

Paragraph 6005 Class E airspace.

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AWP CA E5 Marysville, CA

Marysville Yuba County Airport, CA
(Lat. 39°05'52" N, long. 121°34'11" W)

Marysville Beale AFB, CA
(Lat. 39°08'10" N, long. 121°26'12" W)

Marysville Beale AFB TACAN
(Lat. 39°08'05" N, long. 121°26'26" W)

Marysville VOR/DME
(Lat. 39°05'55" N, long. 121°34'23" W)

Mustang VORTAC
(Lat. 39°31'53" N, long. 119°39'22" W)

Lincoln Municipal Airport, CA
(Lat. 38°54'33" N, long. 121°21'05" W)

Sierraville Dearwater Airport, CA
(39°34'51.653" N, 120°21'15.745" W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Beale AFB and 2 miles each side of a 345° bearing from the Lincoln Municipal Airport and within a 7-mile radius of Yuba County Airport and within 7.8 miles west and 4.3 miles east of Beale AFB TACAN 342° radial extending from the Beale AFB 8.7-mile radius to 25 miles northwest of the Beale AFB TACAN and within 7 miles west and 4.3 miles east of the Marysville VOR 343° radial, extending from the Yuba County Airport 7-mile radius to 10.4 miles northwest of the Marysville VOR and within 7 miles southwest and 4.3 miles northeast of the Marysville VOR 153° radial extending from the Yuba County Airport 7-mile radius to 10.4 miles southeast of the Marysville VOR. That airspace extending upward from 1,200 feet above the surface bounded on the east by a line extending from lat. 40°00'00" N, long. 120°30'04" W; to lat. 39°30'00" N, long. 120°30'04" W; to lat. 39°30'00" N, long. 120°19'04" W; to lat. 39°07'00" N, long. 120°19'04" W; thence counterclockwise via the 39.1-mile radius of the Mustang VORTAC to lat. 39°00'00" N; thence via lat. 39°00'00" N, to the west boundary of V-23; thence bounded on the west by the west boundary of V-23, on the northwest by the Red Bluff, CA Class E airspace area, and on the north by lat. 40°00'00" N. That airspace extending upward from 8,500 feet MSL bounded on the south by lat. 40°00'00" N, on the west and northwest by the Red Bluff, CA and Maxwell, CA Class E airspace areas, on the north by lat. 40°45'00" N, and on the east by a line extending from lat. 40°45'00" N, long. 121°39'04" W; to lat. 40°23'00" N, long. 121°39'04" W; to lat. 40°23'00" N, long. 121°25'04" W; to lat. 40°00'00" N, long. 121°25'04" W. That airspace extending upward from 10,500 feet MSL bounded on the east by long. 120°19'04" W; on the south by the Truckee-Tahoe Class E airspace area, including that airspace within a 2-mile radius of the Sierraville Dearwater Airport, thence north via long. 120°30'04" W; to lat. 40°00'00" N, long. 120°30'04" W; to lat. 40°00'00" N, long. 121°25'04" W; on the west by long. 121°25'04" W, and on the north by lat. 40°45'00" N. That airspace extending upward from 12,500 feet MSL bounded on the east by long. 121°25'04" W; on the south by lat. 40°23'00" N, on the west by long. 121°39'04" W; and on the north lat. 40°45'00" N.

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Issued in Los Angeles, California, on March 3, 1997.

Michael Lammes,

*Acting Manager, Air Traffic Division,
Western-Pacific Region.*

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Securities Representing Investment of Customer Funds Held in Segregated Accounts by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend Rules 1.23, 1.25, and 1.27 to permit futures commission merchants ("FCMs") to increase or decrease the amount of funds segregated for the benefit of commodity customers by making direct transfers of permitted securities into and out of segregated safekeeping accounts. The types of securities in which customer funds can be invested and which will now be directly transferable are set forth in Rule 1.25. Currently, FCMs can only make direct transfers of cash to augment the customer segregated account.

Furthermore, in order to provide additional assurance that there will be a clear audit trail for such permitted transfers of securities, Rule 1.27 is proposed to be amended to require that the description of the investment securities, required by the rule, include the security identification number developed by the Committee on Uniform Security Identification Procedures ("CUSIP Number").

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Comments may be sent by facsimile transmission to (202) 418-5528, or by electronic mail to secretary@cftc.gov. Reference should be made to "Securities Representing Investment of Customer Funds."

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets ("Division"), Commodity Futures Trading Commission, Three

Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418-5430.

SUPPLEMENTARY INFORMATION: The Commission is proposing technical amendments to Rules 1.23, 1.25, and 1.27.¹ These changes will permit FCMs to transfer unencumbered securities directly from the proprietary domain into a segregated safekeeping account at a bank or trust company, if they are the types of securities that are permitted investments of customer funds² under Rule 1.25, in order to increase the amount of funds segregated for the benefit of commodity customers. It will also permit an FCM to transfer such securities directly from such a segregated safekeeping account to the proprietary domain, to the extent the FCM has excess funds in segregation.

I. Investment of Customers' Segregated Funds

A. Background

Section 4d(2) of the Commodity Exchange Act and Rule 1.25 restrict the types of securities in which customer funds can be invested by FCMs to obligations of the United States, general obligations of any State or any political subdivision thereof, and obligations fully guaranteed as to principal and interest by the United States ("Qualified Investments"). Rule 1.25 also requires all such investments to be purchased from, and the proceeds of any sale to be deposited into, an account or accounts used for the deposit of customer funds. Rule 1.23 currently allows an FCM to add to the funds segregated for customers through transfers of cash into a segregated account and to reduce its residual interest by cash withdrawals payable directly to the FCM.³

Current Commission rules and Division interpretations do not permit FCMs to increase their interest in segregated funds by directly transferring into a segregated account Qualified Investments which they may own.

¹ Rules referred to herein can be found at 17 C.F.R. Ch. I (1996).

² The term "customer funds" is defined in Rule 1.3(gg).

³ If adopted, the proposed changes will also require the Division to revise Financial and Segregation Interpretation No. 7, which includes the following statement:

Under Regulations 1.23 and 1.25 such obligations must be: (1) purchased with money deposited in an account used for the deposit of customers' funds; (2) made through such an account; and (3) the proceeds from any sale of such obligations must be redeposited in such an account. Thus, all additions to and withdrawals from customer segregated funds which represent topping up by the FCM to cover actual or expected customer deficits must be in the form of cash.

¹ Comm. Fut. L. Rep. (CCH) ¶ 7117, at 7124 (July 23, 1980).

Current rules also prohibit FCMs from withdrawing Qualified Investments from a segregated account and depositing them in their own account in order to reduce their financial interest in segregated funds. Consequently, all such additions to and withdrawals from segregated accounts must currently be in the form of cash.

FCMs and the Joint Audit Committee ("JAC")⁴ have claimed that the current rules place an undue burden on FCMs. For example, in the event an FCM desires to correct an expected or existing undersegregated condition, in order to comply with the Commission's existing segregation rules, if the FCM does not have cash readily available to transfer into the segregated account, it would have to sell its own Qualified Investments and, then, transfer the cash to the segregated account. The cash could then be re-invested in Qualified Securities. Conversely, when an FCM wishes to decrease its financial interest in segregated funds, this entire process must be reversed.

This additional step not only causes a delay in the transfer, but additional transaction costs associated with buying and selling the proprietary securities are incurred. These costs can be substantial, not only as a result of the commissions or other fees incurred, but also due to possibly unfavorable market conditions when buying and selling like securities.

The Commission believes the industry's proposal, as first suggested to the Commission's staff during a JAC meeting, to allow direct transfers of Qualified Securities into and out of the segregated account, has merit. Customer protection would be directly enhanced by reducing the amount of time required to effect a transfer of funds into segregation and, with appropriate safeguards, should not diminish existing segregation protections.

The Commission has reviewed these proposed changes in light of the Bankruptcy Reform Act of 1978 ("BReAct"), which appears to have resolved any questions with respect to the status of customers' segregated funds in the event of an FCM bankruptcy.⁵ In the Commission's view, the definition of customer property contained in Section 761(10)⁶ of the

BReAct, together with the special priority of distribution accorded to such property under Section 766(h) of the BReAct, requires that, like cash, any securities held in a segregated safekeeping account will not be used to satisfy the claim of a noncustomer creditor of the FCM until all customer net equity claims have been satisfied.

B. Proposed Amendments

The Commission is proposing that Rules 1.23 and 1.25 be amended to allow an FCM to deposit firm-owned unencumbered Qualified Investments directly into segregated accounts held at qualifying banks or trust companies and to withdraw, to the extent of the FCM's residual financial interest in segregated funds, any Qualified Investments from such segregated accounts.

The Commission is proposing to permit an FCM to deposit Qualified Investments owned by the FCM which are otherwise unencumbered into customers' segregated accounts to overcome an undersegregated condition or to increase its financial interest in segregated funds. Any securities transferred into segregation must be owned directly by the FCM itself, *i.e.*, the FCM is not permitted to transfer in securities owned by any other persons, including noncustomers.⁷ Under this

acquired, or held by or for the account of the debtor, from or for the account of a customer—

(A) including—

- (i) property received, acquired, or held to margin, guarantee, secure, purchase, or sell a commodity contract;
- (ii) profits or contractual or other rights accruing to a customer as a result of a commodity contract;
- (iii) an open commodity contract;
- (iv) specifically identifiable customer property;
- (v) warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer;
- (vi) cash, a security, or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer;
- (vii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim based on a security of the same class and series of an issuer;
- (viii) property that was unlawfully converted and that is property of the state; and
- (ix) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including property to the extent that a customer does not have a claim against the debtor based on such property[.]

⁷ Noncustomers are persons within the definition of a proprietary person in Commission Rule 1.3(y) other than the FCM itself or a general partner of the FCM. Examples of noncustomers are associated persons, officers, directors, owners, contributors of 10 percent or more of the FCM's capital or controllers of 10 percent or more of the FCM's

proposal an FCM will also be permitted to withdraw Qualified Investments from segregated accounts and deposit them into its own accounts to decrease its residual financial interest in segregated funds.

These proposed rule changes would permit the deposit and withdrawal of Qualified Investments into and out of segregated accounts, in effect, under essentially the same conditions and restrictions as cash. There is no change in the conditions applicable to the transfer of proprietary cash into or out of segregation.

Rule 1.25, as proposed to be amended, would no longer require that Qualified Investments which represent an investment of customers funds be purchased from and the sales proceeds flow through a segregated account. The proposed amendments would permit FCMs to deposit their own Qualified Investments into a segregated account at a permitted custodian. The amendments would also permit FCMs to withdraw any Qualified Investments from segregation and deposit such securities in their own account up to the extent of their residual financial interest in customers' segregated funds.

For purposes of Rules 1.26, 1.27, 1.28 and 1.29, all Qualified Investments when deposited into a customers' segregated account will be deemed to be securities and obligations which represent investments of customers' funds until such time as the FCM withdraws or otherwise disposes of such investments.

The Commission is also proposing to amend Rule 1.27, which requires FCMs to maintain records of Qualified Investments held in segregated accounts. The Commission is proposing that the rule explicitly require the record to include the CUSIP number of such securities as a part of the description of such investments. The Commission believes that the addition of the CUSIP number will impose no significant additional burden on FCMs, and that many entities already incorporate the CUSIP number in their record-keeping formats. Further, the CUSIP numbers are provided by the counterparty financial institutions at the time of purchase or sale of a security.

The Commission is not proposing any other changes to Rule 1.27, but wants to remind FCMs that Rule 1.27 requires them to include in the investments record, among other information, the name of the person through whom such investments were made and the name of the person to or through whom such

shares, and affiliated companies. See Commission Rule 1.17(b)(2)–(4).

⁴ The JAC is comprised of representatives from each commodity exchange and National Futures Association who coordinate the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

⁵ See 11 U.S.C. 761–766.

⁶ Section 761(10) defines "customer property" as follows:

(10) Customer property means cash, a security, or other property, or proceeds of such cash, security, or property, at any time received,

investments were disposed of. Therefore, this record should clearly identify Qualified Investments owned by the FCM which were deposited into segregation and any investments withdrawn from segregation and deposited in the FCM's own account. The Commission invites comments on whether custodians for these purposes should be limited to banks and trust companies not affiliated with the FCM.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered FCMs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with RFA.⁸ The Commission previously determined that registered FCMs are not small entities for the purpose of the RFA.⁹

Further, the amendments proposed herein do not impose any significant new burdens upon FCMs. The proposed amendments facilitate the use of firm-owned obligations to enhance funds segregated for commodity customers by allowing the direct transfer of said obligations into and out of segregated accounts. As a result, the Commission anticipates that adoption of the proposed amendments will reduce the burden of compliance with segregation requirements by FCMs. Accordingly, pursuant to Section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairperson, on behalf of the Commission, certifies that these proposed amendments would not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered FCM which believes that these rules would have significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission), in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. The Commission believes these proposed amendments impose no burden. While these proposed rule amendments have

no burden, the group of rules (3038-0024) of which the rules proposed to be amended are a part, has the following burden:

Average burden hours per response: 18.00.

Number of Respondents: 1,662.00.

Frequency of response: 19.00.

Copies of the OMB approved information collection package associated with these rules may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4d, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.23 is revised to read as follows:

§ 1.23 Interest of futures commission merchant in segregated funds; additions and withdrawals.

The provision in Section 4d(2) of the Act and the provision in § 1.20(c) which prohibit the commingling of customer funds with the funds of a futures commission merchant shall not be construed to prevent a futures commission merchant from having a residual financial interest in the customer funds segregated as required by the Act and the regulations in this part and set apart for the benefit of commodity or option customers, nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated customer funds such amount or amounts of money from its own funds or unencumbered securities from its own inventory of the type set forth in § 1.25, as it may deem necessary to ensure any and all commodity or option customers' accounts from becoming undersegregated at any time. The books

and records of a futures commission merchant shall at all times accurately reflect its interest in the segregated funds. A futures commission merchant may draw upon such segregated funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in segregated safekeeping accounts held by the bank or trust company custodians. Such withdrawal shall not result in the customer funds of one commodity and/or option customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other commodity customer, option customer or other person.

3. Section 1.25 is revised to read as follows:

§ 1.25 Investment of customer funds.

No futures commission merchant and no clearing organization shall invest customer funds except in obligations of the United States, in general obligations of any State or of any political subdivision thereof, or in obligations fully guaranteed as to principal and interest by the United States. Such investments shall be made through an account or accounts used for the deposit of customer funds and proceeds from any sale of such obligations shall be deposited into such account or accounts. However, this shall not prohibit a futures commission merchant from directly depositing unencumbered securities, of the type specified in this section, which it owns for its own account into a segregated account or from transferring any such securities from a segregated account to its own account up to the extent of its residual financial interest in customers' segregated funds: *Provided, however*, that such transfers are clearly recorded in the record of investments required to be maintained by § 1.27 and such funds are held by bank or trust company custodians. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into segregation shall be considered customer funds until such investments are withdrawn from segregation.

4. Section 1.27 is amended by revising paragraphs (a)(4) and (b)(2) to read as follows:

§ 1.27 Record of investments.

- (a) * * *
- (4) A description of the obligations in which such investments were made, including the CUSIP numbers;
- * * * *
- (b) * * *

⁸ 47 FR 18618-18621 (April 30, 1982).

⁹ 47 FR 18619-18620.

(2) A description of such documents, including the CUSIP numbers; and

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Issued in Washington D.C. on March 17, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-5711-9]

Water Quality Standards for Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of rulemaking.

SUMMARY: EPA is preparing to promulgate water quality standards applicable to surface waters in the State of Idaho. These federally promulgated standards will supersede those aspects of Idaho's water quality standards that EPA disapproved on June 25, 1996. EPA is taking this action to comply with a court order directing EPA to promulgate standards by April 21, 1997. Due to the brevity of the court-ordered deadline for promulgation, EPA plans to promulgate an "interim-final" rule without a prior proposal or comment period. EPA will request comment on the interim-final standards after their promulgation. EPA will revise the interim-final standards through a subsequent rulemaking if justified by analysis of the comments. The rulemaking that EPA is preparing will establish revised use designations on currently unclassified waters in the state and on 53 specified water body segments whose use designations do not meet the goals of the Clean Water Act and for which the state has not provided information to justify its lower use designations. The interim-final rule will also establish revised temperature criteria necessary to protect certain threatened, endangered, and candidate species. Finally, EPA's interim-final rule will amend Idaho's mixing zone and antidegradation policies as well as its "private waters exclusion."

Today's notice is intended to alert the public to the process EPA is following and the reasons for doing so, to reassure the public that EPA intends to seek public comment, and to give the public advance notice of the need to identify information that may be relevant to the attainability of fishable/swimmable uses in the waters identified in EPA's June 1996 letter.

DATES: EPA plans to promulgate replacement water quality standards for Idaho in a separate action by April 21, 1997. At that time, EPA will solicit public comment. Comments are not being considered at this time, due to the brevity of the court schedule.

FOR FURTHER INFORMATION CONTACT: Lisa Macchio at U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, (telephone: 206-553-1834) or William Morrow in U.S. EPA Headquarters at 202-260-3657.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in Idaho could be affected by this rulemaking since water quality standards are used in determining NPDES permit limits.

B. Background

1. Statutory/Regulatory History.

Section 303(c) of the Clean Water Act (CWA) directs States, with oversight by EPA, to adopt water quality standards to protect public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under Section 303, States have the primary responsibility to establish water quality standards, which consists of designated uses, the water quality criteria necessary to support those uses, and antidegradation.

Section 303 requires States and Tribes to review their standards at least once every three years and to submit any new or revised standards to EPA for its review. Under Section 303(c), EPA is required to either approve or disapprove such new or revised State/Tribal standards, depending on whether they meet the requirements of the Act. Where EPA disapproves a new or revised State/Tribal standard, and the State or Tribe does not revise the standard to meet EPA's objection, sections 303(c)(3) and 303(c)(4)(A) of the Act require the Agency to promptly propose substitute Federal standards and promulgate final Federal standards within 90 days thereafter. In addition, section 303(c)(4)(B) authorizes the Administrator to promulgate a Federal standard whenever she determines that a new or revised standard is necessary to meet the requirements of the CWA. The implementing regulations for the water quality standards program are found at 40 CFR part 131.

2. History of Idaho/EPA Actions

In 1994, Idaho submitted water quality standards to EPA for review and

approval under § 303 of the Act. On October 25, 1995, EPA gave Idaho advance notice of deficiencies in the state's 1994 standards submission. On June 25, 1996, EPA approved some portions and disapproved other portions of those standards. Both before and after the October 25, 1995, letter and the June 25, 1996, approval/disapproval letter, EPA worked to encourage the state of Idaho to revise its standards to address the deficiencies identified by EPA. While the state has taken some preliminary steps to address some of EPA's concerns, it has not yet submitted revised standards to EPA for approval. On February 20, 1997, as a result of a lawsuit filed by three environmental groups (*Idaho Conservation League v. Browner*; No. C96-807WD), Judge Dwyer of the United States District Court for the Western District of Washington ruled that EPA had failed to carry out a mandatory duty to promptly prepare and publish Federal standards to address the items disapproved in the June 25, 1996, letter. Judge Dwyer ordered EPA to promulgate such standards within 60 days, that is, by April 21, 1997.

Because of the court order, EPA has found it necessary to condense its normal rulemaking process, and will be issuing an interim-final rule with subsequent opportunity for public comment. The national goal for water quality as articulated in section 101(a)(2) of the Act "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." These goal uses of the Act are commonly referred to as "fishable/swimmable". Since Idaho has not provided information concerning the attainability or non-attainability of "fishable/swimmable" uses for the waters addressed in the June 1996 letter, EPA will likely be promulgating designated uses based on the goal uses of the Act for those waters. During the comment period which will follow the April 21st promulgation, EPA will seek information from the public on the appropriateness of those designated uses and will revise them as needed.

The State of Idaho is currently working to resolve many of the deficiencies identified in EPA's June 25, 1996, letter. EPA is coordinating this rulemaking effort with that of the state.

Dated: March 14, 1997.

Tudor Davies,

Director, Office of Science and Technology.

[FR Doc. 97-7216 Filed 3-20-97; 8:45 am]

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