

Rules and Regulations

Federal Register

Vol. 49, No. 123

Monday, June 25, 1984

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 37]

Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Administrator has approved an increase of the dollar amount limitation of authority delegated the Small Business Administration's District and Regional Office Claims Review Committees. Compromise settlements by these committees is an Agency method of recovering funds still owed by borrowers even after liquidation of their loan. The delegated authority, which includes the determination of committee membership and dollar amount limitations which can be settled, differ at district, region, and Central Office levels. Consequently, debt amounts exceeding each committee's authority level are passed on to the next highest committee for action.

The Agency has experienced increased claims compromise activity in recent years involving greater recoverable debt amounts. More cases are being received in the Central Office after having been reviewed and commented upon by District and Regional Claims Review Committees.

The delegation of authority increase to field Claims Review Committees will allow an increased number of settlement procedures in those offices and, correspondingly, reduce the time and manpower loss of cases formerly reviewed but not settled by these offices.

EFFECTIVE DATE: June 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Information Resources

Management Branch, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Telephone No. (202) 653-8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedures, Organization and functions (Government agencies).

PART 101—[AMENDED]

For the reasons set forth in the preamble and pursuant to authority in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3-2 is amended as set forth below:

§ 101.3-2 [Amended]

1. Part V, Section A, paragraph 1, subparagraphs a through d are revised as follows:

a. Claims not in excess of \$100,000 (excluding interest) upon *majority* vote of the Committee.

b. Claims not in excess of \$150,000 (excluding interest) upon *unanimous* vote of the Committee.

c. Claims in excess of \$150,000 (excluding interest) when the amount offered represents the full principal balance due thereby forgiving only the interest upon *unanimous* vote of the Committee.

d. Settlement offers on claims of any size may be declined upon majority vote of the Committee.

2. Part V, Section A, paragraph 2, subparagraphs a through c are revised as follows:

a. Claims not in excess of \$200,000 (excluding interest) upon *majority* vote of the Committee.

b. Claims in excess of \$200,000 but not exceeding \$300,000 (excluding interest) upon *unanimous* vote of the Committee.

c. Settlement offers on claims of any size may be declined upon majority vote of the Committee.

Dated: June 19, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84-18878 Filed 6-22-84; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9155]

Great Lakes Chemical Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: This consent order requires the leading producer of elemental bromine and brominated flame retardants in the U.S., to grant PPG Industries, Inc. (PPG), according to a prescribed non-exclusive licensing agreement, all the latest technology and know-how on brominated flame retardants acquired from Velsicol Chemical Corp. The order requires Great Lakes to enter into other agreements that would govern the operation and ownership rights of Arkansas Chemicals, Inc. (ACI), a joint bromine production venture between Great Lakes and PPG. The agreements would, among other things, eliminate certain restrictions on PPG's use of bromine purchased from ACI; permit PPG to sell elemental bromine in the merchant market; allow PPG to use ACI bromine in the production of all brominated compounds, including flame retardants; and require Great Lakes to purchase a specified amount of bromine from ACI annually. In addition to specific record keeping and reporting requirements, the order prohibits Great Lakes from acquiring any concern engaged in the production of elemental bromine or brominated flame retardants without prior Commission approval for a period of 10 years.

The Commission, under separate order dismissed the proceedings against Northwest Industries, Inc. and Velsicol Chemical Corp.

DATE: Complaint issued June 23, 1981. Decision and Order issued May 23, 1984.¹

FOR FURTHER INFORMATION CONTACT: FTC/CS-2, John V. Lacci, Washington, D.C. 20580. (202) 254-8644.

SUPPLEMENTARY INFORMATION: On Monday, March 12, 1984, there was published in the Federal Register, 49 FR

¹ Copies of the Complaint and the Decision and Order filed with the original document.

9220, a proposed consent agreement with analysis in the Matter of Great Lakes Chemical Corporation, a corporation, Northwest Industries Inc., a corporation, and Velsicol Chemical Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act. Subpart—Correction Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-43 Grant license(s); § 13.533-45 Maintain records; § 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Flame retardants, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 84-16655 Filed 6-22-84; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 31

Fees for Leverage Commodity Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission recently proposed to establish a \$7,500 fee for leverage commodity registration applications. 49 FR 3878 (Jan. 31, 1984). After further reviewing its projected costs in light of the actual or anticipated applications for registration, and upon considering the concerns expressed by several commenters, the Commission is now adopting the fee in final form at a level of \$3,500 per application. It is anticipated that this fee will recover a substantial portion of the actual costs to

the Commission in reviewing applications for registration of leverage commodities.

EFFECTIVE DATE: July 25, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel S. Goodman, Esquire, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission rule 31.6, 17 CFR 31.6 (1984), provides that the Commission must register each leverage commodity upon which a leverage transaction merchant offers a leverage contract for sale. The Commission's staff will spend a substantial amount of time analyzing each application to register a leverage commodity. This analysis will include both studying the underlying cash market for the commodity and scrutinizing the terms and conditions of the proposed contract.

On January 31, 1984, the Commission published for comment in the *Federal Register* a proposed fee of \$7,500 for each application for registration of a leverage commodity. 49 FR 3878. The \$7,500 figure was based on an estimate that, on average, it would take at least three-fourths as much staff time to process an application for a leverage commodity registration as it takes to process an application for designation as a futures contract market, for which the Commission currently charges a \$10,000 fee. See 17 CFR Part 5, Appendix B (1984); 48 FR 38214 (Aug. 23, 1983) (final schedule of fees).

After reviewing the comments submitted by five firms, at least four of which have applied or intend to apply for registration as a leverage transaction merchant,¹ and the list of proposed commodities for which the firms have filed or intend to file registration applications, the Commission developed a more precise estimate of the costs involved in analyzing each application for a leverage commodity registration. The revised estimate, \$3,750 per application, was based upon the Commission's knowledge of how many and what kinds of leverage commodity registration applications it had received or was likely to receive in the near future.

¹The five commenters were: First National Monetary Corporation (comments submitted by its general counsel, Simon, Deitch, Siefman, Tucker and Friedman), Monex International, Ltd., American Coin Exchange, Investment Metals International, Inc., and International Precious Metals Corporation.

II. Comments on Proposed Fee

The great bulk of the comments received on the proposed \$7,500 fee dealt with its size and the way in which it was computed. Without exception, the commenters thought that the proposed fee was excessive. Some felt that the proposed fee was so high as to be anticompetitive. Other commenters suggested that it was improper to compare the proposed fee to the Commission's fee for contract market designation applications.

The Commission believes that all of these comments have largely been answered by its decision to slice the proposed fee by more than half. The \$3,500 figure includes compensation and benefit costs of the staff and supervisory time devoted to scrutiny of the terms and conditions of the proposed leverage commodity contracts and analysis of the underlying cash markets. It also includes travel costs, the costs of support personnel, and a 32% overhead figure, which represents the Commission's actual overhead percentage for space, supplies, utilities, etc. The Commission feels confident that its estimated cost of \$3,750 per leverage commodity registration application, which was rounded down to \$3,500, is a very conservative figure.

Some commenters noted that they would be submitting applications for registration of several similar leverage commodities. For instance, a firm might submit one application for registration of a 2,000 oz. silver bullion contract and another application for registration of a 1,000 oz. silver bullion contract. These commenters thought it would be inequitable to charge the same fee for several similar leverage commodity registration applications.

The Commission agrees that there are economies of scale in analyzing similar applications submitted by the same firm. There are also economies involved in considering applications submitted by different firms for the registration of similar or identical leverage commodities. The Commission took these economies of scale into account in arriving at its \$3,500 fee. The \$3,500 figure represents a conservative estimate of the average cost of considering an application for registration of a leverage commodity. In this regard, the Commission believes that it is far more equitable to charge every firm the same fee than, for example, to charge the first firm submitting a gold coin application a very high fee and all subsequent firms submitting gold coin applications a much lower fee.

One commenter expressed its belief that the Commission lacks statutory authority to compel the registration of leverage commodities and argued that, *a fortiori*, the Commission lacks authority to impose fees on applications for leverage commodity registration. The Commission finds no support for that position. In 1982, Congress added language to Section 19 of the Commodity Exchange Act requiring the Commission to regulate leverage transactions "under such terms and conditions as the commission shall prescribe * * * ." 7 U.S.C. 23(c). The registration of leverage commodities is a vital part of the Commission's regulatory scheme for the leverage industry and is clearly within the scope of the Commission's broad Congressional mandate.

Another commenter stated that the Independent Offices Appropriation Act of 1952 ("IOAA"), see 31 USCA 9701, requires that fees be charged only for a service which benefits the recipient of the service. The commenter contended that the Commission's registration of leverage commodities will not benefit leverage transaction merchants. This argument is contradicted by the case law interpreting the IOAA. See *National Cable Television Association v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976) ("*NCTA*") (annual cable television authorization fee); *Mississippi Power and Light Co. v. United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980) (application, permit, and license fees for nuclear power facilities); *Nevada Power Co. v. Watt*, 711 F.2d 913 (10th Cir. 1983) (application fees for rights of way under the Federal Land Policy and Management act of 1976). The discussion in *NCTA* is particularly appropriate:

In arguing that there is no justification for an annual fee against any cable operator, petitioners attempt to make much of the fact that it was not necessary * * * for the Commission to assume this regulatory authority * * * and thus that the agency in truth renders no "service" or "benefit" to them. Unlike * * * other industries, it is argued, the cable television industry could have developed better without FCC regulation * * *. All that may be true, but * * * [t]he fact is that the FCC has undertaken to regulate this industry * * * with the result that a certificate of compliance has become a necessary and therefore valuable license.

554 F.2d at 1101-02 (footnotes omitted). In any event, it should be noted that in addition to its reliance upon the IOAA in promulgating this fee, the commission also bases its legal authority on the relevant portions of the commodity exchange Act, as amended, and the

Futures Trading Act of 1978, as amended.

The same commenter expressed the view that it would be inappropriate for the commission to charge a fee for leverage commodity registration applications based upon only an estimate of the costs involved in considering such applications. The Commission is mindful of its statutory obligation not to charge fees for an activity which exceed the actual cost thereof. 7 U.S.C. 16a(c). Therefore, the commission believes that it is fully appropriate to set a leverage commodity registration fee initially at a figure based upon a conservative estimate of the costs to be incurred. Of course, the commission will review the \$3,500 figure in subsequent fiscal years, when actual Commission cost data become available, to be sure that the fee does not exceed the Commission's actual costs.

When it published the proposed leverage commodity registration fee in January, the Commission stated that it had "determined that should it decide to adopt the proposed fee schedule as a final fee schedule, good cause would exist for making the fee schedule effective prior to the registration of any leverage commodity under [17 CFR] 31.6. See 5 U.S.C. 553(d)(3)." 49 FR 3879. The Commission received no comments on this aspect of its proposal and reaffirms its decision to make the fee applicable to all pending applications for leverage commodity registration. In order to avoid subjecting any firm to the fee involuntarily, however, the Commission has determined to provide a firm with a pending application an opportunity to withdraw that application without prejudice. Accordingly, any application for leverage commodity registration will be considered withdrawn without prejudice if the Commission does not receive the \$3,500 fee within 10 days of the effective date of this fee schedule. Any application for leverage commodity registration received after this fee schedule takes effect will be returned if not accompanied by the \$3,500 fee. The Commission will not refund any fees which it receives.

III. Regulatory Flexibility Act

The Commission has previously determined that leverage transaction merchants are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, 49 FR 20646 (May 16, 1984). Thus, the requirements of the Regulatory Flexibility Act do not apply to leverage transaction merchants. While one commenter expressed disagreement with this determination, it is difficult to see how a firm which must

by regulation maintain a minimum base adjusted net capitalization of \$2,500,000 can be considered small. See 17 CFR 31.9 (1984). Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 31

Applications for leverage commodity registration, Fees, Commodity futures.

Adding Appendix A to Part 31 of Title 17 CFR

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular in Sections 5, 5a, 8a(5), and 19, 7 U.S.C. 7, 7a, 12a(5), and 23; in Section 26 of the Futures Trading Act of 1978, as amended by Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a; and in the Independent Offices Appropriation Act of 1952, as amended by Pub. L. 97-258, 96 Stat. 1051 (Sept. 13, 1982) (see 31 USCA 9701), the Commission hereby amends Part 31 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding Appendix A. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 31—REGULATION OF LEVERAGE TRANSACTIONS

Appendix A is added to Part 31 to read as follows:

Appendix A—Schedule of Fees for Registration of Leverage Commodities

(a) Each application for registration of a leverage commodity must be accompanied by a check or money order in the amount of \$3,500 made payable to the Commodity Futures Trading Commission.

(b) Checks or money orders should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for registration of a leverage commodity will result in the return of the application. Fees will not be returned after receipt.

(d) Any firm with an application for registration of a leverage commodity pending on the date that this fee schedule becomes effective must submit its application fee within 10 days of that date. Otherwise, the application shall be deemed withdrawn without prejudice and shall be returned to the applicant.

Issued in Washington, D.C., on June 19, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-16811 Filed 6-22-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 84-130]

Amorphous Silicas: Change of Tariff Classification

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document gives notice that Customs is changing its current established and uniform practice of classifying imported synthetically produced amorphous silicas as "silica", free of duty. After reviewing comments received in response to the notice proposing this change, Customs will now classify that merchandise under the tariff provision for "other inorganic compounds" at the appropriate rate of duty.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after September 24, 1984.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to an established and uniform practice, based on Treasury Decision 68-29(14) and subsequent importations, Customs has classified highly dispersed, synthetically produced amorphous silicas, including silica gel, under the provision for silica, not specially provided for, in item 523.11, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

However, information has been developed by Customs to indicate that the merchandise in question, being synthetically produced, has significantly different physical and chemical properties from mineral silica and does not have the same use(s) as the natural substance. In addition, it appears that synthetic amorphous silicas are not used in the trade or commerce as substitutes for the mineral silica.

Change of Practice

On the basis of the above information, Customs has determined that the established and uniform practice of classifying synthetically produced amorphous silicas as (mineral) silica, in item 523.11, TSUS, is clearly wrong. It is Customs position that synthetic amorphous silicas, including the silica gel in question, a highly dispersed silica produced by the pyrogenic method from silicon tetrachloride, which is an anhydride of silicic acid, is properly classifiable under the provision for other inorganic compounds, in item 423.00, TSUS, and is dutiable. A notice proposing this change of practice was published in the *Federal Register* on April 29, 1983 (48 FR 19395).

Discussion of Comments

Four comments were received in response to the notice, all opposed. It was the commenters' contention that synthetic amorphous silicas, including silica gel, are a form of the mineral silica. Silica gel is said to be a polymerized colloidal silica. Synthetic amorphous silicas are said to be technically described as substantially dehydrated polymerized silica. It is argued that item 523.11, TSUS, silica, not specially provided for, is an *eo nomine* provision, and, therefore, includes the synthetic forms. In support of their position the commenters submitted several brochures in which synthetic amorphous silicas and silica gel were referred to as forms of silica.

A common definition of a synthetic mineral is a substance having the same chemical composition, crystalline form and other physical properties of the naturally occurring mineral. In other cases concerning the identification of the synthetic material as the natural for tariff purposes, the court has said that the term "rubber" as used in the tariff schedules includes rubber produced by artificial means, provided it is the same substance or possesses the essential characteristics and qualities of the material known as rubber. Synthetic rubber tires were known in the trade as rubber tires and there was no difference between the natural rubber tire and the synthetic rubber tire. *A. M. Deringer v. United States*, (C.D. 1882). The court also stated that synthetic diamond particles possess many of the chemical, mineralogical and physical properties of natural diamonds and are considered by scientists and the industrial diamond trade to be diamonds, and have the same end uses. *Christensen Diamond Product v. United States* (C.D. 2537).

Thus, the criteria to be met in order to identify the synthetic material as the

natural for tariff purposes is whether the synthetic material has the same chemical, mineralogical and physical properties as the natural, considered by scientists and the trade to be the same, and has the same end uses.

In this case, as to the synthetic amorphous silicas, the physical and chemical properties are different from the mineral silica. The mineral is crystalline in structure, while the synthetic amorphous form is described as a form of dehydrated polymerized silica. While the mineral silica is an abrasive and toxic, the synthetic amorphous silicas are not abrasive and not toxic, to the extent that many forms are used in foods.

Thus, the principal thing that the mineral and synthetic amorphous silicas have in common is that they are called "silica," apparently because they contain the element silicon. However, the synthetic amorphous form is not a substitute for the mineral, since it is not used for the same purposes as is the mineral form. Although it may be referred to as silica, it is not identified with the mineral by technical experts.

Rather than being a synthetic form of the mineral, synthetic amorphous silicas are manufactured items which bear little similarity to the mineral, having separate and distinct properties and uses totally different from the mineral form.

Change of Practice

After careful analysis of the comments and further review of the matter, synthetically produced amorphous silicas, including "silica gel", will be classifiable under the provision for other inorganic compounds in item 423.00, TSUS, subject to the appropriate rate of duty.

This change of practice revokes T.D. 68-29(14) and any other existing Treasury or Customs Decisions, or other administrative rulings, to the extent that they are inconsistent with the new practice.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 177

Administrative practice and procedure, Customs duties and inspection, Government procurement.