example, what if a decision involves only one industry party, but the precedent to be established will affect other operators (including the operator in which the member has an interest)? Several commenters noted that multi-interest boards which adopt rules and general policies have the most widespread effect and the greatest effect on coal companies, and, thus, this is the type of activity in which avoidance of conflicts of interest is most important.

Guidelines have not been adopted at this time because OSMRE cannot anticipate every type of factual situation in which a conflict of interest might arise. The standard set forth in Section 705.4(d) is sufficiently descriptive to enable all affected persons to evaluate whether recusal is required: If the proceeding may affect the direct or indirect coal-related financial interests of a multi-interest board member, then the member must recuse himself or herself. OSMRE anticipates that over time case law will evolve in implementing the standard to provide clear examples of what is required. In the example mentioned by the commenter involving a proceeding where one of the parties is a coal company, a board or commission member would not have to be recused unless that member has a direct or indirect financial interest in the company which is party to the proceeding.

A commenter stated that OSMRE's proposal would allow a board member whose business relies on the health of the mining industry generally, to sit on board actions. OSMRE agrees, and notes that such a result is not prohibited by the Act, so long as the member's interests do not constitute a direct or indirect financial interest in a surface coal mining operation.

Another commenter questioned whether a multi-interest board member would be required to recuse himself or herself from acting on a permit application by a competitor to the coal-related interest in which the member has an investment. OSMRE believes that in most instances actions on permit applications would be performed by employees of the state regulatory authority rather than by multi-interest board members. In the event that a multi-interest board does act upon a permit application and direct, head-to-head competition exists between a permit applicant and a company in which the board member has an interest, recusal would be necessary if the decision on the permit application could in some way affect the member's interest.

Several commenters stated that the recusal requirement is inadequate because the influence of the interested board member can still be felt even if the member refrains from actual voting. That is, if an interested board member participated in discussion on the issue, his or her views may affect the vote, even if he or she does not vote, and objectivity will be jeopardized. With regard to these comments, OSMRE notes that the regulation requires the board member to recuse himself not only from the vote, but also from the entire proceedings of the board, including any hearing, discussion, or decision by the board, which may affect the member's coal-related financial interests.

In addition, a recused board member may not act as counsel for any party to the proceeding. However, if any member of a board or other person subject to 30 CFR Part 705 is otherwise authorized to participate in a proceeding as a party, a witness, an intervenor, or in some other recognized capacity, these regulations do not deprive the board member or employee of that right. To this extent, like any other legitimate participant in the proceedings, the board member or employee may attempt to influence the outcome by his participation.

SECTION 705.5 - DEFINITION OF "EMPLOYEE."

The final definition of "employee" remains unchanged and continues to exclude members of multi-interest boards from the requirement not to have certain restricted financial interests. As noted in the preamble to the original rulemaking on Part 705 *(42 FR 56060, 56061,* October 20, 1977), it is essential to avoid dismembering boards or commissions composed in such a manner as to represent divergent interests. As one commenter stated, continuation of the exclusion will enable such boards to continue to attract well qualified board members with expertise concerning coal mining and related concerns.

The final rule appropriately addresses the concerns of petitioners in the 1978 petition for rulemaking, namely that multi-interest board members should file financial interest statements, and that decisions under the Act should not be made by members whose financial interests would be affected by the decisions. The new requirements for filing of financial statements and recusal from proceedings which may affect financial interests reflect commenter concerns that board or commission decisions should be free from any influence that may stem from direct or indirect financial interests of members, and that decisions of board members should have the appearance of fairness as well as being fair.

Such concerns are also resolved because other safeguards exist. For instance, board decisions are subject to administrative or judicial review; also OSMRE performs oversight to ensure that state substantive and procedural requirements are met and that board actions are consistent with SMCRA and OSMRE's regulations.

Several commenters offered their views as to whether multi-interest board members should be considered employees, under the Act. Some commenters asserted that any coal mining industry representation on a board is prohibited by the Act. Other commenters asserted that "employee" cannot include members of boards or commissions which oversee the state regulatory authority. Another commenter asserted that Congress did not intend that persons overseeing state programs, approving regulations, or ruling in adjudicatory proceedings should be allowed to hold coal-related interests and not be treated as employees. Another commenter stated that Congress wanted the rules implementing section 517(g) to cover all persons performing governmental functions or duties under the Act. A comment was received which alleged that OSMRE's approach treats state personnel different than Federal, and that no logical reason existed for Congress to expect more from Federal employees than from state employees, particularly in light of Congress' repeated statement that the Act was necessary because of States' failure to develop and enforce effective surface mining controls.

OSMRE has evaluated the legislative history of the Act, the text of section 517(g) of the Act, and the statutory definitions of the terms used in that provision and finds that Part 705 as amended by this rulemaking does not exempt any state personnel required to be covered under the Act.

The legislative history of section 517(g) of the Act is brief and inconclusive as to what state personnel are to be covered. A relevant discussion appears in the Congressional Record in 1975. The discussion compared a version of section 517(g) in an earlier bill, applicable even at that time to "employees of the state regulatory authority," to the predecessor of Section 201(f), the parallel provision applicable to employees of OSMRE or to any other Federal employee performing a function or duty under the Act. n1 In offering the amendment, Representative Heckler stated that --

n 1 The provision was originally offered as an amendment which would permit state regulatory authority employees a de minimis exclusion from conflict of interest prohibitions, for ownership of up to 100 shares of coal-related stock. This exclusion was the same as had been proposed for Federal employees. Both state and Federal de minimis exclusions were deleted from SMCRA.

This amendment would apply the same conflict of interest regulations to the employees of State regulatory agencies and authorities . . . as applied to Federal regulatory officials. . . . [M]y amendment will ensure that appropriate and conforming conflict of interest regulations apply equitably.

121 Cong. Rec. 7046 (Mar. 18, 1975). Although in a discussion of the predecessor to section 201(f), Representative Dingell stated that the term "employee" should be construed broadly at the Federal level (121 Cong. Rec. 13372, May 7, 1975), little consideration was given precisely to whom the prohibition applied at the state level.

Section 517(g) of the Act uses different language to specify affected State employees than the language used in section 201(f) which defines affected Federal employees. Section 517(g) is directed at employees of the State regulatory authority. Section 201(f) applies to employees of OSMRE and any other Federal employee. The narrower language of section 517(g) allows a more restrictive reading of that section than section 201(f), if such an interpretation is rationally implemented.

Congress declared in section 101(f) of the Act that primary governmental responsibility to develop and enforce rules should vest with the States and in section 102(g) of the Act that the Act is intended to assist the States in developing and implementing a program. Thus support exists in the Act for allowing states to specify the governmental units by which they implement their programs. This proposition also is supported by the following passage in the Conference report on an earlier bill: n2

n 2 This earlier bill, a precursor to SMCRA, was passed by Congress but vetoed by the President for unrelated reasons.

". . . many states already have a particular governmental unit regulating surface coal mining industry. The conferees believe that some aspects of the regulatory program might be carried out on the State level by more than one agency, especially where States with surface coal mining agencies have another agency which regulates surface impacts of underground mines.)"

H.R. Rep. No. 93-1522, 93d. Cong., 2d. Sess. 83 (1974).

Since 1977 OSMRE has recognized that a number of states already had resource regulatory boards or commission which regulated matters such as surface coal mining, oil drilling or water quality, and a number of states would designate pre-existing multi-function boards to perform surface coal mining regulatory functions under SMCRA. Therefore, in the initial rulemaking for Part 705, OSMRE exempted members of multi-interest boards from the definition of employee. The original rulemaking for Part 705 was adopted immediately after enactment of the Act, and represented the Secretary's contemporaneous interpretation of Congressional intent as to implementation of financial interest restrictions on state personnel under the Act. To require board members now to divest themselves of all surface coal mining interests or else be subject to fine or imprisonment is a regulatory change without compelling need and which is unreasonable where the statute and legislative history do not clearly establish a requirement that members of such boards be subject to such sanctions.

To ensure that the objectives of SMCRA section 517(g) are met, disclosure and recusal requirements will ensure that such members do not act in situations in which there would be a conflict of interest. This interpretation and application of section 517(g) fairly resolves any uncertainties about the intended scope of the statutory provision; the balance struck ensures that conflicts of interest will not taint the actions of State board members, but does not require dismantling of the boards.

Since 1977, states have had considerable experience in implementation of their respective programs. Although certain commenters stated that perceived conflicts of interest or potential for conflicts of interest exist, specific examples were few. OSMRE has concluded that the use of boards representing multiple interests generally has been successful and that problems that have arisen can be properly addressed by the disclosure and recusal provisions adopted herein.

A commenter stated that the proposed changes to Part 705 would cripple a state's ability to regulate coal mining in the state's best interests because OSMRE is attempting to determine who can be appointed by a state to serve on a board. Under the final rule, OSMRE does not intend to determine who may be appointed by a State to an advisory commission or board. The regulation as adopted will optimize state discretion within the statutory framework, as discussed above.

Several commenters emphasized that the State boards and commissions need members with experience and expertise in order to make sound decisions, and that the multi-interest board exemption is essential to make this possible. Other commenters disagreed and took the position that the state regulatory authority will have sufficient staff expertise to advise the board and explain technical and legal matters, and the coal industry is fully capable of adequately representing its position. These commenters also asserted that political or value judgments are best rendered by persons without a vested interest in the industry. As indicated above, OSMRE concludes that the need for stability and expertise is best met by retaining the exclusion for multi-interest boards but utilizing the safeguards set forth in these amendments to avoid

conflicts of interest in board proceedings. Many multi-interest boards or commissions were created at the State level prior to the enactment of the Act and represent delicate political judgments and compromises. Where consistent with law, OSMRE should minimize its interference with local decisions and allow such boards and commissions to remain.

One commenter noted that the original rules have been applied to exempt non-advisory bodies, and said that while the Act might not apply to truly advisory bodies, all other boards are covered by SMCRA. OSMRE does not agree. As discussed above, the Act is less than precise concerning its applicability to multi-interest board members, regardless of whether their roles are advisory. The definition of employee consistently has been construed to exclude members of multi-interest boards and commissions even if those members perform decision making functions in accordance with state law. This interpretation will continue, because an exemption is not necessary for solely advisory bodies. Such groups are not covered by Section 517(g), which generally prohibits decision makers from having any interest in coal mining operations. Under the definition of employee, members of a board established in accordance with State law or regulations to represent various interests such as the coal mining industry, forestry, conservation, agriculture, environmentalists, or landowners, would be considered multi-interest board members.

Another commenter asked for an explanation of OSMRE's legal rationale for the proposed rulemaking. The commenter asked what the rationale and statutory basis was for proposed changes. As mentioned above, the proposal included three different options which were proposed in response to a petition for rulemaking. This preamble sets forth OSMRE's rationale for the option which OSMRE has selected, including: experience with State implementation of the prior regulation, statutory analysis, and policy considerations. The preceding discussion raises certain ambiguities about Congress' precise intent concerning the ambit of section 517(g), and sets forth the policy considerations which form the basis for OSMRE's regulations. Moreover, the use of a multi-interest board in a state program has already withstood judicial challenge. See Save Our Cumberland Mountains, et al. v. Watt, No. 80-3723 (M.D. Tenn., 1983), and Tug Valley Recovery Center v. Andrus, No. 80-2529 (S.D. W.Va., 1982), aff'd, *703 F.2d 796 (4th Cir. 1983).* Although neither of these cases ruled on the validity of OSMRE's definition of employee at 30 CFR 705.5, both held that the use of multi-interest boards was constitutional and created no due process violations. In addition to Section 517(g), the imposition of recusal and filing requirements for multi-interest board members is also supported by Sections 201(c)(2), 412(a), 501(b) and 503 of SMCRA.

SECTION 705.11(a) - REQUIREMENT THAT MEMBERS OF MULTI-INTEREST BOARDS FILE STATEMENTS OF INTEREST.

Section 705.11(a) is amended to require that members of advisory boards and commissions established in accordance with State law or regulations to represent multiple interests, who perform a function or duty under the Act, must file the same statement of employment and financial interests required of state regulatory authority employees. Because a potential for actual conflicts of interest exists involving multi-interest board members, OSMRE is adopting the filing requirement as one of the amendments to address this concern.

A commenter alleged that the proposed rule would impose an increased reporting burden on multi-interest board members. OSMRE acknowledges that these board and commission members will now have to file the same statements as do all other state personnel who are subject to Part 705. However, these disclosure requirements are reasonable and necessary to avoid conflicts of interest and are an appropriate means to implement the purposes of the Act.

A commenter alleged that the disclosure requirement may discourage citizen participation on multi-interest boards because of the filing burden and the invasion of privacy involved in the disclosure requirements. OSMRE does not agree. The administrative procedures involved in filing the statements should be minimal, based on the experience with the filing of such forms by other state personnel. Although perceived privacy interests could be affected, multi-interest board members may welcome the opportunity to verify the absence of any conflict of interest in their actions as public officials. And in any case, the public's interest in avoiding conflicts of interest outweighs any potential reluctance of board members to serve or to provide the information necessary to verify compliance. The financial statements will enable the head of the regulatory authority or OSMRE, either independently or upon request, to determine whether board members are properly acting to recuse themselves in compliance with Section 705.4(d). Moreover, the requirement to file financial statements is essential in order to create a record, one purpose of which will be to serve as a basis for determining whether further regulatory changes are desirable.

SECTION 705.13 - TIME FOR FILING.

To implement the filing requirement, Section 705.13 will be extended to cover members of advisory commissions or boards designated to represent multiple interests. Inasmuch as these regulations are effective on November 17, 1986, multi-interest board members who are newly subject to the requirement to file a statement of employment and financial interests initially will be required to file on (Insert: date 150 days from the date of publication.) Additionally, unless the multi-interest board members are subject to Section 705.13 (b) or (c), they will need to file their statements annually on February 1, as set forth in 30 CFR 705.13(a)(2).

SECTION 705.15 - WHERE TO FILE.

To implement the filing requirement, a conforming amendment is included in 30 CFR 705.15. This amendment specifies that statements that are required to be filed by multi-interest board members under Section 705.11 should be filed with the head of the state regulatory authority or other official so designated under state law or regulation.

III. PROCEDURAL MATTERS

Paperwork Reduction Act

The information collection requirements in this final rule were approved by the Office of Management and Budget under *44 U.S.C. 3507* and are assigned Approval Number 1029-0067. The information is needed to meet the requirements of 517(g) of Public Law 95-87, and will be used to assess that no employee of the State regulatory authority and no member of an advisory board or commission representing multiple interests performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operations. A technical change is being made to 30 CFR 705.10 to reflect that the relevant section of the Act is section 517(g), and not section 507(g) as erroneously appears in Section 705.10.

Executive Order 12291

The DOI has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This rule is directed at persons in State government rather than at members of the coal industry. Thus the economic effects of this rule are not major.

Regulatory Flexibility Act

The DOI certifies that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Public Law 96-354. This document will not impose any new requirements on surface coal mining operators.

Author

The author of this regulation is Peggy Moran, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue N.W., Washington, DC 20240; Telephone: 202 343-4665 (Commercial or FTS).

National Environmental Policy Act

This final rule is categorically excluded from the NEPA (National Environmental Policy Act of 1969, *42 U.S.C. 4321* et seq.) process under 40 CFR 1507.3(b) and section 8.4B(16) of Appendix 8, DOI Department Manual (516 DM 6).

LIST OF SUBJECTS IN 30 CFR PART 705

Conflict of interest, Coal mining, Surface mining, Underground mining

Accordingly, 30 CFR Part 705 is amended as set forth below:

Dated: August 4, 1986.
James E. Carson, Acting Assistant Secretary for Land and Minerals Management.

PART 705 -- PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 705 is revised to read as follows:

Authority: Pub. L. 95-87 *(30 U.S.C. 1201* et seq.).

2. Section 705.4 is amended by adding paragraph (d) to read as follows:

SECTION 705.4 - RESPONSIBILITY.

* * * * *

(d) Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, shall recuse themselves from proceedings which may affect their direct or indirect financial interests.

3. Section 705.10 is revised to read as follows:

SECTION 705.10 - INFORMATION COLLECTION.

The information collection requirement contained in 30 CFR 705.11 has been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0067. The information is being collected on Form OSM 23 to meet the requirement of section 517(g) of Pub. L. 95-87, which provides that no employee of the State regulatory authority shall have direct or indirect financial interest in any underground or surface coal mining operation. This information will be used by officials of the State regulatory authority agency to determine whether each State employee complies with the financial interest provisions of Pub. L. 95-87. The obligation to respond is mandatory.

4. Section 705.11 is amended by revising paragraph (a) to read as follows:

SECTION 705.11 - WHO SHALL FILE.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, must file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who is no longer employed by the State Regulatory Authority at the time a filing is due, is not required to file a statement.

* * * * *

5. Section 705.13 is revised to read as follows:

SECTION 705.13 - WHEN TO FILE.

(a) Employees and members of advisory boards and commissions representing multiple interests performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees and new members of advisory boards and commissions representing multiple interest hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees and new members of advisory boards and commissions representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 2, 1986 would file a statement on that date. Because December 2 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1988.

6. Section 705.15 is revised to read as follows:

SECTION 705.15 - WHERE TO FILE.

The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees and members of advisory boards and commissions representing multiple interests, as provided in Section 705.11, shall file their statements with the head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

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