List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and Recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

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

2. A new § 984.342 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 984.342 Expenses and assessment rate.

Expenses of $1,804,116 by the Walnut Marketing Board are authorized and an assessment rate of $0.0085 per kernelweight pound of merchantable walnuts is established for the 1991–92 marketing year ending on July 31, 1992. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: November 27, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–29075 Filed 12–3–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R-0742]

Membership of State Banking Institutions in the Federal Reserve System (Regulation H); International Banking Operations (Regulation K)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board is issuing an interpretation of the provisions of its Regulation H, Membership of State Banking Institutions in the Federal Reserve System, that provides that engaging in certain activities relating to commodities, including commodity- or equity-linked activities such as commodity or stock index swaps, will be considered to be a change in the general character of a bank's business, and that state member banks must obtain the Board's approval under Regulation H to engage in such activities. Under the provisions of the Board's Regulation K, International Banking Operations, this approval requirement will also apply to certain commodity swap activities when undertaken outside of the United States by U.S. banking organizations.

DATES: *Effective date:* December 4, 1991. *Applicability date:* For activities commenced prior to the adoption of this interpretation, applications to continue such activities should be submitted on or before February 3, 1992.

FOR FURTHER INFORMATION CONTACT: For state member banks under Regulation H: Oliver Ireland, Associate General Counsel (202/452-3625), or Lawranne Stewart, Attorney (202/452-3513), Legal Division; or Robert S. Plotkin, Assistant Director (202/452-2782), Division of Banking Supervision and Regulation. For international banking organizations under Regulation K: Kathleen M. O'Day, Assistant General Counsel (202/452-3786), Legal Division; or Michael Martinson, Assistant Director (202/452-3640), Division of Banking Supervision and Regulation. For the hearing impaired *only*: Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Commodity-linked transactions (transactions in which a portion of the return is linked to the price of a particular commodity or to an index of commodity prices) are offered currently by only a few banks. Recently, however, more and more banks have become interested in offering loans, deposits, debt issues, and derivative products, such as forward contracts, options, and swaps, linked to the prices of commodities or to stock indices. In these transactions, the interest, principal, or both, or the payment streams in the case of swaps, are linked to the price of a commodity, equity, or related index. To date, the bulk of bank activities in commodity-linked transactions has been commodity or equity swaps.[1] Banks also enter into exchange-traded commodity futures and options to hedge the exposure created by commodity-linked transactions.

Under the Federal Reserve Act, the Board is authorized to prescribe regulations concerning state bank membership in the Federal Reserve System, and to impose conditions on membership.[2] The Board's Regulation H, Membership of State Banking Institutions in the Federal Reserve, requires as a condition of membership that a state member bank seek the approval of the Board before permitting "any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership."[3] The Board has determined that engaging in certain commodity-linked activities and similar transactions linked to equity securities will be considered a change in the general character of a state member bank's business.

As stated in this interpretation, a state member bank that wishes to commence or continue certain commodity- or equity-linked activities will be required to obtain the approval of the Board. Board approval is not required to engage in transactions linked to commodities or securities that the bank is permitted to hold directly, or when the transactions are engaged in on a perfectly matched basis. Additionally, approval will not be required for a state member bank to offer loan or deposit contracts in which only the interest portion of the return is linked to commodity or security prices or indices. The approval requirement is intended to enable the Board to determine whether state member banks engaging in these activities are adequately prepared to deal with the risks presented by such transactions.

Under Regulation K, this interpretation also will apply to commodity swap activities undertaken outside of the United States by bank holding company and Edge corporation subsidiaries.[4]

Administrative Procedures and Regulatory Flexibility Acts.

The provisions of the Administrative Procedures Act concerning notice and comment are not applicable to interpretative rules. 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, a statement concerning the effects of the rule on small entities is also not required under the Regulatory Flexibility Act. 5 U.S.C. 604. The Board notes, however, that the

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[1] A commodity swap, like an interest rate swap, is a cash-settled transaction. Both types of contracts are based on a "notional" principal amount, and counterparties agree to make payments to one another based on changes resulting from movements in the interest rates or commodity or other price indices to which the swap is linked.

[2] FRA sec. 9, 1 (12 U.S.C. 321).

[3] 12 CFR 208.7(a)(1).

[4] Under Regulation K, this interpretation would not apply to swap transactions linked to equity instruments. Regulation K provides that bank holding company and Edge corporation subsidiaries may engage in such transactions abroad as incidental to other securities activities. As indicated in this interpretation, perfectly matched transactions may include a swap executed by a state member bank with an affiliate that is authorized under Regulation K to engage in equity swaps.

interpretation is unlikely to have any effect on small institutions.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 12, parts 208 and 211, of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 26(a) of the Federal Reserve Act, as amended (12 U.S.C. 321-338, 248(a), 248(c), 461, 481-486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907-910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906-3909); sections 2,12(b), 12(g), 12 (i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78o-4(c)(5), 78q, 78q-1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310-3351).

2. Section 208.128 is added to read as follows:

§ 208.128 Commodity- or equity-linked transactions.

(a) State-chartered banks that are members of the Federal Reserve System are required to obtain the approval of the Board under Regulation H (Membership of State Banking Institutions in the Federal Reserve System) before permitting any change to be made in the general character of their business or in the scope of the corporate powers they exercised at the time of admission to membership. The Board has considered whether engaging in transactions linked to commodity or equity security prices or indices would represent a change in the general character of the business of a state member bank.

(b) Banking organizations have developed a number of commodity- or equity-linked transactions in which a portion of the return is linked to the price of a particular commodity or equity security or to an index of such prices. These transactions have been offered in a variety of forms, including commodity-indexed deposits, loans, debt issues, and derivative products, such as forwards, options, and swaps. In these transactions, the interest, principal, or both, or payment streams in the case of swaps, are linked to the price of a commodity. In addition, banks are also entering into exchange-traded commodity or stock-index futures and options in order to hedge the exposure inherent in these transactions. These types of transactions have been linked to a variety of commodities, including gold, oil, aluminum, and copper, as well as individual securities and stock indices.

(c) With the exception of gold, silver, and, in some cases, platinum, banks are not empowered to purchase or hold the commodities or equity securities that underlie these transactions. Although commodity-linked transactions settle only in cash, they effectively expose banks to commodity or equity market price risks. Thus, linking payments to commodities or equities may present risks with which banks generally are not familiar, and the inability of the bank to purchase the commodity or equity security to which a transaction is linked may increase the difficulty of hedging the exposure created by such transactions.

(d) The Board has determined that engaging in transactions linked to commodities or securities that a state member bank does not have the authority to purchase and hold directly should generally be considered a change in the character of the bank's business unless the transactions are entered into on a perfectly matched basis.[1] State member banks that wish to engage in commodity- or equity-linked transactions that are considered to be a change in the general character of their business should obtain Board approval before initiating these transactions or, in the case of activities commenced prior to the adoption of this interpretation, to continue such activities. Applications to continue such activities should be submitted on or before February 3, 1992.

(e) Transactions linked to securities or monetary metals that a state member bank is authorized to purchase and hold directly will not be considered to be a change in the general nature of the bank's business, and approval will not be required.[2] Additionally, approval will not be required for a state member bank to offer loan or deposit contracts in which only the interest portion of the return is linked to a commodity or security even if the bank is not authorized to hold the commodity or security.

(f) Applications to engage in commodity-related activities should outline the types of transactions and scope of activities that the bank plans to undertake. The application also should demonstrate that the bank has the expertise to engage in such transactions and has developed adequate policies and controls to govern the conduct of these activities and to monitor the associated risks.

(g) Recent revisions to Regulation K (International Banking Operations) permit bank holding company subsidiaries, Edge and agreement corporations, and member banks to act as principal or agent outside of the United States in swap transactions, subject to any limitations applicable to state member banks under Regulation H Banking organizations that wish to engage in swap transactions based on commodities that the organizations do not have the authority to purchase directly, therefore, must submit applications under Regulation K in order to engage in such transactions. Because Regulation K provides separate authority to engage outside of the United States in swap transactions based on equity securities or indices, approval of these transactions is not required.

[1] The term "perfectly matched," as used in this interpretation refers to transactions that are entered into on a matched basis, that is, offsetting transactions where the counterparties for both transactions have been found before the bank enters into either transaction and the transactions are consummated on the same day. Offsetting transactions include transactions that have a price differential to provide the bank with its usual and customary fee or commission for its services. The exemption from prior approval for perfectly matched transactions would include mirror image equity swaps executed by a state member bank with any affiliate that is authorized under Regulation K to engage in equity swaps.

[2] Gold and silver are the only commodities that banks generally have authority to purchase. In states where banks have authority to deal in platinum, transactions linked to platinum will not be considered a change in the general nature of the business of a bank.

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Section 211.603 is added to read as follows:

§ 211.603 Commodity swap transactions.

For text of interpretation relating to this subject, see § 208.128 of this chapter.

By order of the Board of Governors of the Federal Reserve System, November 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-29038 Filed 12-3-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM90-8-000; Order No. 529]

Amendments to FERC Form Nos. 1 and 1-F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses; Technical Amendment

Issued November 27, 1991

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Technical Amendment.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is correcting an error in the regulations concerning annual charges under parts II and III of the Federal Power Act and related statutes. A sample worksheet found at § 382.201(b)(4)(B)(ii) of the Commission's regulations was not revised to reflect Commission-ordered revisions in Order No. 529 issued on November 5, 1990. [55 FR 47311 (Nov. 13, 1990)].

EFFECTIVE DATE: This technical amendment is effective November 27, 1991.

FOR FURTHER INFORMATION CONTACT: Ann E. Gorton, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0231.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this technical amendment will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) is correcting an error in the regulations on annual charges under parts II and III of the Federal Power Act and related statutes.

On November 5, 1990, the Commission issued Order No. 529, a final rule amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees. (55 FR 47311 (Nov. 13, 1990)); FERC Stats. & Regs. (Regulations Preambles 1986–1990 ¶ 30,904 (Nov. 5, 1990)). Order No. 529 also made minor conforming changes to the Commission's fuel cost and purchased economic power adjustment clause regulations in part 35 of the Commission's regulations, and the Commission's annual charges regulations in part 382. The final rule made conforming changes to the worksheet that must be submitted as part of the Commission's annual charges reporting requirement in § 382.201 of the Commission's regulations. However, the Commission failed to correct the sample worksheet shown in § 382.201(b)(4)(B)(ii) of the Commission's regulations. This technical amendment corrects that sample worksheet. A corrected sample worksheet is attached.

In § 382.201(b)(4)(B)(ii), in the sample worksheet, the heading for column 3, the title for Row B, and footnote 2 are all amended by removing the words "interchange out" and inserting in their place the words "exchange delivered"; footnote 2 is amended by removing the words "page 328" and inserting in their place the words "pages 326–327"; and footnote 3 is amended by removing the words "page 332" and inserting in their place the words "pages 328–330." In addition, the subtitle is amended by removing the words "Kilowatt-hours" and inserting in their place the words "Megawatt-hours"; and the heading for column 4 is amended by removing the term "Kwh" and inserting in its place "Mwh".

While the conforming changes to the worksheet that were ordered in the final rule were made effective 30 days after publication in the **Federal Register**, or on December 13, 1990, this technical amendment correcting the sample worksheet is effective on November 27, 1991.

Lois D. Cashell,

Secretary.

PART 382—ANNUAL CHARGES

1. The authority citation for part 382 is revised to read as follows:

Authority: Sec. 3401, Pub. L. 99–509, 100 Stat. 1890–1891; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 5 U.S.C. 551–557; 15 U.S.C. 717–717w; 16 U.S.C. 791a–828c; 15 U.S.C. 3301–3432; 16 U.S.C. 2601–2645; 49 U.S.C. 1–27.

2. In § 382.201(b)(4)(ii), the Worksheet is revised to read as follows:

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

WORKSHEET—AS REPORTED ON THE FERC FORM NO. 1

[Amounts in Megawatt-hours]

Annual charge categories	Form 1 sales for resale	Form 1 exchange delivered	Form 1 transmission delivered	Mwh totals
Totals from Form 1	(1)	(2)	(3)	(4)

WORKSHEET—AS REPORTED ON THE FERC FORM NO. 1—Continued

[Amounts in Megawatt-hours]

Annual charge categories	Form 1 sales for resale	Form 1 ex-change deliv-ered	Form 1 trans-mission deliv-ered	Mwh totals
(A) Adjusted sales for resale for A/C purposes				
(B) Coordination sales including transmission delivered and exchange delivered for A/C purposes				

[1] Must agree with totals shown in Form No. 1, on pages 310-311, included in Account No. 447.
[2] Must agree with total exchange delivered shown in Form No. 1, on pages 326-327, included in Account No. 555.
[3] Must agree with total transmission delivered shown in Form No. 1, on pages 328-330, included in Account No. 456.
[4] Total A+B=Total [1]+[2]+[3].

* * * * *

[FR Doc. 91-29008 Filed 12-3-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 620

[Docket No. 91N-0366]

Amendment of Additional Standards for Bacterial Products; Pertussis Vaccine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by revising the definition for Pertussis Vaccine. The definition as currently codified could be interpreted as encompassing the new generation of acellular pertussis vaccines. FDA does not believe that these new acellular vaccines should be subject to licensure and regulation under the additional standards in §§ 620.1 through 620.6 (1 CFR 620.1 through 620.6). To clarify that these requirements are not applicable to acellular vaccines, FDA is deleting the reference to fractionated bacteria from the definition.

DATES: Written comments by February 3, 1992. This rule becomes effective December 4, 1991.

ADDRESSES: Written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Rockville, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION:

I. Current Regulation

FDA specifies the requirements for Pertussis Vaccine in §§ 620.1 through 620.6. Under § 620.1, FDA defines Pertussis Vaccine as "whole *Bordetella pertussis* bacteria or a fraction of *Bordetella pertussis* bacteria." Under §§ 620. through 620.6, FDA specifies the production, reference standard, potency test, mouse toxicity test, and general requirements for Pertussis Vaccine. Licensed vaccines subject to these requirements include both single pertussis vaccines (i.e., Pertussis Vaccine Adsorbed) and the pertussis component of combined vaccines (i.e., Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed).

II. Background

All currently licensed Pertussis Vaccines are whole bacteria vaccines. To date, only one fractionated bacteria vaccine has been licensed. The method used to manufacture the previously licensed fractionated bacteria vaccine yielded a preparation that differed from whole bacteria vaccines in that it was a soluble mixture of undefined components. In spite of such differences, the potency, safety, and freedom from toxicity requirements applicable to whole bacteria vaccines were also appropriate for the fractionated bacteria vaccine. For reasons unrelated to regulatory issues, the manufacturer of the fractionated bacteria vaccine ceased production, and the product license was revoked at the request of the manufacturer on December 2, 1985. FDA does not anticipate that any similarly manufactured fractionated bacteria vaccines will be licensed in the future.

A new generation of acellular pertussis vaccines is currently under investigation in the United States and abroad. The methods used to manufacture the new acellular pertussis vaccines yield preparations that, like the fractionated bacteria vaccines, differ from whole bacteria vaccines in that they are soluble mixtures. In contrast to the fractionated bacteria vaccines, the new acellular vaccines are soluble mixtures of highly purified components. Because of the differences between the fractionated and new acellular bacteria vaccines, the additional standards at §§ 620.1 through 620.6 are neither appropriate nor adaptable for the new acellular vaccines. FDA is currently evaluating these new acellular vaccines on the basis of data and specifications contained in the product license applications (PLA's).

The definition for Pertussis Vaccine in § 620.1 could be interpreted as encompassing the new acellular vaccines. If so interpreted, the new acellular vaccines would be required to meet the production, potency, safety, and freedom from toxicity standards specified in §§ 620.3 through 620.6, when those standards are not appropriate for the new acellular vaccines. FDA is therefore revising the definition in § 620.1 by deleting the reference to fractionated bacteria. This amendment will clarify that acellular vaccines are not subject to the additional standards in §§ 620.1 through 620.6. FDA has determined that notice and public procedure for revising § 620.1 are contrary to the public interest in that licensure of new acellular pertussis vaccines could be delayed.

Investigations currently underway suggest equal, if not greater, effectiveness and less reactigenicity with the new acellular vaccines than with the whole bacteria vaccines. Licensure of acellular vaccines that meet, if not exceed, the safety, purity, potency, and effectiveness of whole bacteria vaccines is in the public interest. FDA has received PLA's for acellular pertussis vaccines and anticipates that the clinical data and manufacturing specifications in the PLA's may support licensure in the near future.

This final rule contains only a minor amendment that is necessary to clarify that the new generation of acellular pertussis vaccines is not subject to the regulations at §§ 620.1 through 620.6. Therefore, FDA finds that there is good cause to dispense with a notice of proposed rulemaking, pursuant to sections 553 (b) and (d) of the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)) and FDA's administrative practices and procedures regulations (21 CFR 10.40(e)). FDA also finds, in accordance with the Administrative Procedure Act, that there is good cause to make this final rule effective on the date of publication in the **Federal Register**. FDA is, however,