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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 483]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period March 7–13, 1980. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: March 7, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 30, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on March 4, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is very active on all sizes.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.783 Navel Orange Regulation 483.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period March 7, 1980 through March 13, 1980, are established as follows:

(1) District 1: 1,440,000 cartons;
(2) District 2: 160,000 cartons;
(3) District 3: Unlimited cartons;
(4) District 4: Unlimited cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 5, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80–7260 Filed 3–5–80; 11:56 am]

BILLING CODE 3410–02–M

7 CFR Part 908

[Valencia Orange Regulation 635]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period March 7–13, 1980. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: March 7, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on January 22, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on March 4, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is not yet stabilized.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.935 Valencia Orange Regulation 635.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period March 7, 1980 through March 13, 1980, are established as follows:

(1) District 1: Unlimited;

(2) District 2: Unlimited;

(3) District 3: 114,010 cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 5, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-7259 Filed 3-5-80; 11:55 am]

BILLING CODE 3410-02-M

9 CFR Part 204

Organization and Functions; Delegations of Authority

AGENCY: Packers and Stockyards, Agricultural Marketing Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document updates regulations on agency organization and delegations of authority to reflect the fact that two field offices have been moved, and two branches in the headquarters have been combined into one.

DATE: March 6, 1980.

FOR FURTHER INFORMATION CONTACT: Jack W. Brinckmeyer, Livestock Marketing Division, P&S, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4366.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been determined to be exempt from those requirements. The undersigned made this determination because it relates to agency management. The location of the field office in Springfield, Illinois has changed. Also, the Sterling, Virginia office has been relocated to Bedford, Virginia. Also, on February 24, 1980, the Rates, Services, and Facilities Branch, and the Registrations, Bonds, and Reports Branch, in the Livestock Marketing Division, were combined into a single branch, named the Rates and Registrations Branch.

Accordingly, 9 CFR 204.2(e)(2) is hereby revised to read as follows:

§ 204.2 Organization.

* * * * *

(e) * * *

(2) The locations of these offices, which are under officers in charge, are as follows:

Atlanta—Rm. 640, 1720 Peachtree St., NW., Atlanta, Georgia 30309.

Bedford—Turnpike Road, Bedford, Virginia 24523.

Denver—208 Livestock Exchange Building, Denver, Colorado 80216.

Fort Worth—Rm. 8A36, Federal Building, 819 Taylor Street, Fort Worth, Texas 76102.

Indianapolis—Suite 24, 537 Turtle Creek South Drive, Indianapolis, Indiana 46227.

Kansas City—828 Livestock Exchange Building, Kansas City, Missouri 64102.

Lawndale—Rm. 2W6, Federal Office Building, 15000 Aviation Boulevard, Lawndale, California 90260.

Memphis—Rm. 459, Federal Building, 167 North Main Street, Memphis, Tennessee 38103.

North Brunswick—525 Milltown Road, North Brunswick, New Jersey 08902.

Omaha—435 Livestock Exchange Building, Omaha, Nebraska 68107.

Portland—Suite E, 9370 SW Greenburg Road, Portland, Oregon 97223.

South St. Paul—208 Post Office Building, Box 8, South St. Paul, Minnesota 55075.

Springfield—975 Durkin Drive, Suite G, Springfield, Illinois 62704.

* * * * *

Also, 9 CFR 204.3(d) is amended by deleting subparagraph (4), by renumbering subparagraph (5) as (4), and by revising subparagraphs (1) and (2) to read as follows:

§ 204.3 Delegations of authority.

* * * * *

(d) Branch Chiefs:

(1) The Chief of the Rates and Registrations Branch; the Chief of the Marketing Practices Branch; the Chief of the Scales and Weighing Branch of the Livestock Marketing Division; the Chief of the Livestock Procurement Branch; the Chief of the Meat Merchandising Branch; and the Chief of the Poultry Branch of the Packer and Poultry Division are hereby individually delegated authority under the provisions of section 402 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 222), to issue special orders pursuant to the provisions of subsection 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)) and, with respect thereto, to issue notices of default provided for in section 10 of the Federal Trade Commission Act (15 U.S.C. 50).

(2) The Chief of the Rates and Registrations Branch of the Livestock Marketing Division is hereby delegated authority to perform all acts, functions, and duties with respect to suspending the operation of schedules of rates and charges of stockyard owners and market agencies and extending the time of such suspensions as prescribed in subsection 306(e) of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 207(e)), all acts, functions and duties as prescribed in section 1.133 of Part I of title 7 (7 CFR 1.133) with respect to the investigation and disposition of information furnished concerning apparent violations involving rates or charges or the application of regulations of stockyard owners and market agencies, or the alleged failure of such persons to furnish reasonable stockyard services as required by section 304 of the same Act (7 U.S.C. 205); all acts, functions, and duties with respect to the posting and deposting of stockyards pursuant to the provisions of subsection 302(b) of the same Act (7 U.S.C. 202(b)), and perform all acts, functions, and duties of the Deputy Administrator, Packers and Stockyards, with respect to the execution of bonds and trust fund agreements under §§ 201.27 through 201.38 of this chapter, including the power to determine that a bond is inadequate under § 201.30(f) of this chapter and to determine the amount of bond needed under such paragraph.

* * * * *

This document relates to agency management. On that basis 5 U.S.C. 553 does not apply to it.

Done at Washington, D.C. February 29, 1980.

(Reorganization Plan No. 2 of 1953, 5 U.S.C., 1976 Ed., App. p. 764, 7 U.S.C., 1976 Ed., p. 1434, 7 CFR 2.17(e), 2.50(a)(8), 42 FR 65223)

James L. Smith,

Acting Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.

[FR Doc. 80-6960 Filed 3-5-80; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

Nondiscrimination in Federally Assisted Commission Programs; Application to the Handicapped

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to implement the requirements of section 504 of the Rehabilitation Act of 1973, as amended. The amendment makes it unlawful for any recipient of Federal financial assistance to discriminate against a qualified handicapped person, on the basis of handicap, in employment or the receipt of services.

EFFECTIVE DATE: The amendment becomes effective on May 20, 1980.

FOR FURTHER INFORMATION CONTACT: Jay W. Maynard, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (phone: 301-492-8668).

SUPPLEMENTARY INFORMATION: On May 8, 1979, the NRC published for a 60-day comment period a proposed rule (44 FR 26887) to amend its regulations in 10 CFR Part 4. The proposed rule implements section 504 of the Rehabilitation Act of 1973, as amended, by prohibiting discrimination in federally assisted Commission programs on the basis of a physical or mental handicap.

In Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," dated April 28, 1976, the President directed that all Federal agencies empowered to provide Federal financial assistance issue rules, regulations, and directives consistent with standards and procedures established by the Secretary of Health, Education, and Welfare (HEW). The rule is consistent with that directive and the HEW Guidelines published in the Federal Register, January 13, 1978 (43 FR 2131), codified at 45 CFR Part 85.

The amendments restructure 10 CFR Part 4 into two subparts. Except for minor changes, Subpart A reflects those regulations previously promulgated by the Commission to implement Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974, which relate to nondiscrimination with respect to sex, race, color, or national origin in any program or activity receiving financial assistance from the NRC. The new Subpart B implements section 504 of the Rehabilitation Act of 1973, as amended, and is devoted exclusively to prohibiting discrimination against qualified handicapped persons in employment and in the operation of programs and activities receiving financial assistance from the NRC.

The NRC currently provides financial assistance in the form of training programs for state personnel. The training is performed pursuant to section 274 of the Atomic Energy Act of 1954, as amended, which provides for state assumption of certain areas of NRC regulatory activity. This "Agreement States Program" is designed to improve the state employees' technical and administrative skills as well as develop an understanding and ability to apply regulatory concepts and procedures. NRC also provides financial assistance through programs designed to train state and local government personnel in developing or improving their radiological emergency response plans. More recent authorization for NRC involvement in financial assistance derives from the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, 92 Stat. 3021. Section 207 of the Act authorizes the NRC to provide grants in Fiscal Year 1980 to eligible Agreement States to aid in the development of state regulatory programs which implement certain provisions of the Act.

Thirteen comment letters were received from state and Federal agencies, educational institutions, and public interest groups. Eight comment letters, primarily from state recipients of NRC financial assistance, contained no objections to the adoption of the rule as proposed. The remaining commenters made a number of suggestions which have been adopted in the final rule. Following is a summary of the principal substantive revisions to the regulations.

The term "responsible NRC official" is used in Subparts A and B of Part 4. To more accurately reflect the present responsibilities within NRC for assuring compliance with Part 4, § 4.3(i) of the General Provisions has been revised to define "responsible NRC official" as the Director for Equal Employment Opportunity or any other NRC official to whom the Executive Director for Operations has delegated the authority to act under Part 4 of the Commission's regulations.

The requirement found in § 4.123 that recipients make "reasonable accommodation" to the limitations of the handicapped unless the recipient can demonstrate "undue hardship" has been clarified. Subsections (b) and (c) have been added which set forth examples of "reasonable accommodation" and factors to be considered in determining whether an accommodation would impose an "undue hardship" on the operations of a recipient's program. Subsection (d) also has been added to state explicitly that employment may not be denied to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation.

Section 4.124, "Employment Criteria," also has been clarified. Subsection (a) now states that job-related employment tests or criteria which screen out handicapped persons may not be used unless alternative job-related tests or criteria that do not have that effect are not available. Subsection(b) requires recipients to ensure that employment tests administered to handicapped applicants or employees accurately reflect aptitude or other factors the tests purport to measure, rather than reflect the applicant's or employee's handicap (except where those imparied skills are the factors that the tests seek to measure).

Subsection (b) of § 4.128 is a new provision. It states that the American National Standards Institute specification ANSI A117.1-1961 (R1971) may be utilized in complying with the requirement in subsection (a) that new facilities and, to the maximum extent feasible, alterations to existing facilities be constructed so that they are readily accessible to and usable by handicapped persons. Federal financial assistance which the NRC currently provides does not include assistance for construction or alteration of facilities by recipients. Should NRC fund such assistance in the future, recipients will be required to comply with the provisions of Section 504 as well as the Architectural Barriers Act (42 U.S.C. 4151 et seq.), as implemented by the Architectural and Transportation Barriers Compliance Board.

Section 4.231 has been divided into six subsections. Subsections (a) and (b) clarify that the assurance of compliance submitted by a recipient will obligate the recipient for the period during which financial assistance is extended and allow the assurance to be incorporated by reference in a subsequent application for assistance. Subparagraph (c) makes clear a recipient's responsibility to take remedial action when the responsible NRC official finds a violation of section 504 or Subpart B of Part 4 of the Commission's regulations. Where another recipient exercises control over the recipient that has discriminated, the responsible official may require either or both recipients to take remedial action. Remedial action may be required with respect to former participants in the recipient's program or persons who would have been participants had the discrimination not occurred. Subsection (d) clarifies that a recipient may voluntarily undertake action to overcome effects of limited participation of handicapped persons in the recipient's program without a formal finding of discrimination by the responsible NRC official. Subsection (e) adds the requirement that the records of self-evaluations conducted by recipients shall be maintained for public and NRC inspection for a period of three years and specifies the contents of those records. Subsection (f) requires each recipient to designate at least one person to coordinate its efforts to comply with Subpart B of Part 4.

The notice requirement of § 4.231 of the proposed rule has been expanded and relocated in § 4.232. Those who must be notified that the recipient does not discriminate on the basis of handicap now include participants in federally assisted programs, applicants, and unions or professional organizations holding collective bargaining or professional agreements with recipients. The section also sets forth approved methods for providing notice; certain provisions which must be included in the notice; and guidance with respect to certain materials published by recipients of Federal assistance.

Several comments were made which did not result in changes to the final rule. One commenter urged that the self-study requirements in the proposed regulations be met by prior self-studies completed for other Federal agencies. The NRC will accept prior self-studies completed for other Federal agencies to the extent they encompass the programs and activities which receive NRC financial assistance and otherwise satisfy NRC requirements. It was not believed necessary to change the rule to incorporate the comment because the rule does not prohibit the use of such self-evaluations.

Another commenter recommended that the proposed 504 regulations not be finalized until they "reflect the requirements of the 1978 amendments" to the Rehabilitation Act, which according to the commenter, applies section 504 to employment discrimination only where the primary objective of Federal financial assistance is to provide employment. The commenter cited as authority for its objection the ruling of the Fourth Circuit Court of Appeals in "Trageser v. Libbie Rehabilitation Center, Inc." 590 F. 2d 87 (4th Cir. 1978), cert. denied —— U.S. ——, 99 S.Ct. 2985 (1979).

Congress amended section 504 in 1978 to state that the "remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved (under section 504)." The court in "Trageser" observed that the 1978 amendments made section 504 coextensive with Title VI of the Civil Rights Act. The court held that since Title VI limits relief in the area of employment discrimination to circumstances where a primary objective of the Federal assistance is to provide employment, relief under the coextensive section 504 must be similarly limited.

This comment and similar comments made to other Federal agencies have been considered by the former Department of Health, Education, and Welfare (HEW) (now the Department of Health and Human Services). HEW has advised in a recently written opinion that it considers the "Trageser" decision "poorly reasoned and should not be followed outside the Fourth Circuit * * *." HEW argues that the legislative history of the 1978 amendments to section 504 clearly demonstrates that Congress intended to establish only procedural rights of persons aggrieved by violations of section 504. It does not believe that this amendment to the Act demonstrates Congressional intent to curtail the substantive rights of handicapped persons under section 504. In light of the lead role granted to that agency by Executive Order 11914, the NRC has decided not to change its regulations in this area from those which were originally proposed.

Changes to the proposed regulations are summarized as follows:

1. The definition of "Responsible NRC official" in § 4.3 has been amended.

2. Subsections (b), (c), and (d) have been added to § 4.123.

3. Section 4.124 has been revised and divided into two paragraphs.

4. The language of subsections 4.125(b) and 4.127 (b) and (d) has been clarified.

5. A new paragraph (b) has been added to § 4.128.

6. Section 4.231 has been expanded and divided into six subsections.

7. The notice provision formerly found in § 4.231 has been revised and renumbered as § 4.232.

8. Section 4.232 in the proposed rule regarding enforcement procedures has been renumbered and appears as § 4.233 in the final rule.

9. Appendix A has been revised to reflect NRC financial assistance which is granted under the authority of the Uranium Mill Tailings Radiation Control Act of 1978.

The final rule has been reviewed by the Office of Civil Rights, HEW; Office of Interagency Coordination, Equal Employment Opportunity Commission; and the Architectural and Transportation Barriers Compliance Board.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 522 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 4, are published as a document subject to codification.

1. In 10 CFR Part 4 the table of contents and citation of authority are revised to read as follows:

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 207, Pub. L. 95–604, 92 Stat. 3033; sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841); Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–1–2000d–4) and sec. 401, Pub. L. 93–438, 88 Stat. 1254 (42 U.S.C. 5891); Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2982 (29 U.S.C. 794); and sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)).

2. Section 4.1a is added and §§ 4.1, 4.2, and 4.3(i) are revised to read as follows:

General Provisions

§ 4.1 Purpose and scope.

The regulations in this part implement: (a) The provisions of Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, and Title IV of the Energy Reorganization Act of 1974, Pub. L. 93–438, which relate to nondiscrimination with respect to race, color, national origin or sex in any program or activity receiving Federal financial assistance from NRC; and (b) the provisions of section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93–112, Pub. L. 95–602, which relates to nondiscrimination with respect to the handicapped in any program or activity receiving Federal financial assistance.

§ 4.1a Subparts.

Subpart A sets forth rules applicable to Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974. (The Acts are collectively referred to in Subpart A as the "Act"). Subpart B sets forth rules applicable specifically to matters pertaining to section 504 of the Rehabilitation Act of 1973, as amended.

§ 4.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by NRC. The programs to which this part applies are listed in Appendix A of this part; Appendix A may be revised from time to time by notice published in the **Federal Register.** This part applies to money paid, property transferred, or other Federal assistance extended under any program or activity, by way of grant, loan, or contract by NRC, or an authorized contractor or subcontractor of NRC, the terms of which require compliance with this part. If any statutes implemented by this part are otherwise applicable, the failure to list a program in Appendix A does not mean the program is not covered by this part. This part does not apply to:

(a) Contracts of insurance or guaranty; or

(b) Procurement contracts; or

(c) Employment practices under any program or activity except as provided in § 4.13 and § 4.122.

§ 4.3 Definitions.

* * * * *

(i) "Responsible NRC official" means the Director of the Office of Equal Employment Opportunity or any other officer to whom the Executive Director for Operations has delegated the authority to act.

* * * * *

3. Immediately following § 4.4, a Subpart A head is added to read as follows:

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

4. Section 4.47 is revised to read as follows:

§ 4.47 Noncompliance with § 4.21.

If an applicant fails or refuses to furnish an assurance required under § 4.21 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of § 4.48.

§§ 4.11–4.13, 4.21–4.22, 4.31–4.34, 4.41–4.46, 4.48–4.49, 4.51, 4.63–4.64, 4.73–4.75, 4.91–4.93 [Amended]

5. Sections 4.11, 4.12, 4.13, 4.21, 4.22, 4.31, 4.32, 4.33, 4.34, 4.41, 4.42, 4.43, 4.44, 4.45, 4.46, 4.48, 4.49, 4.51, 4.63, 4.64, 4.73, 4.74, 4.75, 4.91, 4.92 and 4.93, are amended by changing "this part", wherever it appears, to "this subpart".

Appendix A [Relocated]

6. Appendix A, which now follows § 4.93, is relocated to follow § 4.233.

7. Immediately following § 4.93, a new Subpart B is added to read as follows:

Subpart B—Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as amended

§ 4.101 Definitions.

As used in this subpart:

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive, genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease,

diabetes, mental retardation, and emotional illness.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) does not have a physical or mental impairment but is treated by a recipient as having such an impairment.

(c) "Qualified handicapped person" means (1) with respect to employment, a handicapped person who, with reasonable accommodation, can perform essential functions of the job in question and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(d) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602 (29 U.S.C. 794).

Discriminatory Practices

§ 4.121 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity that receives or benefits from Federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to any agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 4.122 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this subpart applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 4.123 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all-inclusive nor meant to suggest that an employer must follow all the actions listed.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 4.124 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion as used by the recipient is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 4.125 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination, or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient makes clear to the applicant that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient makes clear to the applicant that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this subpart.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties that may be assigned to handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition associated with the handicap might require emergency treatment; and

(3) Government officials investigating compliance with the Rehabilitation Act of 1973 shall be provided relevant information upon request.

§4.126 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

§4.127 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of health, welfare or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 4.128 or any other methods that result in making its program or activity accessible to and usable by handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this subpart except that where structural changes in facilities are necessary, the changes are to be made within three years of the effective date of this subpart, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this subpart, a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and the plan is to meet with the approval of the NRC. A copy of the transition plan is to be made available for public inspection. At a minimum, the plan is to:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility and usability of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible to and usable by handicapped persons;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period or the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to, and usable by, handicapped persons.

§4.128 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961(R1971)), which is incorporated by reference in this subpart, shall constitute compliance with paragraph (a) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to and use of the facility or part of the facility is thereby provided.

Enforcement

§4.231 Responsibility of applicants and recipients.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this subpart applies shall submit an assurance, on a form specified by the responsible NRC official, that the program will be operated in compliance with the subpart. An applicant may incorporate these assurances by reference in subsequent applications to the NRC.

(b) *Duration of obligation.* The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Remedial action.* (1) If the responsible NRC official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this subpart, the recipient shall take such remedial action as the responsible NRC official deems necessary to overcome the effect of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this subpart and where another recipient exercises control over the recipient that has discriminated, the responsible NRC official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible NRC official may, where necessary to overcome the effects of discrimination in violation of section 504 or this subpart, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred

(d) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this subpart, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(e) *Self-evaluation.* (1) A recipient shall as soon as practicable:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this subpart;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this subpart; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to those policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (e)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible NRC official upon request:

(i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

(f) Designation of responsible employee. A recipient shall designate at least one person to coordinate its efforts to comply with this subpart.

§ 4.232 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this subpart. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 4.231

(f). A present recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this subpart. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, if shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 4.233 Enforcement procedures.

The enforcement and hearing procedures set forth in §§ 4.41–4.75 of Subpart A with respect to discrimination based on sex, race, color or national origin shall be used for the enforcement of the regulations in subpart B with respect to discrimination based on handicap.

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

* * * * *

(e) The Uranium Mill Tailings Radiation Control Act of 1978, section 207, Pub. L. 95–604, 92 Stat. 3033, authorizes grants to eligible Agreement States to aid in the development of state regulatory programs to implement those provisions of the Act which amended section 274 of the Atomic Energy Act of 1954, as amended.

Dated at Washington, D.C. this 28th day of February 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-6655 Filed 3-5-80; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0202]

Truth in Lending; Right of Rescission

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of effective date.

SUMMARY: On September 19, 1979, the Board revoked an amendment to Regulation Z (Truth in Lending) that created an alternative in certain circumstances to the three-day cancellation right otherwise applicable to each individual advance under open-end credit accounts secured by consumers' residences. The revocation, which also included the revocation of related Board and Official Staff Interpretations, was to become effective on March 31, 1980. This action delays, implementation of the revocation action for two months until May 31, 1980, pending Congressional action similar to that of the Board's revoked amendment as part of the proposed Truth in Lending Simplification legislation. The Board's action also prohibits creditors from offering new plans or expanding existing plans during the extended time period.

EFFECTIVE DATE: This action, which delays until May 31, 1980, the revocation of the open-end rescission amendment to Regulation Z and related Board of Official Staff Interpretations, is effective February 29, 1980.

FOR FURTHER INFORMATION CONTACT: Maureen P. English, Section Chief, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3867).

SUPPLEMENTARY INFORMATION: On September 19, 1979, the Board revoked § 226.9(g)(6) of Regulation Z (12 CFR Part 226), Board Interpretation § 226.904, and Official Staff Interpretation FC-0159 (44 FR 55553–54), effective March 31, 1980, which relate to the application of the Truth in Lending rescission rules to advances under open-end credit plans secured by consumers' principal residences. In order to provide ample time for the orderly modification or termination of the limited number of such open-end credit plans, the Board delayed the effective date of its action until March 31, 1980. During this time period, however, creditors were not to offer new plans or to expand existing plans (44 FR 61587).

The Senate has approved the Truth in Lending Simplification bill which contains a provision similar to the Board's amendment that was revoked. That provision eases the rescission requirements for open-end credit plans involving advances that are secured by consumers' principal residences. Subsequently, the bill was attached as part of H.R. 4986, which is presently being considered by a Senate-House Conference Committee. House conferees have indicated that they are willing to accept the Senate's open-end credit rescission provision for a three-year trial period. Several petitions have been received requesting that the Board delay the implementation of its revocation action pending Congressional action that would permit the type of credit plans developed under the Board's amendment.

The Board's action delays the effective date of its revocation order until May 31, 1980; and, as before, creditors are prohibited from offering new plans or expanding existing plans during that time period. In taking this action, the Board considered the hardship that would result to both consumers and creditors if substantial modifications were required to be made—and required to be made without delay in order to comply with the March 31, 1980 deadline—in existing open-end credit plans, despite the probable enactment of legislation that provides an exception similar to that allowed by the Board's amendment.

The Board has determined that the delay involved in complying with the provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date would be contrary to the public interest, since the disruptive termination of existing open-end credit plans would, in fact, occur during the completion of the general procedures required by § 553. Board action on delaying the effective date of the Board's revocation action was not requested until recently, since the petitioners had, undoubtedly, anticipated the final resolution of the issue by Congress. Therefore, pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Board is publishing this rule without notice and prior opportunity for comment, to become effective immediately.

Pursuant to § 105 of the Truth in Lending Act (15 U.S.C. 1604 (1970)), the Board delays the effective date of the revocation of § 226.9(g)(6) of Regulation Z (12 CFR Part 226), Board Interpretation § 226.904, and Official Staff Interpretation FC-0159 until May 31, 1980.

By order of the Board of Governors, February 29, 1980.

Theodore E. Allison,

Secretary of the Board.

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