

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

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Amendments to Plan of Organization and Operation Effective During Emergency Conditions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is adopting amendments to certain of its rules that operate in the event of emergency conditions to revise the provisions on delivering submittals, the line of succession to the Chairman in the event of the Chairman’s incapacity or unavailability, and make conforming changes. These changes are intended to update these provisions.

EFFECTIVE DATE: June 9, 2006.

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SUPPLEMENTARY INFORMATION:

I. Background

Subpart G of Part 200 of Title 17 of the Code of Federal Regulations “describes the plan of organization and operation which will be observed by the Securities and Exchange Commission in discharging its duties and responsibilities in the event of

[specified emergency conditions].”¹ It includes provisions for designating the location of the offices of the Commission; delivering requests, filings, reports, or other submittals to the Commission; and designating the successor to the Chairman and the division and office heads in the event of their incapacity or unavailability during emergency conditions.

II. Summary of Amendments

The amendments provide guidance on certain terms used in subpart G; revise the provisions on delivering requests, filings, reports, or other submittals during emergency conditions; revise the line of succession to the Chairman in the event of the Chairman’s incapacity or unavailability during emergency conditions; and make conforming changes.

A. Guidance on General Terms

The amendments provide guidance on the terms “unavailable or incapacitated” and “emergency conditions,” as used in subpart G.

1. Unavailable or Incapacitated. The amendments clarify that a person shall be considered unavailable or incapacitated in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location. This language is intended to be a general statement of the concepts of unavailability and incapacity rather than an exhaustive definition of the terms. The statement is a flexible one that is intended to cover unforeseen, and perhaps novel, circumstances.

¹ 17 CFR 200.200.

2. Emergency Conditions. The amendments also provide that emergency conditions shall be deemed to commence upon the occurrence, or the imminent threat of the occurrence, of a natural or man-made disturbance, including, but not limited to, an armed attack against the United States, its territories or possessions, terrorist attack, civil disturbance, fire, pandemic, hurricane, or flood, that results in, or threatens imminently to result in, a substantial disruption of the organization or operations of the Commission. Such conditions shall be deemed to continue until the Commission shall, by notice or order, resume its normal organization and operations, whether at its headquarters in Washington, DC or elsewhere.

The prior concept of emergency conditions contemplated that emergency conditions would “commence at the time of an armed attack upon the United States, its territories and possessions, at the time of official notification of the likelihood or imminence of such attack, or at a time specified by authority of the President, whichever may first occur, and shall continue until official notification of cessation of such conditions.”² Recent global developments, however, have demonstrated the need for a broader concept of emergency conditions, one that encompasses all hazards that may substantially disrupt the normal organization or operations of the Commission. This broader concept is the basis for the revised definition of emergency conditions.

While the “all hazards” approach embodied in the new definition of emergency conditions is broad, not all disturbances that might affect the operations of the Commission will trigger the commencement of emergency conditions. For example, a number of events could require closure or evacuation of the Commission’s headquarters

² 17 CFR 220.201.

in Washington, DC without substantially disrupting the Commission's operations. In most circumstances, a snow emergency, water leak, disruption of water service, temporary power outage, localized fire, fire alarm, or other condition that might require the temporary closure or evacuation of all or a part of the headquarters would not trigger the commencement of emergency conditions.

The "all hazards" approach in the new definition of emergency conditions also underlies the Commission's current Headquarters Continuity of Operations ("HQ COOP") Plan, which establishes operational procedures to sustain the essential functions of the Commission during any emergency or situation that may disrupt normal operations. The Commission expects that, in most circumstances, the occurrence, or the imminent threat of the occurrence, of a disturbance that leads to full or partial activation of the HQ COOP Plan also will trigger the commencement of emergency conditions.

Under the HQ COOP Plan, the Chairman is responsible for directing full or partial activation of the HQ COOP Plan. The Chairman may be unavailable or incapacitated, however, upon the occurrence, or the imminent threat of the occurrence, of a disturbance that likely will require activation of the HQ COOP Plan. In that situation, it would be useful to invoke the Chairman succession provisions in 17 CFR 200.203(c)(1), so that the Chairman's successor could determine whether or not to activate the HQ COOP Plan. Because the succession provisions become operative only during emergency conditions, however, a definition of emergency conditions that was limited to situations in which the Chairman already had activated the HQ COOP Plan would be problematic. Thus, the definition of emergency conditions contemplates that such conditions commence upon the occurrence, or the imminent threat of the occurrence, of certain disturbances, rather

than upon an official response or reaction to the disturbance.³

B. Operation of Subpart G

Prior 17 CFR 200.201 included language that indicated when the provisions of subpart G would be operative. Specifically, the language stated that subpart G would become operative “as at the commencement of emergency conditions and continue until cessation of those conditions, or until the Commission shall by notice or order resume its normal operations.” This language is no longer necessary, because all of the provisions in subpart G are contingent upon the existence of emergency conditions,⁴ and the revised definition of “emergency conditions” specifies that emergency conditions will continue until the Commission shall, by notice or order, resume its normal organization and operations.

C. Delivery of Documents

The amendments also revise the provision on delivering requests, filings, reports, or other submittals during emergency conditions. The revised provision specifies that, during emergency conditions, all formal or informal requests, filings, reports, or other submittals shall be submitted to the Commission as permitted in non-emergency conditions, unless the Chairman or his or her successor specifies another means or location for submission of such requests, filings, reports, or other submittals, by a notice that is disseminated through a method (or combination of methods) that is reasonably

³ In most circumstances, a Continuity of Operations message directing the Securities and Exchange Commission to assume a COGCON 1 readiness posture will be issued as a result of an event that triggers the commencement of emergency conditions and also leads to activation of the HQ COOP Plan.

⁴ Prior 17 CFR 200.204 was not explicitly contingent on the existence of emergency conditions. However, as discussed below, the amendments make a conforming change to this section to clarify that it operates only under such conditions.

designed to provide broad distribution of the information to the public.

The prior provision contemplated that all submittals would be “delivered to the Commission at designated offices” or addressed to an address no longer used by the Commission. The reference to “designated offices” was a reference to the requirement in 17 CFR 200.202(a) that the Chairman, or his or her successor, designate, during emergency conditions, the location of headquarters and, if different from the normal location, each Regional and District office.⁵ The new provision provides the Chairman with greater flexibility to designate a location for submission of formal or informal requests, filings, reports, or other submittals during emergency conditions. For example, the Chairman may find it appropriate, during emergency conditions, to designate a location geographically remote from headquarters, whether at its normal location or a new location, for the submission of filings that ordinarily would be submitted to the headquarters. The new provision also enables the Chairman to specify a different means for the submission of requests, filings, reports, or other submittals during emergency conditions. In this regard, the new provision accommodates the fact that many filings now are required or permitted to be submitted to the Commission in electronic format.

During emergency conditions, persons may experience difficulties submitting requests, filings, reports, or other submittals to the Commission, whether by normal means or by means otherwise specified by the Chairman. These difficulties could arise from disruptions at the location of the person seeking to make the submittal, disruptions in the means of transmittal (for example, breakdowns in mail services, electronic

⁵ In the absence of communication with the Chairman, 17 CFR 200.202(a) specifies that, during emergency conditions, the Regional Director or District Administrator for an office, or his acting successor, will designate the location of the office, if different from the normal location.

transmission facilities, or courier services), or disruptions at the location of the Commission office to which the submittal is attempted to be made. In such cases, the person could seek,⁶ or the Commission on its own initiative could provide, appropriate relief. Of course, the ability to seek or provide relief may be hindered by disruptions in communications between persons seeking to make submittals and the Commission.

Because the nature of any relief would be dictated by the specific circumstances of any disruptions, and the Commission has broad authority to provide relief in appropriate circumstances, the amended provision does not address directly the consequences of a disruption in the ability to submit requests, filings, reports, or other submittals during emergency conditions. The provision, however, does provide some flexibility for responding to disruptions in the ability to transmit requests, filings, reports, or other submittals by allowing the Chairman to specify the means and/or location for submission during emergency conditions.

D. Succession Provisions

The amendments revise the line of succession to the Chairman in the event of the Chairman's incapacity or unavailability during emergency conditions. Specifically, the amendments revise the current order of succession within the categories of Division Directors, Regional Directors, and District Administrators so that that the order of succession in each category will be as designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority. The current order of succession within

⁶ For example, if a submittal is required to be transmitted to the Commission electronically, but electronic transmission is disrupted at the time the submittal is due, the filer could seek appropriate relief, including pursuant to 17 CFR 232.13(b), 232.201, or 232.202.

these categories is based on seniority. The change would give the Chairman the flexibility to accommodate the fact that, at any given time, there may be particular areas of expertise that might militate in favor of an order not based strictly on seniority. In addition, the amendments eliminate the Executive Director and the Executive Assistant to the Chairman from the line of succession.

E. Other Provisions

The amendments also revise 17 CFR 200.203(e), which currently provides for a line of succession to a division or office head in the event of his or her absence or incapacity during emergency conditions. The amendments make a conforming change and specify that a successor to a division or office head is delegated all of the authority that the Commission has delegated to the division or office head. Currently, a successor to a division or office head may discharge all of the duties of the division or office head, but is not explicitly delegated all of the authority that the Commission has delegated to the division or office head. In addition, the amendments make a conforming change to 17 CFR 200.204, which sets forth the line of succession for certain administrative staff, to clarify that the provision applies only during emergency conditions.

III. Related Matters

A. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunity for public participation are not applicable.⁷ For the same reason, and

⁷ 5 U.S.C. 553(b).

because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.⁸ In addition, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.⁹ Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.¹⁰

B. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission believes that the amendments to its rules that it is adopting today will produce the benefit of providing greater clarity to the plan of organization and operation that will be observed by the Commission in discharging its duties and responsibilities during certain emergency conditions. The Commission also believes that these rules will not impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

C. Consideration of Burden on Competition

Section 23(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition.

⁸ 5 U.S.C. 804.

⁹ 5 U.S.C. 601 - 612.

¹⁰ 44 U.S.C. 3501 - 3520.

STATUTORY AUTHORITY

The amendments to the Commission's rules are adopted pursuant to the authorities set forth therein.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

TEXT OF AMENDMENTS

For reasons set out in the preamble, Title 17, Chapter II, subpart G, of the Code of Federal Regulations is amended as follows:

Part 200 - Organization; Conduct and Ethics; and Information Requests

Subpart G - Plan of Organization and Operation Effective During Emergency

Conditions

1. The general authority citation for Part 200, subpart G is revised and the subauthority is removed.

The revision reads as follows:

Authority: 15 U.S.C. 77s, 78d, 78d-1, 78w, 77sss, 80a-37, 80b-11; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt).

2. Section 200.200 is amended by:

- a. Removing the authority citation following the section; and
- b. Revising the phrase "a national emergency" to read "emergency conditions,".

3. Section 200.201 is revised to read as follows:

§ 200.201 General provisions.

(a) For purposes of this subpart, a person shall be considered unavailable or

incapacitated in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location.

(b) For purposes of this subpart, emergency conditions shall be deemed to commence upon the occurrence, or the imminent threat of the occurrence, of a natural or man-made disturbance, including, but not limited to, an armed attack against the United States, its territories or possessions, terrorist attack, civil disturbance, fire, pandemic, hurricane, or flood, that results in, or threatens imminently to result in, a substantial disruption of the organization or operations of the Commission. Such conditions shall be deemed to continue until the Commission shall, by notice or order, resume its normal organization and operations, whether at its headquarters in Washington, DC or elsewhere.

4. Section 200.202 is amended by:

- a. Removing the authority citation following the section; and
- b. Revising paragraph (b) to read as follows:

§ 200.202 Offices, and information and submittals.

* * * * *

(b) During emergency conditions, all formal or informal requests, filings, reports, or other submittals shall be submitted to the Commission as permitted in non-emergency conditions, unless the Chairman or his or her successor acting pursuant to § 200.203(c)(1) of this subpart specifies another means or location for submission of such requests, filings, reports, or other submittals, by a notice that is disseminated through a method (or combination of methods) that is reasonably designed to provide broad distribution of the information to the public.

5. Section 200.203 is amended by:
 - a. Removing the authority citation following the section;
 - b. Revising paragraph (c)(1);
 - c. In the first sentence of paragraph (e), revising the phrase “in the absence or incapacity of such person during the emergency conditions” to read “in the event of the unavailability or incapacity of such person during emergency conditions”;

and

 - d. Adding a sentence to the end of paragraph (e).

The revision and addition read as follows:

§ 200.203 Organization, and delegation of authority.

* * * * *

(c) * * *

(1) In the event of the unavailability or incapacity of the Chairman of the Commission during emergency conditions, the authority of the Chairman to govern the affairs of the Commission and to act for the Commission, as provided for by law and by delegation from the Commission, will pass to the available person highest on the following list, until such time as the Chairman is no longer unavailable or incapacitated, or a successor Chairman has assumed office pursuant to Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) and Reorganization Plan No. 10 of 1950 (15 F.R. 3175, 64 Stat. 1265):

- (i) The Commissioners in order of seniority.
- (ii) The General Counsel.
- (iii) The Division Directors in the order designated by the Chairman in the

most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

(iv) The Regional Directors in the order designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

(v) The District Administrators in the order designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

* * * * *

(e) * * * A person who discharges or assumes the duties of the head of a division or office pursuant to this subsection is hereby delegated, throughout the period of the unavailability or incapacity of the head of the division or office during the emergency conditions, all of the functions that the Commission has delegated to the head of the division or office.

6. Section 200.204 is amended by:

- a. Removing the authority citation following the section; and
- b. Revising the phrase “In the absence of unavailability of the appropriate staff officer or his successor” to read “In the event of the unavailability or incapacity of the appropriate staff officer or his or her successor during emergency conditions”.

7. Section 200.205 is amended by removing the authority citation following the section.

By the Commission.

Nancy M. Morris
Secretary

Dated: June 5, 2006