

§ 148.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adjudicatory proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

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Subpart C—Procedures for Considering Applications

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8. Section 148.26, paragraph (a), is revised as follows:

§ 148.26 Further Proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Commission was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought. No discovery and/or evidentiary proceedings shall be permitted into the question of whether the agency's position was substantially justified.

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9. Section 148.28 is revised as follows:

§ 148.28 Appeal to the Commission.

(a) Either the applicant or counsel for the Commission or for another relevant agency may appeal the initial decision on the fee application by complying with the requirements of this section. An appealing party shall serve upon opposing parties and shall file with the

Proceedings Clerk a notice of appeal within fifteen (15) days after service of the initial decision. The notice need consist only of a brief statement indicating the filing party's intent to appeal the initial decision, and shall include the date upon which the initial decision was rendered, the name of the proceeding, and the docket number of the proceeding. The failure of a party timely to file and serve a notice of appeal in accordance with this paragraph, or to perfect the appeal in accordance with paragraph (b) of this section, shall constitute a voluntary waiver of any objection to the initial decision, and of all further administrative or judicial review under these rules and the Equal Access to Justice Act.

(b) An appeal shall be perfected by the appealing party by timely filing with the Proceedings Clerk an appeal brief which meets the requirements of paragraphs (b) and (d) of this section. An original and one copy of the appeal brief shall be filed within thirty (30) days after filing of the notice of appeal. By motion of the appealing party, the Commission may, for good cause shown, extend the time for filing the appeal brief. If the appeal brief is not filed within the time prescribed in this subparagraph, the Commission may, upon its own motion or upon motion by a party, dismiss the appeal, in which event the initial decision shall become the final decision and order of the Commission, effective upon service of the order of dismissal.

(c) The opposing party may, within thirty (30) days after service of the appeal brief, file an original and one copy of an answering brief, and serve one copy thereof, unless the time limit is extended by the Commission upon motion of the party and for good cause shown.

(d) Parties filing an appeal brief or answering brief shall meet the requirements of § 10.12 of this Chapter as to form. The content of briefs shall satisfy the requirements of § 10.102(d) of this Chapter, except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without advance leave of the Commission.

(e) On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

Dated: May 19, 1986.

Jean A. Webb,

Secretary to the Commission, Commodity Futures Trading Commission.

[FR Doc. 86-11634 Filed 5-22-86; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33-6644]

Delegations of Authority to Director of Division of Corporation Finance and Regional Administrators

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules relating to general organization to delegate to the Director of the Division of Corporation Finance authority to waive the disqualification provisions of Regulation D under the Securities Act of 1933 (the "Securities Act"). In addition, the Commission is amending the extent of the delegation of authority to its Regional Administrators with respect to confidential treatment applications filed under the Securities Act. The changes will enable the Commission and its staff to process the waiver requests and confidential treatment applications expeditiously and result in savings of time for the Commission and the public.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff, (202) 272-2644, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The exemption provided by Rule 505 of Regulation D (17 CFR 230.501—230.506) under the Securities Act governing limited offers and sales of securities not exceeding five million dollars is not available if any persons identified in Rule 252 (c), (d), (e) and (f) of Regulation A (17 CFR 230.251—230.264) are involved in the offering. The Commission may determine not to apply such disqualification provision upon a showing of good cause that under the circumstances the Rule 505 exemption should not be denied.

In order to facilitate the processing of waiver requests under Regulation D, as described above, the Commission is amending its delegation of authority rules to indicate that the Director of the

Division of Corporation Finance may grant such applications under Regulation D by specifically referring to Rule 505.

Rule 242 (17 CFR 230.242) under the Securities Act provided an exemption from the registration provisions of such Act for certain limited offers and sales by qualified issuers. That rule was a predecessor and model for Rule 505 of Regulation D. The Director of the Division of Corporation Finance was given the delegated authority to grant applications for relief from the issuer disqualification provisions of Rule 242. These provisions, as with Rule 505, tie into Regulation A, Rule 252 (c), (d), (e) and (f) (17 CFR 230.252 (c), (d), (e) and (f)) under the Securities Act. In view of the delegation of authority relative to Rule 505 and the removal of Rule 242 (Release No. 33-6389 (March 8, 1982) [47 FR 11251]), it is apparent that the delegation of authority to the Director of the Division of Corporation Finance, relative to Rule 242 may be deleted.

Rule 406 (17 CFR 230.406) under the Securities Act provides a method whereby provisions of material contracts may be accorded confidential treatment where it is shown and the Commission determines that disclosure would impair the contract's value and is not necessary for the protection of investors. Pursuant to delegated authority, both the Director of the Division of Corporation Finance and the Commission's Regional Administrators have the power to grant such applications for confidential treatment (17 CFR 200.30-1(a)(3), 200.30-6(a)(3)). The Director of the Division of Corporation Finance, but not the Regional Administrators, now has the power to deny certain confidential treatment applications or schedule hearings with regard to possible denial of such applications (17 CFR 200.30-1(a)(3)). The Commission finds it to be appropriate that the Regional Administrators have parallel authority to the Director of the Division of Corporation Finance with respect to confidential treatment applications made under the Securities Act.

The Commission also finds, in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)) that the foregoing action relates solely to agency organization, procedure or practice, and that such section makes unnecessary the notice and prior publication required by the Act (5 U.S.C. 553). In view of the foregoing, and the expeditious processing which will result in time savings to both the Commission and the public, good cause exists for dispensing with the normal thirty day

delay in effectiveness. Accordingly, the amendments to Rules 30-1 and 30-6 are effective immediately.

List of Subjects in 17 CFR Part 200

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

Text of Amendment

Accordingly, Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

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

1. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted. § 200.30-1 is also issued under secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; secs. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77i, 77s(a), 78c(b), 781, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37; Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2. § 200.30-3 is also issued under secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; c. 122, 59 Stat. 167; Pub. L. 91-565, 84 Stat. 1480; 15 U.S.C. 77c(b), 77s(a) 78d-1, 78n, 80a-37; secs. 2, 17 and 23 thereof (15 U.S.C. 78b, 78q and 78w).

2. Section 200.30-1 is amended by revising paragraph (d) as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

(d) With respect to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and Regulation D thereunder (§ 230.501, et seq. of this chapter), to authorize the granting of applications under Rule 505(b)(2)(iii)(C), (§ 230.505(b)(2)(iii)(C) of this chapter) upon a showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

3. Section 200.30-6 is amended by revising paragraph (a)(3) as follows:

§ 200.30-6 Delegation of authority to Regional Administrators.

(a) * * *

(3) To grant applications for

confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act; to issue orders scheduling hearings on such application and to deny any such application as to which the applicant waives his right to a hearing, provided such applicant is advised of his right to have such denial reviewed by the Commission.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

May 19, 1986.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 82

[Docket Nos. 83C-0012 and 84C-0426]

Confirmation of Effective Date for D&C Green No. 6 as a Color Additive for Coloring Absorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 22, 1986, for the final rule that amended the color additive regulations to provide for an increase in the level at which D&C Green No. 6 can be used to color certain polyglycolic acid surgical sutures and to provide for its use for coloring poly(glycolic acid-co-trimethylene carbonate) absorbable sutures for general surgical use. These actions responded to two petitions filed by American Cyanamid Co.

EFFECTIVE DATE: Effective date confirmed: April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 21, 1986 (51 FR 9780), FDA amended the color additive regulations to provide for an increase in the level at which D&C Green No. 6 can be used to color certain surgical sutures.

FDA gave interested persons until April 21, 1986, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule

