

recommending that the Commission find probable cause to believe that the respondent has violated or is about to violate the Federal Election Campaign Act of 1971, as amended ("the Act"), or Chapters 95 or 96 of Title 26, U.S. Code. The Office of General Counsel does not currently offer other deponents an opportunity to obtain their transcripts; once the entire matter has been closed, other deponents can copy the transcript at their own expense if the transcript is made part of the public record.

The Commission recently invited the public to comment on various aspects of the agency's enforcement practices, including whether and when transcripts of depositions should be released and to whom. See "Enforcement Procedures," Notice 2003-9, 68 FR 23311 (May 1, 2003). One possible change in practice included in the notice was for the Office of General Counsel to routinely allow deponents who are also respondents to procure immediately a copy of their own transcripts unless, on a case-by-case basis, the General Counsel concluded (or the Commission concluded, on the recommendation of the General Counsel) that it was necessary to the successful completion of the investigation to withhold the transcript until completion of the investigation.

On June 11, 2003, the Commission held a public hearing on its enforcement practices. At the hearing, counsel for the regulated community suggested changes to the agency's enforcement procedures, including its deposition policy. Some of those testifying suggested that deponents be allowed to obtain copies of their own depositions immediately after the deposition, contrary to the historic practice. Several of these commenters also noted that the Commission's practice regarding depositions contrasts with that of some other civil law enforcement agencies during the investigative stage of their proceedings.

The Commission is governed, in part, by the Administrative Procedure Act (APA). Under the APA, "[a] person compelled to submit data or evidence is entitled to retain or, on payment of lawfully proscribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. 555(c). One example of "good cause" recognized by courts is a concern that witnesses still to be examined might be coached. See *Commercial Capital Corp. v. SEC*, 360 F.2d 856, 858 (7th Cir. 1966). In the past, all open investigations have been considered as

falling within the APA's good-cause exception based on the potential for deponents to share their testimony with third parties. The Commission and its Office of General Counsel have also been mindful of the Federal Election Campaign Act's requirement that ongoing investigations be kept confidential.<sup>1</sup>

Other federal agencies that conduct nonpublic investigations have adopted policies that interpret the APA's good-cause exception more narrowly. For example, in 1964 the Federal Communications Commission adopted a policy whereby: "In any matter pending before the Commission, any person submitting data or evidence, whether acting under compulsion or voluntarily, shall have the right to retain a copy thereof, or to procure a copy \* \* \* of any transcript made of his testimony, upon payment of the charges therefor to the person furnishing the same, which person may be designated by the Commission. The Commission itself shall not be responsible for furnishing the copies." 47 CFR 1.10. In 1972, the Securities and Exchange Commission adopted its current rule on this subject, which is similar to the FCC's. See 17 CFR 203.6. Likewise, the practice of the Commodity Futures Trading Commission is governed by 17 CFR 11.7(b), which states: "A person compelled to submit data or evidence in the course of an investigatory proceeding shall be entitled to retain or, upon payment of appropriate fees \* \* \* procure a copy or transcript thereof, except that the witness may for good cause be limited to inspection of the official transcript of his testimony."

After carefully reviewing the comments submitted to it on this matter and considering the experience of other federal agencies regarding deposition transcripts in nonpublic investigations, the Commission hereby announces that, from the date of publication of this notice, it will permit deponents in enforcement matters to obtain, upon request to the Office of General Counsel, a copy of the transcript of their own deposition. The Commission has determined that it can maintain the integrity of its investigations even if current practice is altered, so long as

<sup>1</sup> Under 2 U.S.C. 437g(a)(12): "Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. Any member or employee of the Commission, or any other person, who violates the provisions \* \* \* shall be fined not more than \$2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions \* \* \* shall be fined not more than \$5,000."

access to transcripts may still be denied upon determination that good cause exists for doing so, and so long as third-party witnesses (or deponents who are also respondents in matters with multiple respondents) are granted access to their transcripts subject to the confidentiality requirements of the Act.

Accordingly, in all matters open and pending before the Commission on or after the date of publication of this notice, a deponent may, in writing, request a copy of his or her own deposition transcript. The request may be made at any time after the deposition concludes. The Office of General Counsel will review the request and, absent good cause to the contrary, it will notify the deponent and the court reporter in writing that the deponent may obtain a copy of the transcript, at his or her own cost, from the court reporter. If the Associate General Counsel or her deputy determined that there was reason to invoke the good-cause exception, this Office would notify the deponent and the Commission. This change would not in any way affect 11 CFR 111.12(c).

Dated: August 18, 2003.

**Michael E. Toner,**

*Commissioner, Federal Election Commission.*  
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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-CE-17-AD; Amendment 39-13279; AD 2003-17-05]

**RIN 2120-AA64**

#### **Airworthiness Directives; Short Brothers and Harland Ltd. Models SC-7 Series 2 and SC-7 Series 3 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Short Brothers and Harland Ltd. (Shorts) Models SC-7 Series 2 and SC-7 Series 3 airplanes. This AD establishes a technical service life for these airplanes and allows you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for