

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.42 [Amended]

2. Section 73.42 is amended as follows:

R-4202 Lake Margrethe, MI [Amended]

By removing the present time of designation and controlling agency and substituting the following:

Time of designation. September 1 through May 31 by NOTAM 24 hours in advance; and June 1 through August 31 with specific dates to be published by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Issued in Washington, DC, on April 27, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-10229 Filed 5-5-87; 8:45 am]

BILLING CODE 4910-13-M

securities broker-dealers and enable government securities broker-dealers currently registered or registering with the Commission to use Form BD in order to notify the Commission of their activities as government securities broker-dealers. The Commission is adopting a technical revision to Rule 15b1-3 to correct a typographical error and revisions to the description of Form BDW appearing at 17 CFR 249.501a to include references to Commission rules and statutory sections relating to government securities brokers and government securities dealers.

EFFECTIVE DATES: July 25, 1987, except for amendments to Form BD in § 249.501, which are effective May 13, 1987.

FOR FURTHER INFORMATION CONTACT:

Lynne G. Masters, Esq. at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:**Introduction**

On October 28, 1986, the Securities Exchange Act of 1934 (the "Exchange Act") was amended by Pub. L. 99-571,¹ the Government Securities Act of 1986 (the "Act"). As amended, the Exchange Act contains a new section 15C(a) that requires government securities brokers² and government securities dealers³

¹ 100 Stat. 3208.

² New section 3(a)(43) of the Exchange Act defines a government securities broker as any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) Any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or (B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

³ New section 3(a)(44) of the Exchange Act defines a government securities dealer as:

Any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) Any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) Any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) Any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) Any person registered with the Commodity Futures Trading Commission, any contract market

other than those already registered with the Commission or financial institutions⁴ to register with the Commission by July 25, 1987.⁵ Under the Act, broker-dealers currently registered with the Commission⁶ that act as government securities brokers or government securities dealers are not required to re-register with the Commission. They are, however, required to file by July 25, 1987⁷ written notice with the Commission that they are government securities brokers or government securities dealers.⁸ Similarly, financial institutions that are government securities brokers or dealers are required to file with their appropriate regulatory agency⁹ by July

designated by the Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

⁴ New section 3(a)(46) of the Exchange Act defines "financial institution" as "(A) a bank as defined in section 3(a)(6) of the Act, (B) a foreign bank, and (C) an insured institution as such term is defined in section 401 of the National Housing Act."

⁵ Government securities brokers and dealers registering pursuant to section 15C(a) are also required to become members of a registered securities association or a national securities exchange. See section 15C(e)(1).

⁶ These broker-dealers (hereinafter referred to as "registered broker-dealers") are broker-dealers registered under section 15(b) of the Exchange Act and non-bank intrastate municipal securities dealers registered under section 15B of the Exchange Act. See section 3(a)(48).

⁷ Because July 25, 1987 falls on a Saturday, registered broker-dealers required to file notice must file their notices no later than July 27, 1987. See Rule 0-3(a).

⁸ After the effective date of the amendments, all registered broker-dealers that are government securities broker-dealers are required by section 15C(a)(1)(B)(i) to file a notice with the Commission when they cease to act as a government securities broker or dealer. Section 15C(a)(1)(B) provides that a government securities broker or dealer must file a written notice with the appropriate regulatory authority when it ceases to act as a government securities broker or dealer. Although the literal language of this provision could be interpreted to apply to any government securities broker or dealer, the Commission believes that Congress intended this provision to apply only to broker-dealers registered pursuant to sections 15 and 15B and financial institutions, and not to government securities broker-dealers registered solely pursuant to section 15C(a)(1)(A).

⁹ As amended, section 3(a)(34) of the Exchange Act defines "appropriate regulatory agency" to include the following new paragraph:

(C) When used with respect to a government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) The Comptroller of the Currency, in the case of a national bank, a bank in the District of Columbia

Continued

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-24372; File No. S7-4-87]

Government Securities Act, Implementation, Revision to Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Final Rules and Revisions to Form BD.

SUMMARY: The Commission is adopting previously proposed rules to implement provisions of the Government Securities Act of 1986, which requires currently unregulated government securities brokers or government securities dealers to register with the Commission. Registered broker-dealers who act as government securities brokers or government securities dealers must file written notice with the Commission. The rules prescribe the form and information required to be filed by government securities broker-dealers in their applications for registration with the Commission. The Commission also is adopting previously proposed revisions to Form BD, the form used to register as a broker-dealer. The proposed revisions adapt the form for use by government

25, 1987 written notice in the form prescribed by the Board of Governors of the Federal Reserve System.

Government securities brokers and government securities dealers are subject to the rulemaking authority of the Secretary of the Treasury ("Treasury") in the areas of financial responsibility, reporting, recordkeeping, and exemptions from rulemaking. The Treasury has proposed rules in these areas, at 17 CFR 400.1 through 405.3.

For government securities broker-dealers required to register under section 15C(a)(1)(A) of the Exchange Act, the Act directs the Commission to prescribe the forms to be used for registration and for withdrawal from registration, as well as the information that must be filed with the required forms. In addition, the Act authorizes the Commission to establish the form to be used by registered broker-dealers that must file notice with the Commission of their status as government securities broker-dealers. In order to implement the registration, withdrawal from registration, and notice requirements of the Act, the Commission is adopting the rules described more fully below and the corresponding revisions to Form BD.¹⁰ Unless

examined by the Comptroller of the Currency, or a Federal branch or Federal agency of foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) The Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, A foreign bank, a State branch or a State agency of a foreign bank, or a Commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

(iii) The Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal Savings Bank);

(iv) The Federal Home Loan Bank Board, in the case of a Federal Savings and Loan Association, Federal Savings Bank, or District of Columbia savings and loan association;

(v) The Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal Savings and Loan Association, Federal Savings Bank, or District of Columbia savings and loan association);

(vi) The Commission, in the case of all other government securities brokers and government securities dealers.

The term "District of Columbia savings and loan associations" means "any association subject to examination and supervision by the Federal Home Loan Bank Board under section 8 of the Home Owners Loan Act of 1933."

¹⁰ The Commission will exercise its interpretive and no-action authority in determining whether registration under the Act is required. See S. Rep. No. 426, 99th Cong. 2d Sess. n. 37 (1986). Requests for interpretative or no-action advice should be addressed to the Chief Counsel, Division of Market Regulation. The Act vests Treasury with the authority to exempt and government securities broker or government securities dealer from

otherwise noted, these rules impose upon government securities broker-dealers required to register under the Act¹¹ disclosure and filing requirements for registration and withdrawal from registration similar to those that are imposed upon other broker-dealers. The revisions to Form BD are intended to adapt the form for use by government securities broker-dealers applying for registration and by registered broker-dealers notifying the Commission of their government securities activities or intention to cease such activities.

As described more fully below, the Commission received two comment letters on the proposal.¹² One Commentator supported the proposal but suggested that the Commission consider removing proposed exemptions from one of the rules. The other Commentator requested clarification of one of the rules.

I. Discussion of Rules

1. Rule 15Ca-1

The Commission is adopting proposed Rule 15Ca-1 to implement the requirement that government securities broker-dealers already registered with the Commission pursuant to sections 15(b) or 15B(a) of the Exchange Act file written notice with the Commission that they are government securities brokers or dealers.¹³ The Rule requires such government securities broker-dealers to file notice on Form BD that they are government securities broker-dealers by July 25, 1987. Proposed Rule 15Ca-1 also requires a registered broker-dealer that begins government securities activities after July 25, 1987 to file written notice on Form BD with the Commission on or prior to the day it begins acting as a government securities broker-dealer. Paragraph (b) of the Rule requires a registered broker-dealer that has previously filed notice of government securities activities to file written notice on Form BD within 30 days of ceasing to act as a government securities broker-dealer.

provisions of the Act, including registration. Requests for exemptions by government securities brokers or government securities dealers should be addressed to the Office of the Deputy Assistant Secretary (Federal Finance) Room 2334, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. 20220

¹¹ As described more fully below, the effective date for the amended Form BD is seven days from the date it is published in the *Federal Register*. All new broker-dealers that register with the Commission on and after the effective date of the revised form will be required to complete the new Form BD.

¹² See *infra* text at n. 20.

¹³ Section 15C(a) (1) (B).

2. Rule 15Ca2-1

Under paragraph (a) of Rule 15Ca2-1, government securities broker-dealers required to register pursuant to new section 15C(a) (1) (A) are required to apply for registration on Form BD. Form BD is the uniform application form for broker-dealer registration¹⁴ used by the Commission, state securities regulators, and the National Association of Securities Dealers, Inc. ("NASD").¹⁵ Form BD requires that an applicant provide the Commission with information concerning the nature of its business, the background of its principals, its controlling persons, and its employees and is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business.¹⁶ Because the Act requires applicants registering under section 15C(a) (1) (A) to meet substantially the same statutory requirements as other applicants for broker-dealer registration, the Commission has determined to use Form BD as the application for registration for government securities broker-dealers. Government securities broker-dealers required to register pursuant to section 15C(a)(1)(A) will be

¹⁴ Form BD is the form filed by an applicant to become registered pursuant to section 15(b) of the Exchange Act. See Rule 15b1-1. In addition, intrastate nonbank municipal securities dealers required to register under Section 15B(a) file an application for registration with the Commission on Form BD. See Rule 15Ba2-2. Municipal securities dealers that are banks or separately identifiable departments or divisions of banks are not brokers or dealers because of the exception for banks contained in the section 3(a) (4) definition of broker and the section 3(a)(5) definition of dealer. These municipal securities dealers are required to register with the Commission under section 15B and file an application for registration on Form MSD. See Rule 15Ba2-1.

¹⁵ In 1975 the Commission adopted Form BD as a uniform form in order to enable broker-dealer applicants to file a single form for registration as a broker-dealer with the Commission, the states, and the self-regulatory organizations. See Securities Exchange Act Rel. No. 11424 (May 26, 1975), 40 FR 30634. Although the amendments facilitated the use of a single form, duplicative filing requirements remained. See Securities Exchange Act Rel. No. 20020 (July 28, 1983), 48 FR 36115. In 1983 the Commission amended Form BD to reduce those duplicative registration requirements. In addition, the revisions made Form BD and Form BDW, the form used for broker-dealer withdrawal from registration, compatible with the NASD's Central Registration Depository ("CRD"). The CRD provides a computer database that maintains current registration information for every broker-dealer that is a member of the NASD.

¹⁶ For example, section 15C of the Exchange Act incorporates by reference the provisions of section 15(b) of the Exchange Act to permit the Commission to deny an applicant's registration if it finds that the applicant has been convicted of committing certain crimes, such as bribery, perjury or burglary within the preceding 10 years.

required to complete all Items on the Form.

At present, Rule 15b3-1(b) requires registered broker-dealers to amend their Form BDs promptly whenever information contained in the forms becomes inaccurate.¹⁷ The proposed rules do not contain a similar provision because such amendments are deemed reports under the Act, and the Act vests the Treasury with the authority to adopt reporting requirements. However, the Treasury has proposed a rule requiring that Form BD be amended when the Form as filed becomes inaccurate.¹⁸

3. Rule 15Ca2-2: Statement of Financial Condition to be Filed with Application for Registration as a Government Securities Broker or Government Securities Dealer

Rule 15Ca2-2 as proposed required a government securities broker-dealer applying for registration to submit as part of its application on Form BD a statement of financial condition and other information concerning the applicant's financial resources. For example, the Rule required (1) disclosure of the applicant's assets, liabilities, and net worth, (2) a schedule listing the applicant's securities and, if readily marketable, their market value, (3) a computation made in accordance with the capital requirements to be established by the Secretary of the Treasury,¹⁹ (4) a statement describing the nature and source of capital and representing that such amount of capital has been contributed to and will continue to be devoted to the business, (5) a statement concerning establishment and maintenance of the facilities and financing required for the operation of the business, and (6) a statement for the ensuing year of operations (a) describing the arrangements made for obtaining the funds necessary to operate the business, (b) setting forth the anticipated expenses for that year, and (c) providing information as to any arrangements which have been made to obtain additional financing if it becomes necessary. The purpose of the rule is to allow the Commission to determine whether the applicant has the required amount of capital and the capacity to operate as a going concern.

¹⁷ See also Rules 15Ba2-2(c) and 15Ba2-1(b).

¹⁸ 17 CFR 400.5.

¹⁹ Under the Act, the Secretary of the Treasury is to establish capital adequacy requirements for government securities broker-dealers. The proposed rule, therefore, differs from Rule 15b1-2 because it requires information concerning compliance with capital standards as established by the Secretary of the Treasury rather than the Commission.

As proposed, Rule 15Ca2-2 required an applicant to furnish as part of its statement of financial condition a schedule of its securities and if readily marketable, their market value. Paragraph (e) of the Rule exempted firms that had been in operation for one or more years prior to July 25, 1987 from this requirement. Paragraph (e) also relieved established firms from providing a detailed description of the firm's personnel, physical facilities, and arrangements for and uses of its funds, provided that a firm represented that it had been acting as a government securities broker or dealer as of a date prior to July 25, 1986.

Upon review, the Commission has determined to relieve all applicants from filing detailed descriptions of its personnel, physical facilities, maintenance and preservation of books and records, and supervision procedures. The Rule therefore does not require any applicant to file with its general representations concerning its facilities and financing a detailed statement describing arrangements in these areas. The Commission believes that generally this information is either disclosed on Form BD or is readily ascertainable by a self-regulatory organization when it conducts a pre-membership interview, and therefore these requirements place an unnecessary burden on applicants. The Rule also contains an exception for government securities broker-dealers that were in operation for a year prior to July 25, 1987 from filing a schedule of securities and a description of arrangements for and uses of its funds for the first year of operations after registration.

The Commission received two comment letters discussing proposed Rule 15Ca2-2. One commentator²⁰ noted that the proposed language requiring the filing of a statement of financial condition "as of a date no more than 30 days after the date on which such statement is filed" should be clarified because it suggests that the statement of financial condition must be dated 30 days after it is filed. The Commission agrees that the language is confusing and accordingly has modified the Rule to require the balance sheet to be dated no more than 30 days before the application is filed.

Another commentator²¹ suggested that the Commission reconsider the

proposed exemptions concerning the filing of detailed statements for those government securities broker-dealers in operation for one or more years. The commentator suggested that the information provided in the representations may be helpful in determining the current financial operating ability of an established firm. The Commission believes, however, that the information provided by the representations is unnecessary because it is already available from other sources or readily ascertainable. Accordingly, the Commission has not adopted the commentator's suggestion.

4. Rule 15Ca2-3: Registration of Successors

The Commission is adopting a successor rule for government securities broker-dealers similar to that already applicable to broker-dealers registered under section 15(b) of the Act.²² The rule is intended to provide for a smooth transition when one government securities broker-dealer succeeds to the business of another government securities broker-dealer that is registered pursuant to section 15C(a) of the Act. In general, a broker-dealer succeeds to and continues the business of a predecessor broker-dealer when the successor broker-dealer assumes substantially all the assets and liabilities of the predecessor²³ and therefore closely resembles the predecessor registered government securities broker-dealer.

Paragraph (a) of the Rule applies generally to instances where a new legal entity succeeds to the business of a registered government securities broker-dealer. The successor is allowed to operate under the registration of the predecessor for 75 days if it files its own complete application for registration on Form BD within 30 days of the date of the succession.²⁴ Paragraph (b) provides procedures for certain changes in legal status that involve the legal creation of a new entity but no practical change in the broker-dealer—changes in date or state of incorporation, form of organization,²⁵ or change in the

Institutions, to Jonathan G. Katz, Secretary, SEC, dated March 18, 1987.

²² See Rule 15b1-3 and Rule 15Ba2-4. Similar successor rules also apply to investment advisers. 17 CFR 275.203-1 (c) and (d). For a more complete discussion of the successor rule see 1985 Release, at 16.

²³ The successor rule cannot be used by a government securities broker-dealer to eliminate a substantial liability. See 1985 Release, at 17.

²⁴ The predecessor must file a Form BDW indicating it is withdrawing from business.

²⁵ Rule 15b1-3(b) as revised in 1986 contained a typographical error causing the phrase "form of

Continued

composition of a partnership. In these instances, paragraph (b) allows the new entity simply to amend the predecessor's Form BD within 30 days of the date of the succession. The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), and any other pages necessary to reflect changes in the successor government securities broker-dealer. In addition, the successor would be required to comply with Rule 15Ca2-1 and file a statement of financial condition described in Rule 15Ca2-1(a).

5. Rule 15Ca2-4: Registration as Fiduciaries

The Commission is adopting for government securities broker-dealers substantially the same rule governing the registration of fiduciaries that applies to registered broker-dealers.²⁶ The rule permits a duly appointed fiduciary to assume immediate responsibility for the operation of a government securities broker-dealer's business. Under the rule, the registration of a government securities broker-dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment or decree of a court of competent jurisdiction. This enables the fiduciary to continue the business of a registered government securities broker or dealer, provided that the fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth substantially the same information required by Form BD.

6. Rule 15Ca2-5: Consent to Service of Process To Be Furnished by Non-Resident Government Securities Brokers or Government Securities Dealers and by Non-Resident General Partners or Managing Agents of Government Securities Brokers or Government Securities Dealers

The Commission is adopting a rule governing service of process for non-resident government securities broker-dealers that is similar to that applied to non-resident registered broker-dealers.²⁷ Generally, this rule provides

that every non-resident government securities broker-dealer applying for registration pursuant to section 15C(a)(1)(A) must provide the Commission with a written irrevocable consent and power of attorney. This consent and power of attorney designates the Commission as an agent upon whom may be served any papers in connection with actions arising from the government securities broker or dealer's government securities business that are subject to the jurisdiction of the United States and that accrue while the government securities broker or dealer is registered with the Commission.²⁸ The Rule requires that the applicant stipulate to be bound by the service of process upon the Commission as if personal service had been made. Paragraph (b)(1) of the Rule provides that registered government securities broker-dealers that become non-residents must file their consent within 30 days.

Pursuant to Rule 15b1-5, the Commission prescribed a series of forms to be used by non-resident broker-dealers.²⁹ The Commission is not prescribing specific forms under Rule 15Ca2-5; nevertheless, an appropriate form to satisfy the requirements of the Rule would be one of those used for Rule 15b1-5 that is modified to apply to a government securities broker-dealer registered pursuant to section 15C(a)(1)(A).³⁰

Unlike Rule 15b1-5, proposed Rule 15Ca2-5 does not grant registered government securities brokers or dealers or those whose registrations are pending when the Rule becomes effective additional time in which to file the consents and powers of attorney.³¹

²⁶ Under the rule, the government securities broker-dealer's consent and power of attorney relate to causes of action that accrue between the time the government securities broker or dealer becomes registered and when its registration is cancelled or revoked or when a notice to withdraw from registration (Form BDW) becomes effective. See Rule 15Ca2-5(a). The cut-off date in Rule 15Ca2-5 differs slightly from that in Rule 15b1-5, which relates to causes of action accruing up until the Commission receives a broker-dealer's Form BDW. Because a broker-dealer's withdrawal does not become effective for 60 days from the date the Form BDW is filed, or a longer time if proceedings are instituted pursuant to section 15C, the Commission believes that Rule 15Ca2-5 should cover causes of action that may accrue between the time a government securities broker-dealer files its Form BDW and the date that notice becomes effective.

²⁷ See Forms 7-M, 8-M, 9-M, and 10-M.

²⁸ Those modifications would include a statement that the applicant's registration is effective pursuant to section 15C and that the designation and irrevocable power of appointment relate to causes of action that accrue until the broker-dealer's withdrawal becomes effective.

²⁹ See Rule 15b1-5(b) (1) and (2).

Non-resident government securities brokers or dealers that may have already registered would have done so pursuant to section 15(b) of the Exchange Act and the rules thereunder. The consent and power of attorney would have been filed in connection with their original application for registration. Therefore, the Commission believes that these provisions are unnecessary in the proposed rule.

7. Rule 15Cc1-1: Withdrawal From Registration

Proposed Rule 15Cc1-1 provides that, in order for a government securities broker-dealer to withdraw its registration under section 15C of the Exchange Act, it must file notice of withdrawal from registration with the Commission on Form BDW.³² Registered broker-dealers withdrawing from registration under other provisions of the Exchange Act are required to file the same notice.³³

II. Revisions to Form BD³⁴

The Commission is modifying Form BD for use as a registration form by government securities broker-dealers by adding a new Item 12. New Item 12 requires an applicant to indicate whether it is applying for or continuing its registration solely as a government securities broker or dealer. The new Item 12 will enable the Commission, regulatory authorities, and the public to identify government securities brokers or dealers registering pursuant to section 15C(a)(1)(A). In addition, this identification will facilitate the Commission's determination of the broker-dealer's compliance with other applicable requirements.³⁵

³² Form BDW must be filed only if an entity is completely ceasing its securities business; if an entity is a registered broker-dealer and is ceasing its government securities activities but continuing other securities activities, it must file a notice on Form BD to reflect this change. See Rule 15Ca1-1.

³³ See Rule 15b6-1 and Rule 15bC3-1.

³⁴ In addition to the new Items described below, the Commission is amending the instructions page to describe the procedure for registering with the Commission as a government securities broker-dealer and for registered broker-dealers to provide notice of their government securities activities.

³⁵ Under the Act, government securities brokers and dealers may be subject to different regulations than broker-dealers registered under section 15(b). For example, a firm that conducts a business solely in government securities, and therefore registers with the Commission pursuant to section 15C(a)(1)(A), would not be a member of the Securities Investor Protection Corporation ("SIPC"). See S. Rep. No. 426, 99th Cong., 2d Sess. 25 (1986). In addition, under section 15C(b) the Secretary of the Treasury may adopt for government securities broker-dealers rules governing their books and records and capital requirements that may differ from the rules applicable to broker-dealers

organization" to read as "form or organization." The Commission intended Rule 15b1-3(b) to refer to "form of organization", the Commission is amending the Rule to correct this error. See *infra* text at n. 41.

²⁶ See Rules 15b1-4 and 15bA2-5 concerning broker-dealers registered pursuant to section 15(b) and section 15B, respectively.

²⁷ See Rule 15b1-5.

The Commission also is revising Form BD so that broker-dealers registered or applying for registration pursuant to section 15 and 15B may use it to notify the Commission of their government securities activities.³⁶ These broker-dealers would file notice on Form BD by answering "yes" to new Item 13A, indicating they are acting as a government securities broker or dealer. After the effective date of the Act, broker-dealers registered pursuant to sections 15(b) and 15B that have conducted a government securities business also must notify the Commission when they cease their government securities activities.³⁷ Under the revised form, notice would be filed by answering "yes" to Item 13B, indicating they are ceasing their government securities activities.

Broker-dealers registered with the Commission will have until July 25, 1987, to file this notice with the Commission. Registered broker-dealers that become government securities brokers or dealers after that date will be required pursuant to Rule 15Ca1-1 to notify the Commission on the date they begin acting as a government securities dealer and within thirty days after ceasing these activities.

Depending on their volume of government securities business, broker-dealers filing notice of government securities activities may also have to amend their Form BD to reflect a change in Item 10. Item 10 requires the applicant to check boxes indicating the types of business it is or will be engaged in if a type of business accounts for 10% or more of the applicant's annual revenue from the securities or advisory business. Current Item 10 provides a box only for government securities dealer activities. The Commission is adding an additional box for government securities brokers.

III. Revisions to Rule 15b2-2: Inspection of Newly Registered Brokers and Dealers

Section 15(b)(2)(C) requires the Commission or the responsible self-regulatory organization to conduct an inspection of a broker-dealer³⁸ within

generally. Finally, under section 15A(f) of the Act the NASD's rulemaking authority over transactions by government securities broker-dealers in government securities is generally limited to examining for and enforcing compliance with applicable provisions of the Act and the rules thereunder. The NASD, however, is specifically empowered to adopt rules to prohibit fraudulent, misleading, deceptive, and false advertising.

³⁶ As adopted the language of Item 13A has been changed to clarify that it applies to brokers and dealers registered under sections 15 and 15B.

³⁷ Section 15C(a)(1)(B).

³⁸ Government securities broker-dealers that are required to register pursuant to section 15C(a) are

six months³⁹ of granting its registration in order to determine whether the broker-dealer is operating in conformity with the federal securities laws. Pursuant to this requirement the Commission adopted Rule 15b2-2. The Commission is adopting revisions to Rule 15b2-2 to provide for the inspection of newly registered government securities broker-dealers. The Rule requires the responsible self-regulatory organization to conduct inspections of newly registered broker-dealers within six months to a year⁴⁰ to determine compliance with "applicable financial responsibility rules." The revisions clarify the applicability of the Rule to government securities broker-dealers registered pursuant to section 15C(a)(1)(A) and define "applicable financial responsibility rules" to include any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1).

IV. Technical Amendments to Rule 15b1-3 and Description of Form BDW

In 1986 the Commission amended Rule 15b1-3, the broker-dealers successor rule, to provide for succession by amendment.⁴¹ As adopted, the Rule contains a typographical error causing the phrase "form of organization" to be read as "form or organization." Because the Commission intended Rule 15b1-3(b) to refer to form of organization, the Commission is adopting a technical amendment to correct the error.

Rule 15Bc3-1 requires certain municipal securities dealers to withdraw from registration by filing Form BDW. Similarly, Rule 15Cc1-1 requires government securities brokers and government securities dealers to withdraw from registration by filing Form BDW. The Form is not published in the Code of Federal Regulations ("CFR"), but the CFR contains a description of Form BDW.⁴² The current description of the Form contains references to broker-dealers registered under Section 15 and the rules thereunder. In view of Rules 15Bc3-1 and 15Cc1-1, the Commission is modifying the description of Form BDW to include its use by government securities brokers and government securities dealers. Accordingly, section 249.501(a) will refer to broker-dealers withdrawing from registration pursuant to Rules 15Bc3-1, 15Cc1-1 and broker-

broker-dealers, and are therefore subject to the Rule.

³⁹ The Commission may delay inspection of any class of brokers or dealers for up to six months. See section 15(b)(2)(C).

⁴⁰ Rule 15b2-2 (c) and (d).

⁴¹ See 1985 Release, at 16.

⁴² 17 CFR 249.501(a).

dealers registered pursuant to Section 15B or 15C.

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)) provides that

[e]xcept when notice or hearing is required by statute, this subsection does not apply . . .

(B) When the agency for good cause finds (and incorporate the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The Commission views the amendments to Rule 15b1-3 and the modifications to Form BDW's description as solely technical in nature. In addition, the substance of these changes—correction of "form of organization", and use of Form BDW—were noticed in the release proposing the amendments. Hence, the Commission finds that notice and public procedure thereon are unnecessary. Accordingly, the Commission is adopting these changes without having previously published them for comment. Nevertheless, pursuant to section 553(e) and the Commission's rules of practice, interested persons have the right to petition for the issuance, amendment, or repeal of a rule.

V. Competition Findings, Effective Date, and Statutory Basis

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under that Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered proposed Rules 15Ca1-1 through 15Cc1-1, Rule 15b2-2, Rule 15b1-3, and revisions to Form BD and Form BDW's description in light of the standards cited in section 23(a)(2) and believes that adopting the rules and form revisions will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the rules will reduce regulatory disparities between registered broker-dealers doing a government securities business and previously unregistered government securities broker-dealers by imposing upon all broker-dealers similar registration requirements.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), interested persons were given an opportunity to submit written views of the proposals. After consideration of the

relevant matters, the rules are being adopted substantially as proposed. Rule 15Ca2-2 as described previously is being modified at the suggestion of a commentator. The rule as modified provides that the statement of financial condition must be dated 30 days before the date on which the Form BD has been filed.

Pursuant to the Government Securities Act of 1986, Rules 15Ca1-1 through Rule 15Cc1-1 and the amendments to rule 15b2-2, Rule 15b1-3 and the changes to § 240.501(a) will become effective as final rules on July 25, 1987.

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that the "required publication or service of a substantive rule shall be made not less than 30 days before its effective date except . . . as otherwise provided by the agency for good cause found and published with the rule." Because of the short time in which unregistered government securities broker-dealers have to register and registered broker-dealers have to file notice of their government securities activities, the Commission believes that sufficient cause exists for the proposed revisions to Form BD to become effective within a week of the date of publication in the *Federal Register*. Prompt effectiveness of the amended Form BD will facilitate the registration of government securities broker-dealers required to register under the statute so that these broker-dealers may be in compliance with the requirements of the Act without a disruption in their operations on the date the Act becomes effective.

VI. Regulatory Flexibility Act Considerations

Pursuant to 5 U.S.C. 605(b), the Chairman certified that the revisions to Rule 15b2-2 if adopted will not have a significant economic impact on a substantial number of small entities. A summary of the Certification was published with the proposal. No comments were received on the Certification.

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") and a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 and 604 respectively regarding proposed rules 15Ca1-1 through 15Cc1-1 and revisions to Form BD. No comments were received on the Commission's IRFA although one commentator raised issues involving considerations addressed by the Regulatory Flexibility Act.

The intent of and the possible costs and benefits of each rule proposal is also discussed in the Analysis. The Analysis notes that the objective of the

rules is to implement the provisions of the Act. The IRFA utilized the Commission's Rule 0-10 under the Exchange Act; which defines small entities when used in reference to a broker-dealer. The Commission believes that the proposed rules will have a significant economic impact on a substantial number of small entities. The impact, however, has been minimized by requiring government securities broker-dealers to register using the same form as the form used for registration of other broker-dealers.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Lynne G. Masters, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272-2848.

VII. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 3, 15(b), 15C(a), and 23 thereof, 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w, the Commission adopts §§ 240.15Ca1-1, 240.15Ca2-1, 240.15Ca2-2, 240.15Ca2-3, 240.15Ca2-4, 240.15Ca2-5, 240.15Cc1-1, and amends § 240.15b1-3, 240.15b2-2, Form BD, § 249.501, Form BDW, § 249.501(a) of Title 17 of the Code of Federal Regulations, in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Dealers, Government Securities brokers and government securities dealers.

VIII. Text of Amendments

In accordance with the foregoing, 17 CFR is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901 as amended 15 U.S.C. 78w * * *

Section 240.15b1-3 also issued under sec. 15, 17; 15 U.S.C. 78o 78q; * * *

Section 240.15b2-2 also issued under secs. 3, 15; 15 U.S.C. 78c, 78o; * * *

Sections 240.15Ca1-1, 240.15Ca2-1, 240.15Ca2-2, 240.15Ca2-3, 240.15Ca2-4, 240.15Ca2-5, 240.15Cc1-1 also issued under secs. 3, 15C; 15 U.S.C. 78c, 78o-5.

2. § 240.15b1-3 is amended by revising paragraph (b) as follows:

§ 240.15b1-3. Registration of successor to registered broker-dealer.

(a) * * *

(b) A Form BD filed by a broker-dealer that is not registered when such form is filed and which succeeds to and

continues the business of a predecessor registered broker-dealer, shall be deemed an application for registration filed by the predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form of organization or change in composition of a partnership and the amendment is filed to reflect these changes.

3. § 240.15b2-2 is amended by revising paragraphs (a) and (b) as follows:

§ 240.15b2-2. Inspection of newly registered brokers and dealers.

(a) *Definition.* For the purpose of this section the term "applicable financial responsibility rules" shall include: (1) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a), or 17(e)(1)(A) of the Act; (2) any rule adopted by the Commission relating to hypothecation or lending of customer securities; (3) any other rule adopted by the Commission relating to the protection of funds or securities; and (4) any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1) of the Act.

(b) Each self-regulatory organization that has responsibility for examining a broker or dealer member (including members that are government securities brokers or government securities dealers registered pursuant to section 15C(a)(1)(A) of the Act) for compliance with applicable financial responsibility rules is authorized and directed to conduct an inspection of the member, within six months of the member's registration with the Commission, to determine whether the member is operating in conformity with applicable financial responsibility rules.

4. By adding § 240.15Ca1-1, 240.15Ca2-1, 240.15Ca2-2, 240.15Ca2-3, 240.15Ca2-4, 240.15Ca2-5, and 240.15Cc1-1 (after § 240.15Bc-1 in the CFR) as follows:

Registration of Government Securities Brokers and Government Securities Dealers

Sec.
240.15Ca1-1 Notice of Government securities broker-dealer activities.
240.15Ca2-1 Application for registration as a government securities broker or government securities dealer.
240.15Ca2-2 Statement of financial condition to be filed with application for registration as a government securities broker or government securities dealer.
240.15Ca2-3 Registration of successor to registered government securities broker or government securities dealer.

Sec.

240.15Ca2-4 Registration of fiduciaries.

240.15Ca2-5 Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers.

240.15Cc1-1 Withdrawal from registration.

Registration of Government Securities Brokers and Government Securities Dealers

§ 240.15Ca1-1 Notice of government securities broker-dealer activities.

(a) Every government securities broker or government securities dealer that is a broker or dealer registered pursuant to sections 15 or 15B of the Act (other than a financial institution as defined in section 3(a)(46) of the Act) shall file with the Commission written notice on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein that it is a government securities broker or government securities dealer. After July 25, 1987, every broker or dealer subject to this paragraph shall file notice that it is a government securities broker or government securities dealer prior to or on the date it begins acting as a government securities broker or government securities dealer.

(b) Every government securities broker or government securities dealer required to file notice under paragraph (a) of this section shall file with the Commission written notice on Form BD in accordance with the instructions contained therein when it ceases to be a government securities broker or government securities dealer. Notice shall be filed within 30 days after the date the broker or dealer has ceased acting as a government securities broker or a government securities dealer.

§ 240.15Ca2-1 Application for registration as a government securities broker or government securities dealer.

(a) An application for registration pursuant to section 15C(a)(1)(A) of the Act of a government securities broker or a government securities dealer shall be filed with the Commission on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein.

(b) Every amendment to Form BD filed by a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act shall constitute a "report" within the meaning of sections 15, 15C, and 32(a) of the Act.

§ 240.15Ca2-2 Statement of financial condition to be filed with application for registration as a government securities broker or government securities dealer.

(a) Every government securities broker or government securities dealer who files an application for registration on Form BD pursuant to Rule 15Ca2-1 shall file with such application a statement of financial condition as of a date no more than 30 days prior to the date on which such statement is filed and as of a later date reflecting any material change, if there has been a material change. Such statement of financial condition shall

(1) Be in such detail as will disclose the nature and amount of assets and liabilities and the net worth of such government securities broker or government securities dealer;

(2) Contain a schedule listing the securities of such government securities broker or government securities dealer or in which such government securities broker or government securities dealer has an interest and, if a ready market for the security exists, valuing the security at the market price with an indication of the market on which such valuation is made, and

(3) Contain a computation made in accordance with the capital requirements applicable to the business of such government securities broker or government securities dealer under the capital rules established by the Secretary of the Treasury.

For purposes of this paragraph (a), if the government securities broker or government securities dealer is a sole proprietorship, the personal assets and liabilities of such government securities broker or government securities dealer shall be included in the computations of its net worth and the Treasury capital requirements pursuant to clauses (1) and (2) hereof in testing compliance with the applicable capital rules.

(b) The schedule of securities furnished as a part of such statement of financial condition shall be deemed confidential if bound separately from the balance of such statement, except that it shall be available for official use by any official or employee of the United States or any state, by any national securities exchange or national securities association of which the person filing such statement is a member, or with whom the person is seeking to be associated, and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest.

(c) Every government securities broker or government securities dealer

who files an application for registration on Form BD pursuant to Rule 15Ca2-1 shall file with such application a statement that shall include the following:

(1) A representation that the capital of such government securities broker or government securities dealer has been contributed, and that such amount of capital will continue to be devoted to its business as government securities broker or government securities dealer, and a description of the nature and source of such capital;

(2) A representation that adequate arrangements have been made by such government securities broker or government securities dealer for the establishment and maintenance of adequate facilities and financing required for the carrying on of its business as a government securities broker or government securities dealer, and an undertaking that such government securities broker or government securities dealer will continue to maintain facilities and financing adequate for its business; and

(3) A statement describing the arrangements made for the obtaining of the funds required for the operation of its business for the first year of operations after registration, and the uses to which such funds will be put, stating in appropriate detail the expenses expected to be incurred for such first year of operations after registration; and setting forth the arrangements made, if any, for the obtaining of additional funds if such funds should become necessary.

(d) Attached to each of the statements required by this rule shall be an oath or affirmation that the information contained therein is true and correct to the best knowledge and belief of the person making such oath or affirmation. The oath or affirmation shall be made before a person duly authorized to administer such oath or affirmation. If the government securities broker or government securities dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer.

(e)(1) The provisions of this rule shall not apply to a government securities broker or government securities dealer succeeding to and continuing the business of a registered government securities broker or government securities dealer, provided that such successor government securities broker or government securities dealer files with the application on Form BD a

statement of financial condition as specified in paragraph (a) of this section.

(2) The information required pursuant to paragraphs (a)(2) and (c)(3) of this rule shall not apply to a government securities broker or government securities dealer that has been acting continuously as a government securities broker or government securities dealer for one or more years prior to July 25, 1987, and who files with its application for registration a representation that it has been acting as a government securities broker or dealer as of a date prior to July 25, 1986.

(3) The Commission may, upon written request or upon its own motion, exempt from the provisions of this rule any government securities broker or government securities dealer, either unconditionally or on specified terms or conditions, as it deems necessary or appropriate in the public interest or for the protection of investors.

(4) The statement of financial condition required by this rule shall be deemed a part of the application for registration within the meaning of the provisions of sections 15, 15C, and 32(a) of the Act authorizing the Commission to prescribe the form of application for registration of a government securities broker or government securities dealer and prohibiting the filing of a false application.

§ 240.15Ca2-3 Registration of successor to registered government securities broker or government securities dealer.

(a) If a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 75 days after such succession, provided that an application for registration on Form BD (§ 249.501 of this chapter) is filed by such successor within 30 days after such succession.

(b) Notwithstanding paragraph (a) of this rule, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the registration of the successor may be effected by amending within 30 days of the succession the Form BD of the predecessor to reflect these changes.

This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor. This successor government securities broker or government securities dealer also must file with its Form BD amendment the statements of financial condition specified in paragraph (a) of Rule 15Ca2-2.

§ 240.15Ca2-4 Registration of fiduciaries.

The registration of a government securities broker or government securities dealer pursuant to section 15C of the Act shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such registered government securities broker or government securities dealer, provided that such fiduciary files with the Commission, no more than 30 days after entering upon the performance of its duties, a statement setting forth as to such fiduciary substantially the information required by Form BD.

§ 240.15Ca2-5 Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers.

(a) Each non-resident government securities broker or government securities dealer applying for registration pursuant to section 15C(a)(1)(A) of the Act, each non-resident general partner of a government securities broker or government securities dealer partnership that is applying for such registration, and each non-resident managing agent of any other unincorporated government securities broker or government securities dealer that is applying for registration, shall furnish to the Commission, in a form acceptable to the Commission, a written irrevocable consent and power of attorney that—

(1) Designates the Securities and Exchange Commission as an agent of such government securities broker or government securities dealer upon whom may be served any process, pleadings, or other papers in any civil suit or action brought in any appropriate court in any place subject to the jurisdiction of the United States, with respect to any cause of action,

(i) That accrues during the period beginning when such government securities broker or government

securities dealer becomes registered pursuant to section 15C(a)(1)(A) of the Act and ending either when such registration is cancelled or revoked, or when a notice filed by such government securities broker or government securities dealer to withdraw from such registration becomes effective, whichever is earlier,

(ii) That arises out of any activity, in any place subject to the jurisdiction of the United States, occurring in connection with the conduct of the business of such government securities broker or government securities dealer, and

(iii) That is founded, directly or indirectly, upon the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of those Acts, and

(2) Stipulates and agrees that any such civil suit or action may be commenced against such government securities broker or government securities dealer by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (c) of this section and that the service as aforesaid of any such process, pleadings, or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due process service thereof had been made.

(b) Each government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act that becomes a non-resident government securities broker or government securities dealer, and each general partner or managing agent of an unincorporated government securities broker or government securities dealer registered or applying for registration pursuant to section 15C(a)(1)(A) of the Act who becomes a non-resident after such registration or filing of an application for such registration, shall furnish such consent and power of attorney no more than 30 days thereafter.

(c) Service of any process, pleadings, or other papers on the Commission under this rule shall be made by delivering the requisite number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings, or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered or certified mail to the appropriate defendants at their last

address of record filed with the Commission; but any failure by the Commission to forward such a copy shall have no effect on the validity of the service made upon the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its file.

(d) For purposes of this rule the following definitions shall apply:

(1) The term "managing agent" shall mean any person, including a trustee, who directs or manages or who participates in the directing or managing of the affairs of any unincorporated organization or association that is not a partnership.

(2) The term "non-resident government securities broker or government securities dealer" shall mean (i) in the case of an individual, one who is domiciled in or has his principal place of business in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(3) A general partner or managing agent of a government securities broker or government securities dealer shall be deemed to be a non-resident if he is domiciled in any place not subject to the jurisdiction of the United States.

§ 240.15Cc-1 Withdrawal from registration.

(a) Notice of withdrawal from registration as a government securities broker or government securities dealer pursuant to section 15C(a)(1)(A) of the Act shall be filed on Form BDW in accordance with the instructions contained therein.

(b) Except as hereinafter provided, a notice to withdraw from registration filed by a government securities broker or government securities dealer shall become effective for all matters on the sixtieth day after the filing thereof with the Commission or within such shorter period of time as the Commission shall determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15C(c) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such government securities broker or government securities dealer or if, before the

effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) Every notice of withdrawal filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C, and 32(a) of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read, in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a. *et seq.*

§ 249.501 [Amended]

6. FORM BD (§ 249.501) is amended as follows: Revisions to the Instructions page, New Items 12 and 13 added, Item 10 amended. (FORM BD does not appear in the Code of Federal Regulations. Only the modified pages of Form BD are published.)

U.S. Securities and Exchange Commission

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, With the U.S. Securities and Exchange Commission

How and Where to File

File Form BD and its schedules in triplicate with the Securities and Exchange Commission, Washington, DC 20549. Manually sign and notarize all three copies on the execution page. Keep a copy. Duplicated copies may be filed if manually signed. Copies must be made on standard size white paper, in the same size as the original.

Form BD Initial filings—Required Statements

Rule 15b1-2 and Rule 15Ca2-2 require filing with each initial Form BD application two copies of special statements of financial condition, capital contribution, facilities, and first-year funding. (See Securities Exchange Act Release No. 9594 (May 12, 1972); Securities Exchange Act Release No. 24369 (April 21, 1987).)

Foreign Broker-Dealers

Rule 15b1-5 and Rule 15Ca2-1 require non-resident brokers or dealers applying for registration to provide the

Commission with a consent and power of attorney. This consent and power of attorney designate the Commission as agent upon whom may be served any papers in connection with actions arising from the broker-dealer's business that are subject to the jurisdiction of the United States and that accrue while the broker or dealer is registered with the Commission. This consent and power of attorney is in addition to and separate from the consent to service of process provided on Form BD. Non-resident broker-dealers must provide both consents and the power of attorney.

Successor Registration

A broker-dealer that assumes substantially all the assets and liabilities of and continues the business of a predecessor broker-dealer is a successor broker-dealer. Rule 15b1-3 and Rule 15Ca2-3 require a successor broker-dealer to file a new Form BD (or, in special instances, to amend the predecessor broker-dealer's Form BD) within 30 days. The filing must indicate on page 2 of the form that the applicant is a successor and must contain the statement of financial condition required by Rule 15b1-2 or Rule 15Ca2-1 for Form BD successor filings. (See Securities Exchange Act Release No. 22468, (September 26, 1985); Securities Exchange Act Release No. 24369 (April 21, 1987).)

Prohibited Broker-Dealer Names

United States Code Title 18 section 709 makes a criminal offense of using the words "National," "Federal," "United States," "Reserve," or "Deposit Insurance" in the name of a person or organization in the brokerage business, unless otherwise allowed by Federal law. If these words are used in the applicant's name, include an opinion of counsel with the Form BD explaining why the words are permitted.

Instructions for Form BD

1. Updating

By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and circle the number of the item being changed.

2. Contact Employee

The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format

- Attach an execution page (page 1) with original manual signatures to the initial Form BD filing and each amendment to the form or Schedules A through D.

- Type all information.
- Give the broker-dealer and date on each page.
- Use only the Form BD and its Schedules or a reproduction of them.

4. Definitions

- Applicant—The broker-dealer applying on or amending this form.
- Control—The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company.
- Jurisdiction—Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.
- Person—An individual, partnership, corporation or other organization.
- Self-regulatory organization—Any national securities or commodities

exchange or registered securities association, or registered clearing agency.

5. Schedule A, B and C

Individuals not required to have a Form U-4 (individual registration) in the Central Registration Depository (CRD) who are listed on Schedules A, B or C must attach page 2 of Form U-4. The applicant broker-dealer must appear in Form U-4 Item 19 or 20. Signatures are not required.

6. Schedule D

Schedule D provides additional space for explaining "Yes" answers to Form BD items, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule E

Schedule E Amendments to report changes in Branch Offices may be submitted without an execution page.

8. Federal Information Law and Requirements

The Securities Exchange Act of 1934, sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with

applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

9. Government Securities Activities

A. Section 15C of the Exchange Act requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting *only* a government securities business.

B. Broker-dealers registered or applicants applying for registration under section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

C. Broker-dealers registered under section 15(d) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

BILLING CODE 4190-11-M

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

Form BD Page 5	Applicant Name: _____	Official Use
	Date: _____ Firm CRD No.: _____	

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category which accounts for or is expected to account for less than 10% of annual revenue from the securities or investment advisory business.

- | | | |
|--|--------------------------|-----|
| A. Exchange member engaged in exchange commission business..... | ☐ | EMC |
| B. Exchange member engaged in floor activities..... | ☐ | EMF |
| C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter..... | ☐ | IDM |
| D. Broker or dealer retailing corporate securities over-the-counter..... | ☐ | BDR |
| E. Underwriter or selling group participant (corporate securities other than mutual funds)..... | ☐ | USG |
| F. Mutual fund underwriter or sponsor..... | ☐ | MFU |
| G. Mutual fund retailer..... | ☐ | MFR |
| H. 1. U.S. government securities dealer..... | ☐ | GSD |
| 2. U.S. government securities broker..... | ☐ | GSB |
| I. Municipal securities dealer..... | ☐ | MSD |
| J. Municipal securities broker..... | ☐ | MSB |
| K. Broker or dealer selling variable life insurance or annuities..... | ☐ | VLA |
| L. Solicitor of savings and loan accounts..... | ☐ | SSL |
| M. Real estate syndicator..... | ☐ | RES |
| N. Broker or dealer selling oil and gas interests..... | ☐ | OGI |
| O. Put and call broker or dealer or option writer..... | ☐ | PCB |
| P. Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)..... | ☐ | BIA |
| Q. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)..... | ☐ | NPB |
| R. Investment advisory services..... | ☐ | IAD |
| S. Broker or dealer selling tax shelters or limited partnerships..... | ☐ | TAP |
| T. Other (give details on Schedule D)..... | ☐ | OTH |

11. A. Does applicant effect transactions in commodity futures, commodities, commodity options as a broker for others or dealer for its own account?..... YES NO ☐ ☐ [30]

B. Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)..... YES NO ☐ ☐ [31]

12. Is applicant applying for or continuing an existing registration solely as a government securities broker or dealer?..... YES NO ☐ ☐ [32]

13. Notice of Government Securities Activities

A. Is applicant acting or intending to act as a government securities broker or dealer in addition to other broker-dealer activities? (Do not answer "Yes" if applicant answered "yes" to Question 12.)..... YES NO ☐ ☐ [33]

B. Is applicant ceasing its activities as a government securities broker or dealer? (Do not answer "Yes" unless previously answered "yes" to Question 13A.)..... YES NO ☐ ☐ [34]

7. § 249.501a is revised as follows:

§ 249.501a Form BDW, notice of withdrawal from registration as broker-dealer pursuant to § 240.15b6-1, § 240.15b3-1, or § 240.15Cc1-1 of this chapter.

This form shall be used for filing a notice of withdrawal as broker-dealer pursuant to Rule 15b6-1 (§ 240.15b6-1 of this chapter), Rule 15b3-1 (§ 240.15b3-1 of this chapter), or Rule 15Cc1-1 (§ 240.15Cc1-1 of this chapter). Under sections 15(b), 15B, 15C, 17(a), and 23(a) of the Securities Exchange Act of 1934 (17 CFR Part 240), and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form from registrants desiring to withdraw their registration as a broker-dealer. Disclosure of the information specified in this form is mandatory prior to processing of applications for withdrawal, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining whether it is in the public interest to permit a broker-dealer to withdraw his registration. This notice will be made a matter of public record. Therefore, any information, given will be available for inspection by any member of the public. Because of the public nature of the information the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws and other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in identifying registrants and, therefore, in promptly processing applications for withdrawal. Failure to disclose the information requested by Form BDW, except for social security account numbers, may result in the registrant not being permitted to withdraw his registration.

By the Commission.

Jonathan G. Katz,

Secretary.

April 21, 1987.

Regulatory Flexibility Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the amendment to Rule 15b2-2 set forth in Securities Exchange Act Release No. 24372 will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the amendments would not effect a

substantial number of small entities because most self-regulatory organizations that are required to conduct inspections of government securities brokers and dealers are not small entities.

Dated: April 29, 1987.

John S.R. Shad,

Chairman.

[FR Doc. 87-10258 Filed 5-5-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket Nos. RM83-41-001 et al.]

Rules of Discovery for Trial-Type Proceedings

Issued April 30, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On March 2, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its Rules of Practice and Procedure to provide rules for conducting discovery in its trial-type proceedings. In this order, the Commission grants rehearing of its order solely for the purpose of further consideration.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph R. Hartsoe, Deputy Assistant General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On March 2, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its Rules of Practice and Procedure¹ to provide rules for conducting discovery in its trial-type proceedings.² On March 31, 1987 and

April 1, 1987, the Commission received three timely petitions for rehearing of this final rule from Tennessee Gas Pipeline Company, Independent Petroleum Association of America, and American Gas Association.³ In order to have sufficient time to consider the issues raised in these petitions, the Commission grants rehearing of this final rule solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of these petitions on the merits, either in whole or part. As provided in § 385.713(d) of the Commission's Rules of Practice and Procedure,⁴ no answers to this petition will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10268 Filed 5-5-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regs. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Liquid and Nonliquid Resources and Resources Determinations; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Correction of final rule.

SUMMARY: In the final rule which appeared in the *Federal Register* February 11, 1987 (52 FR 4282), paragraphs (b) and (c)(1) of § 416.1201 of Regulations No. 16 were revised. However, two words in paragraph (c)(1) were inadvertently transposed and are being corrected at this time.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION:

PART 416—[AMENDED]

A revision of paragraphs (b) and (c)(1) of § 416.1201 of Regulations No. 16 was published as a final rule on February 11,

³The Commission also received a petition for rehearing filed out of time by Texas Eastern Transmission Corporation on April 2, 1987.

⁴ 18 CFR § 385.713(d) (1986).

¹ 18 CFR § 385 (1986).

² Order No. 466, 52 FR 6957 (March 6, 1987), III FERC Stats. & Regs. ¶ 30,731 (1987).

1987 (52 FR 4282). In paragraph (c)(1), we inadvertently transposed 2 words on lines 4 and 5. The words "nonwork certain days" should read "certain nonwork days". Paragraph (c)(1) of § 416.1201 is correctly revised to read as follows:

§ 416.1201 Resources; general.

(c) *Nonliquid resources.* (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily nonliquid are loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land. Nonliquid resources are evaluated according to their equity value except as otherwise provided. (See § 416.1218 for treatment of automobiles.)

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: April 30, 1987.

James V. Oberthaler,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-10298 Filed 5-5-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director, OSMRE is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of Wyoming as a modification to its permanent regulatory program (herein after referred to as the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Chapter XII of the approved permanent program regulations on self-bonding.

EFFECTIVE DATE: May 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Room 2128,

Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

Background

Information concerning the general background on the Wyoming program submission and the approval process, as well as the Secretary's findings, the disposition of comments and an explanation of the conditions of approval can be found in the November 26, 1980 *Federal Register* (45 FR 78637 through 78684). Information on amendments to the Wyoming self bonding program can be found in the February 28, 1985 *Federal Register* (50 FR 8108). Other actions on conditions of approval and program amendments are identified at 30 CFR 950.11 and 950.15.

Proposed Amendment

On December 13, 1985, the State of Wyoming submitted to OSMRE an amendment to its approved regulatory program. The amendment consists of revisions to Chapter XII, Self-Bonding Program of the approved permanent program regulations which are administered by the Wyoming Land Quality Division. Specifically, the amendment consists of revising the definition of "collateral bond" to mean a self-bond supported by personal property, real property or investment-grade securities. The amendment also addresses the procedures to be followed by an operator who intends to use personal property as collateral for posting his reclamation bond. Additionally, the proposed amendment recodifies Chapter XII of the Wyoming program.

The January 15, 1986 *Federal Register* announced receipt of the proposed amendment and invited public comment on its adequacy (51 FR 1816). The public comment period ended February 14, 1986. The public hearing scheduled for February 10, 1986 was not held since no person requested an opportunity to testify at the hearing.

On June 10, 1986, Wyoming submitted additional material to further clarify the proposed amendment. OSMRE reopened the comment period on August 1, 1986 (51 FR 27560) to allow the public an opportunity to comment on the supplemental material. That comment period closed on August 18, 1986.

Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment submitted to OSMRE by the State of Wyoming on December 13, 1985. Only those revisions of particular

interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or provide for recodification of the Chapter and do not adversely affect other aspects of the program.

1. Wyoming has amended the definition of "collateral bond" in Chapter XII section 1(b) to mean a self-bond which is supported by one or more of the following . . . "personal property which the Administrator [of the Department of Environmental Quality] deems to protect the State's interest." (The definition also retains the allowance of real property and investment grade securities as collateral.) Section 2(a)(x)(B)(III) is also amended to further describe what is meant by personal property. The amended language states that personal property shall *not* include: Property which is already collateral or which the operator sells in the course of business; fixtures; certain securities; and certain certificates of deposit. The amendments would allow personal property such as equipment used in mining to be pledged as collateral.

The Federal rule at 30 CFR 800.5 defines types of collateral which OSMRE has found to be acceptable to secure an operator's collateral bond. OSMRE has included only certain specific types of personal property. These are cash accounts, negotiable bonds, negotiable certificates of deposit and irrevocable letters of deposit. They do not include equipment or other personal goods.

In a letter of Wyoming dated April 9, 1986, OSMRE indicated that Wyoming should define the term "personal property" in its proposed amendment so that it clearly allowed only those types of collateral contained in the Federal definition at 30 CFR 800.5.

Wyoming responded on June 10, 1986, by saying that the collateral bond under the Wyoming program differs from that of the collateral bond defined at 30 CFR 800.5 in that under the Wyoming regulations, acceptance of a collateral bond is discretionary with the regulatory authority and is dependent upon the regulatory authority's review of the applicant's balance sheet. Wyoming stated that since this is the case, the restrictions on personal property found in the Federal regulations are not required in the Wyoming regulations. Wyoming argued

that it should be allowed to accept equipment as collateral and that in some cases such an arrangement could benefit Wyoming in that equipment would be on the site and at the State's disposal for use in reclamation in the event of operator default. Wyoming said that it is indifferent as to whether collateral posted is real property or personal property, as long as its value was sufficient to cover the required bond amount.

Since Wyoming's letter did not specify what is included in its review of the applicant's balance sheet, OSMRE is not in a position to determine the adequacy of the combined balance sheet and personal property criteria for acceptance of an applicant's "self-bond" under those criteria. Therefore, OSMRE has reviewed the allowance of personal property as collateral on its face. OSMRE, in its revised bonding rules published July 19, 1983, decided to delete personal property other than those specific forms listed above, from the definition of "collateral bond." OSMRE determined that accepting a perfected first-lien security interest in personal property as collateral may present problems such as "loss of the property, obtaining appraisals of such items, fluctuations in values, and the attachment of liens" (July 19, 1983, 48 FR 32935). The deletion of personal property as an acceptable form of collateral indicated OSMRE's position that the risks involved may put the regulatory authority in a position of being at a higher risk than anticipated by section 509 of SMCRA in accepting an operator collateral bond. The regulatory authority would risk devaluation of the property through damage or obsolescence or through inability to find a buyer for the property at the appraised price. Costs such as the cost to move mining equipment to a potential buyer's location could affect the salability of or profit on a piece of equipment. (Wyoming stated in its letter that it has accepted pledges of personal property that is relatively immobile and "can only be dismantled and removed at substantial expense.") While equipment left on an abandoned site may be of help in some reclamation activities, there is no guarantee that the equipment will be in suitable condition or that the regulatory authority will be able to pay operator costs or properly dispose of the equipment following reclamation activities.

Therefore the Director finds the proposed Wyoming regulations to be inconsistent with the Federal requirements and less effective than the

rules for collateral bond in 30 CFR 800.5 and 800.21.

2. The proposed Wyoming rules at Chapter XII, section 2(a)(x)(C) state that the Administrator *may* require possession by the Department of personal property, or a mortgage or security agreement executed by the operator in favor of the Department of Environmental Quality.

The Federal rule at 30 CFR 800.21(c) requires a "first mortgage, first deed of trust or perfected first-lien security interest" in any real property used as collateral. The Federal provisions provide for greater control over collateral deposited by the applicant than do the proposed Wyoming provisions.

Therefore, the Director finds that the Wyoming proposed rules are less effective than the Federal rules and that Wyoming must retain or reinstate its requirement that the regulatory authority "shall require . . . a mortgage executed by the operator in favor of the department of environmental quality" for real property used as collateral [June 1984 addendum to Wyoming's Chapter XII at section 2(a)(10)(c)]; or otherwise amend its rules to be no less effective than 30 CFR 800.21(c).

3. Wyoming's proposed rules would add section 2(a)(x)(C)(II) to Chapter XII to require that a security interest created by a security agreement be perfected by filing a financing statement or by taking possession of the collateral. The rule would further provide that when the collateral is left in the possession of the operator, in the event of default the operator shall assemble the collateral and make it available to the regulatory authority. Since the Director is disapproving the allowance of personal property other than those types listed in the definition of collateral bond in 30 CFR 800.5, these provisions become extraneous. The Director, therefore, requires that Wyoming further amend its rules to remove extraneous language at section 2(a)(x)(C)(II) concerning forms of personal property found by the Director to be unacceptable as forms of collateral.

Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies. No substantive comments were received from the respondents.

The Director solicited public comment on the proposed amendment in the January 15, 1986 *Federal Register* (51 FR 1816). One set of comments was received from the Arch Mineral Corporation.

Arch Mineral asserts that the distinction between the Federal regulations and the Wyoming regulation is that the Federal regulations allow three types of bonds (collateral, surety, and self-bond) were the Wyoming regulations, recognize only two forms of bond (surety and self-bond). The commenter states that under the proposed Wyoming regulations, the collateral bond is not a separate independent form of bond; it is another form of the self-bond that, contrary to the Federal regulations, the State is under no obligation to accept. The commenter goes on to say that the self-bond under the Wyoming regulations is virtually identical to the Federal program in that it requires an applicant to meet certain financial balance sheet tests which demonstrate financial strength.

As stated above under Finding 1, OSMRE does not agree that the nature of collateral bond acceptance as found in the Wyoming program is substantially different from that found at 30 CFR 800.5 and 800.21. OSMRE agrees that the self-bonding criteria of the Wyoming program is nearly identical to the Federal regulations at 30 CFR 800.23. However, as further discussed under Finding 1, Chapter XII, section 2(a)(x) allows the Administrator to accept a collateral bond using personal property when the applicant has not met the self-bonding criteria of the Wyoming program and is therefore less effective than the Federal regulations. Since the Wyoming rules do not indicate what financial balance sheet tests must be met for the collateral self-bond, OSMRE cannot judge the effectiveness of this arrangement and must view such a bond as a collateral bond.

Arch Mineral outlines a variety of reasons why OSMRE's concerns on the use of personal property to secure an operator's reclamation obligation are not valid in the context of Wyoming's coal mining industry. Although some of the commenter's points may be valid, the Secretary considered similar arguments in the July 19, 1983 rulemaking concerning bonding, and, as indicated in Finding 1 above, decided that the risks of allowing personal property to be posted as collateral outweighed the benefits (48 FR 32932).

Director's Decision

Based on the above findings, the Director is approving the proposed amendments as submitted by Wyoming on December 13, 1985, with the exception of those provisions discussed in Finding 1. In addition, as indicated in Findings 2 and 3, he is requiring that

Wyoming submit regulatory program amendments. The Federal rules at 30 CFR Part 950 are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the Wyoming program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by Wyoming of only such provisions.

Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 950—WYOMING

30 CFR Part 950 is amended as follows:

1. The authority citation for Part 950 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. A new paragraph (b) is added to § 950.12 to read as follows:

§ 950.12 State program provisions and amendments disapproved.

(b) The following provision of the Rules and Regulations of the Land Quality Division of the Wyoming Department of Environmental Quality, as submitted on December 13, 1985, is hereby disapproved: Addition of section 1(b)(iii) to Chapter XII which would have allowed personal property other than allowed by 30 CFR 800.5 (cash accounts, negotiable bonds, certificates of deposit, and letters of credit) to be posted as collateral bond.

3. Paragraph (j) is added to § 950.15 to read as follows:

§ 950.15 Approval of regulatory program amendments.

(j) The following amendments to the Wyoming permanent regulatory program, as submitted to OSMRE on December 13, 1985, are approved effective May 6, 1987, with the exception identified in § 950.12(b), and with the exception of those provisions identified in § 950.16(r) as requiring further amendment.

4. A new paragraph (r) is added to 30 CFR 950.16 to read as follows:

§ 950.16 Required program amendments.

(r) By October 30, 1987, Wyoming shall submit revisions to its permanent program rules or otherwise propose to amend its program:

(1) At Chapter XII, section 2(a)(x)(C) to ensure that the Administrator has access to and control over collateral in a manner no less effective than 30 CFR 800.21; and

(2) At Chapter XII, section 2(a)(x)(C)(II) to remove language made extraneous by the Director's disapproval

of the use of personal property as collateral.

[FR Doc. 87-10243 Filed 5-5-87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F3299/R877; FRL-3196-1]

Pesticide Tolerance for Lactofen; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 87-7258 at page 10567 in the Federal Register of Thursday, April 2, 1987 (52 FR 10567), a new § 180.431 *Lactofen; tolerance for residues* was added to 40 CFR Chapter I. This action inadvertently assigned the new section to a number already in use, resulting in duplicate entries for 40 CFR 180.431.

PART 180—[AMENDED]

Therefore, the section number and heading published in FR Doc. 87-7258 are corrected to read "§ 180.432 *Lactofen; tolerance for residues.*"

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, OPTS Federal Register Staff (TS-788B), Environmental Protection Agency, Room NE-G009, 401 M Street, SW., Washington, DC 20460, (202)-382-2253.

Dated: April 28, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-10283 Filed 5-5-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85-388; (RM 5167); FCC 87-116]

Common Carrier Services; Rural Service Areas; Applications for Cellular Radio

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The FCC determined that its rules for filing cellular radio applications should be amended to codify certain policies for Metropolitan Statistical Areas (MSAs). The FCC has adopted a