(if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the TVA Police investigation.

(j) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available under compulsory legal process when such process becomes a matter of public record. Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal techniques, procedures, or evidence.

(k) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by TVA Police would compromise TVA Police investigations by subjecting the sensitive and confidential information in the TVA Police Records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by the TVA Police.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file, and a Privacy Act lawsuit could therefore become a ready strategic weapon used to impede TVA Police investigations. Furthermore, since, under the current regulations, the system is exempt from many of the Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

This final rule has been reviewed under Executive Order No. 12291 and has been determined not to be a ''major rule'' since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, 18 CFR Ch. XIII, part 1301, is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

§ 1301.24 [Amended]

2. Section 1301.24(e) is added to read as follows:

* * * * *

(e) The TVA system TVA Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 97–2299 Filed 1–30–97; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1311

[DEA Number 146I]

RIN 1117–AA38

Exemption From Import and Export Requirements for Personal Medical Use; Interpretation Regarding Effect of State Law and Federal Laws

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule; interpretation of existing regulations.

SUMMARY: Current DEA regulations provide an exemption from certain provisions of the Controlled Substances Import Export Act (CSIEA) regarding personal use quantities of certain controlled substances. DEA is amending the language of the exemption to incorporate an existing provision that controlled substances for personal use may be imported only to the extent that such importation is authorized or permitted under other Federal laws or state law. Recent occurrences have demonstrated that the exemption is being improperly promoted and used as a means to import controlled substances for abuse purposes in violation of other Federal laws and state law. This action will prevent misinterpretation of the circumstances under which the exemption applies.

EFFECTIVE DATE: January 31, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The CSIEA provides in 21 U.S.C. 956(a) that the Attorney General may, by regulation, exempt an individual who has a controlled substance for personal medical use from the import/export requirements of 21 U.S.C. 952–955. Pursuant to title 21, Code of Federal Regulations (CFR), 1311.27, individuals may enter or depart the United States with a controlled substance in Schedules II, III, IV, or V, that they have lawfully obtained for personal medical use, provided that the controlled substance is in the original container in which it was dispensed and the appropriate declaration is made to the United States (U.S.) Customs Service. However, the exemption must be read within the context of the existing requirements of 21 CFR 1307.02, which states that nothing in DEA's regulations can be construed as authorizing or permitting any person to do any act that is not authorized or permitted under other Federal or state laws.

DEA, the U.S. Customs Service, and independent sources have found that the personal medical use exemption found in 21 CFR 1311.27 is being promoted and exploited as a means to import controlled substances for purposes of trafficking and abuse. Especially troubling is the fact that controlled substances that are not approved for marketing or distribution in the United States are being imported in this manner for trafficking and abuse purposes in amounts that represent a danger to the public health and safety.

The Internet and the news media contain numerous references to the personal use exemption found in Section 1311.27 as a means to import drugs from Mexico that are not readily available here in the United States. The Internet messages provide advice on how to use the exemption to obtain drugs and get them through U.S. Customs, including one message that provides specific details on how to act and what to say regarding the personal use exemption when bringing the drugs through U.S. Customs. These messages are incorrect and misleading because they do not acknowledge that the exemption applies only to the extent that the importation is allowed under other Federal laws and state law.

DEA is concerned with, and will be addressing in a separate rulemaking action, the misuse of the personal use exemption for the general purpose of importing controlled substances for abuse and trafficking purposes. However, the present concern is the misconception that Section 1311.27 permits the importation of controlled substances regardless of prohibitions that may be found in other Federal or state laws. A case in point involves flunitrazepam, which is manufactured in certain foreign countries under various brand names, including Rohypnol. Rohypnol is not approved under the Federal Food, Drug, and Cosmetic Act (FDCA) for use in the United States and the FDCA prohibits the importation of the drug. Despite this, large amounts of the drug were being imported by individuals under the personal medical use exemption.

DEA has received reports from law enforcement authorities in numerous states, including Alabama, Arkansas, Georgia, Louisiana, Tennessee and Indiana, regarding the trafficking in and seizure of flunitrazepam (Rohypnol) that had originally been imported from Mexico. DEA itself has engaged in a significant number of seizures of the product throughout the country.

As part of its investigation of these problems, DEA conducted a study of U.S. Customs drug declaration records at one border crossing point in Laredo, Texas. During a three week period in July of 1995, 1679 declarations for prescription drugs were filed. Of these, 796, or 47.4%, included Rohypnol. A total of 101,700 dosage units were reported on 730 of the declarations; the remaining 66 declarations did not specify the number of dosage units. The daily number of dosage units of Rohypnol reported ranged from a low of 1680 to a high of 12,930, with an average of 4843 dosage units reported per day, or, on an annualized basis, 1,767,695 dosage units per year, at this one checkpoint. Taking into consideration the declarations that did not specify the number of dosage units, the annual figure could well exceed 1,900,000 dosage units per year. These figures represent the number of dosage units per year. These figures represent the number of dosage units of Rohypnol reported at just one of the many border crossings between the United States and Mexico. A separate study conducted by another source of the top 15 drugs declared over a randomly selected 84-day period at this border crossing, found that individuals declared a total of 338,760 dosage units of Rohypnol.

As noted earlier, flunitrazepam (Rohypnol) is not approved for medical use in the United States. Further, there is no indication that the manufacturer of Rohypnol or any other manufacturer of a product containing flunitrazepam, the medical community, or any public interest groups are actively pursuing or advocating the approval of the drug in this country. There are other drugs available that are widely recognized and used in treating the conditions for which flunitrazepam might be considered. There is increasing evidence of abuse and trafficking of flunitrazepam into the United States. There have been at least 2000 seizures of the drug by law enforcement officials; a growing number of reports in the national media regarding its abuse; reports of its use to facilitate sexual assaults against unsuspecting victims; and increasing inquiries from medical personnel for information regarding the drug, including its properties, actions, and treatments.

In light of the exploitation of the personal medical use exemption from the requirements of the CSIE as a means to import unapproved controlled substances for abuse purposes and the incorrect and misleading promotion of the exemption as an easy means to import drugs, DEA is incorporating into 21 CFR 1311.27 the existing language in 21 CFR 1307.02. This change makes clear that the personal use exemption applies only to those importations of controlled substances that are authorized or permitted under other Federal laws or state law. Personal medical use importations of controlled substances that are not authorized or permitted under other Federal laws or state law are not exempt from the requirements of the CSIE. Absent satisfaction of the requirements of the CSIE, such imports are subject to seizure by U.S. authorities.

The Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration has determined that because this rule addresses existing regulatory requirements and does not impose any new requirements, general notice and comment are unnecessary pursuant to 5 U.S.C. 553(b). This action emphasizes DEA's existing regulatory requirements to ensure that individuals are not misled by the language of the regulation into believing that they may engage in activities that are inconsistent with other Federal laws or state law and to address the incorrect and inappropriate promotion and exploitation of the personal medical use exemption as a means to import otherwise unavailable controlled substances for abuse purposes.

The Deputy Assistant Administrator for the Office of Diversion Control, Drug Enforcement Administration certifies that this action will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action reiterates existing regulatory requirements regarding the personal medical use importation of controlled substances.

The Office of Management and Budget (OMB) has determined that this is a significant regulatory action, therefore, it has been reviewed by OMB pursuant to the requirements of Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1311

Administrative practice and procedure, Drug traffic control, Exports, Imports.

For the reasons set out above, 21 CFR Part 1311 is amended as follows:

PART 1311—[AMENDED]

1. The authority citation for part 1311 continues to read as follows:

Authority: 21 U.S.C. 952, 956, 957, 958, unless otherwise noted.

2. Section 1311.27 is amended by revising paragraph (b)(2) and adding a new paragraph (c) to read as follows:

§ 1311.27 Exemptions for personal medical use.

* * * * *

(b) * * *

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name

and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any; and

(c) The importation of the controlled substance for personal medical use is authorized or permitted under other Federal laws and state law.

Dated: January 2, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–2352 Filed 1–30–97; 8:45 am]

BILLING CODE 4410–09–M

COMMISSION OF FINE ARTS

45 CFR Parts 2101, 2102, and 2103

Procedures and Policies

AGENCY: The Commission of Fine Arts.

ACTION: Final rule.

SUMMARY: This document amends the procedures and policies governing the administration of the U.S. Commission of Fine Arts. The current wording is incomplete and has become obsolete or incorrect in several of its parts. This document serves to clarify the functions and requirements of the agency in order to address more efficiently the needs of the Federal government and the public.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Charles H. Atherton, Secretary, (202) 504–2200.

SUPPLEMENTARY INFORMATION: As established by Congress in 1910, the Commission of Fine Arts is a small independent advisory body made up of seven Presidentially appointed ''well qualified judges of the arts'' whose primary role is architectural review of designs for buildings, parks, monuments and memorials erected by the Federal or District of Columbia governments in Washington, D.C. In addition to architectural review, the Commission considers and advises on the designs for coins, medals and U.S. memorials on foreign soil. The Commission also advises the District of Columbia government on private building projects within the Georgetown Historic District, the Rock Creek Park perimeter and the Monumental Core area. The Commission advises Congress, the President, Federal agencies, and the District of Columbia government on the general subjects of design, historic preservation and on orderly planning on matters within its jurisdiction.

The regulations revised in this rule were last published in the Federal Register on November 21, 1979 (44 FR 67050). Specific items this document amends include providing the current address and telephone number of the agency, publishing formerly omitted Public Laws for which the agency is responsible (Heraldic services provided by the Department of the Army, 10 U.S.C. 4594; Commemorative Works, 40 U.S.C. 1001), clarifying a series of procedural functions, and in general correcting ambiguous or grammatically questionable phraseology. Therefore, as these changes clarify established procedures and are minor in nature, the Commission determines that notice and comment are unnecessary and that, in accordance with 5 U.S.C. 553 (b)(B), good cause to waive notice and comment is established.

List of Subjects

45 CFR Part 2101

Organization and Functions (Government agencies).

45 CFR Part 2102

Administrative practice and procedure, Sunshine Act.

45 CFR Part 2103

Administrative practice and procedure.

This document was prepared under the direction of Charles H. Atherton, Secretary, U.S. Commission of Fine Arts, 441 F Street, N.W., Suite 312, Washington, D.C., 20001.

Accordingly, for the reasons set forth above, Parts 2101, 2102, and 2103 are amended as set forth below.

Signed at Washington, D.C., this 24th day of January, 1997.

Charles H. Atherton,

Secretary, U.S. Commission of Fine Arts.

CFA hereby revises 45 CFR Parts 2101, 2102 and 2103 to read as follows:

PART 2101—FUNCTIONS AND ORGANIZATION

Subpart A—Functions and Responsibilities of the Commission

Sec.

Subpart B—General Organization

Authority: Pub. L. 81–808, 64 Stat. 903; 10 U.S.C. 4594; 36 U.S.C. 124; 40 U.S.C. 72, 104, 106, 121, 1001; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; and E.O. 3524 of July 28, 1921.

Subpart A—Functions and Responsibilities of the Commission

§ 2101.1 Statutory and Executive Order Authority.

The Commission of Fine Arts (referred to as the ''Commission'') functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which affect the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action;

(2) For statues, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, and the merits of their designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs before they are accepted by the American Battle Monuments Commission (See also § 2101.1 (g));

(4) For parks within the District of Columbia, when plans of importance are under consideration, the Commission advises upon the merits of the designs; and

(5) For the selection by the National Capital Planning Commission of lands suitable for development of the National Capital park, parkway, and playground system in the District of Columbia, Maryland, and Virginia, the Commission provides advice.

(b) *Private buildings bordering certain public areas in Washington, D.C. (Shipstead-Luce Act).* For buildings to be erected or altered [1] in locations which border the Capitol, the White House, the intermediate portion of Pennsylvania Avenue, the Mall Park System, Lafayette Park, the Zoological Park, Rock Creek Park or Parkway, or Potomac Park or Parkway, or are otherwise within areas defined by the official plats prepared pursuant to Sec. 2 of the Shipstead-Luce Act, the Commission reviews the plans as they relate to height and appearance, color and materials of the exteriors, and

[1] Alteration does not include razing (*Commissioner of the District of Columbia* v. *Bennenson*, D.C. Court of App. 1974, 329 A.2d 437). Partial demolition, however, is viewed as an alteration (The Committee to Preserve Rhodes Tavern and the Natl. Processional Route v. Oliver T. Carr Company, et. al., U.S. Court of App. for D.C. Cir., 1979, 79–1457, Dept. Justice Brief for Fed. Appellee).