

Rules and Regulations

Federal Register

Vol. 62, No. 227

Tuesday, November 25, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure to provide notice that a judge may exclude a party or representative from all or any portion of a Board proceeding before him or her because of misconduct. The intent of this amendment is to inform parties and their representatives that MSPB judges have this authority and will exercise it when necessary to ensure that adjudication of cases proceeds expeditiously and without undue disruption.

DATES: Effective date November 25, 1997. Submit written comments on or before January 26, 1998.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: The Board's current rule at 5 CFR 1201.41(b) provides notice that a judge "will take all necessary action to avoid delay in all proceedings" and "will have all powers necessary to that end unless those powers are otherwise limited by law." It further provides explicit notice of a judge's authority to "maintain decorum, and exclude any disruptive persons from the hearing," [§ 1201.41(b)(6)], "[e]xclude any person from the hearing for good reason" [§ 1201.41(b)(7)], and

"[i]mpose sanctions as provided under § 1201.43 of this part" [§ 1201.41(b)(11)]. Section 1201.43 permits a judge to "impose sanctions upon the parties as necessary to serve the ends of justice."

These provisions in the Board's current rules are sufficient to permit a judge to exclude a party or representative from a proceeding when the person engages in misconduct. The Board is amending its regulations to provide explicit notice that a judge may exercise such authority at a hearing or at any other point in a proceeding, such as a settlement conference or prehearing conference.

The Board is amending its rule at 5 CFR 1201.31 ("Representatives") by adding a new paragraph (d) to make clear that misconduct by representatives, as well as parties or other persons, may result in exclusion by a judge from the Board proceeding before him or her. The new paragraph (d) also requires that the reasons for an exclusion be documented in the record and that, where a representative is excluded, the party be given a reasonable time to obtain new representation. The new provision also states that the Board, when considering a petition for review, is not bound by a judge's decision to exclude a person from the proceeding below.

The Board also is amending its rule at 5 CFR 1201.41 ("Judges") by revising subparagraph (b)(7) to provide for exclusion from "all or any part of the Board proceeding before him or her" rather than from "the hearing."

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.31 is amended by adding a new paragraph (d) at the end, as follows:

§ 1201.31 Representatives.

* * * * *

(d)(1) A judge may exclude a party, a representative, or other person from all or any portion of the proceeding before him or her for contumacious misconduct or misbehavior that obstructs the hearing.

(2) When a judge excludes a person from participation in a proceeding, the judge shall document the reasons for the exclusion in the record.

(3) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative.

(4) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

3. Section 1201.41 is amended by revising paragraph (b)(7) to read as follows:

§ 1201.41 Judges.

* * * * *

(b) * * *

(7) Exclude any person from all or any part of the proceeding before him or her for good reason;

* * * * *

Dated: November 19, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97-30831 Filed 11-24-97; 8:45 am]

BILLING CODE 7400-01-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Parts 1421 and 1446

RIN 0560-AFO1

1997-Crop Peanuts; National Poundage Quota; National Average Support Level for Quota and Additional Peanuts; and Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Peanuts

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1997 peanut crop: the national poundage quota for quota peanuts is established at 1,133,000 short tons (st); the national average support level for quota peanuts is \$610 per st; the national average support level for additional peanuts is set at \$132 per st; and the minimum Commodity Credit Corporation (CCC) export edible sales price for price-support loan-inventory additional peanuts is \$400 per st. The poundage quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). The determination of the national average support levels for quota and additional peanuts was made pursuant to the statutory requirements of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The determination and announcement of the minimum export edible sales price for additional peanuts is a discretionary action made to facilitate the negotiation of private contracts for export edible peanuts. This rule also codifies the additional peanut price support determinations for the 1996 crop and the minimum CCC price for loan inventory additional peanuts from the 1996 crop.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250-0514, telephone 202-720-9255. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

These amendments do not contain information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

A. Announcement of the Quota

Section 358-1(a)(1) of the 1938 Act as amended by the 1996 Act, requires that the national poundage quota for peanuts for each of the 1996 through 2002 marketing years (MYs) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible (excluding seed) and related uses. As to seed, section 358-1(b)(2)(B) of the 1938 Act provides that a temporary allocation of quota pounds for the MY only shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. The MY for 1997-crop peanuts runs from August 1, 1997, through July 31, 1998. Poundage quotas for the 1996 and 1997 crops of peanuts were approved by 97 percent of peanut producers voting in a referendum conducted December 11-14, 1995.

The national poundage quota for the 1997 MY was established at 1,133,000 st, based on the following data.

Estimated Domestic Edible and Related Uses for 1997-Crop Peanuts

Item	Farmer stock equivalent (short tons)
Domestic edible—Domestic production:	
For domestic food use	913,000
On-farm and local sales	9,000
Related uses:	
Crushing residual	120,500
Shrinkage and other losses ..	36,500
Segregation 2 and 3 loan:	
Transfers to quota loan	5,000
Under production	49,000
Total	1,133,000

The estimate of MY 1997 domestic food use of peanuts was developed in two steps. First, the farmer stock equivalent of 1,062,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 149,500 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358e of the 1938 Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent ICEC's MY 1997 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspection data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, and seed is excluded from quota determinations under amendments to the 1938 Act by the 1996 Act.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given lot of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota consists of the edible and crushing content of the farmer stock weight of quota peanuts. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1997 domestic production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. The utilized factor is a FSA estimate equal to the

minimum allowable shrinkage used in calculating a handler's obligation to export or crush additional peanuts as set forth in Section 359e(d)(2)(iv) of the 1938 Act. Excessive moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered since such factors are accounted for as inspection factors at buying points and do not impact quota marketing tonnage.

The adjustment for Segregation 2 and 3 loan transfers represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support at the quota loan rate, if it were not for quality problems. In such cases, for price support purposes only, these peanuts may be pledged as collateral for price support loans at a discounted quota loan rate. Subject to a national limit of 5,000 st, individual producers can transfer up to 25 percent of their effective farm poundage quota from the additional loan pool and receive 70 percent of the quota loan rate. Regarding the disposition of such peanuts, the CCC will ensure that they are crushed for oil.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since the 1996 Act eliminated the carryover of unmarketed quota pounds, any quota pounds not marketed will be a loss of potential income for producers. It is expected that somewhat more than 92 percent will be marketed. It was assumed, based on a consideration of all factors, that 95.5 percent of the 1997 quota will be marketed. This assumption, together with expected growth in domestic consumption of peanut products through new uses and a small increase in demand because of lower peanut support prices resulted in the setting of a national peanut poundage quota of 1,133,000 st for the 1997 MY. This determination followed the publication of a proposed rule on November 25, 1996, in the **Federal Register** (61 FR 59840), which set forth a proposed MY 1997 national poundage quota level, an additional price support level and a minimum CCC sales price for export edible peanuts for sales of price support loan peanuts of the 1997 crop.

There were 169 letters received comprising 63 separate comments in response to the notice during the comment period that ended on December 10, 1996. The 63 comments

addressing these issues represent 29 manufacturers, 18 Associations, five Members of Congress, four producers, four shellers, and the three producer owned cooperatives that administer the loan program. The manufacturers and their associations were concerned with adequate supplies and stock levels. Manufacturers and their associations mostly recommended quota levels ranging from 1,400,000 to 1,500,000 st for MY 1997. Shellers and their associations were concerned with adequate supplies and competitive prices for export edible peanuts. Producers and their associations were concerned with supplies, stock levels and program costs. The Congressional letters counseled the Secretary to be thorough and cautious in setting the 1997 national peanut poundage quota.

A significantly larger quota recommended by most peanut product manufacturers would lower the price received by first buyers and could slightly reduce cost to consumers for peanut products. Furthermore, a substantial increase in quota would lower the average producer price to a level near the average national support price. A quota of 1,400,000 to 1,500,000 st would likely result in sufficient qualities and quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than \$610 per st. Since the demand for greater supplies of peanuts is small, this level of quota would likely result in a surplus and a loss on loan placements for more than 300,000 st of peanuts. These peanut losses would be around \$400 per st. Losses of up to \$120 million could occur and result in producer assessments of over \$100 per st the following year. This level of assessment could lower the effective price received by producers for quota peanuts in MY 1998 to near \$500 per st. In any event, the quota formula is set by statute and the determined quota was calculated using that formula.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1997 price support level for additional peanuts was announced at \$132 per st on February 14, 1997. The national average price support rate for

quota peanuts, for each of the 1996 through 2002 crops, is set at \$610 per st by the 1996 Act and is codified at 7 CFR section 1446.103. So that both prices may be codified in the same regulations, this final rule moves the regulation setting out the additional peanut price from 7 CFR part 1421 to 7 CFR part 1446.

The MY 1997 price support level for additional peanuts was established at \$132 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information was considered:

1. The domestic use of peanut oil during MY 1997 is forecast to be 92,500 st, unchanged from MY 1996 projected domestic use. MY 1997 peanut oil beginning stocks are expected to be 18,500 st, down 44 percent from MY 1996. The MY 1997 average peanut oil price is expected to be \$0.380 per pound, down \$0.015 per pound from MY 1996.

2. The domestic use of peanut meal during MY 1997 is forecast to be 140,000 st, up 5,000 st from MY 1996 projected domestic use. MY 1997 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1996. The MY 1997 average peanut meal price is expected to be \$174.50 per st, down \$60.50 per st from MY 1996.

3. The domestic disappearance of soybean oil during MY 1997 is forecast to be 6,850,000 st, up 1.1 percent from projected MY 1996 domestic disappearance. MY 1997 soybean oil beginning stocks are expected to be 1,117,500 st, up about 11.2 percent from MY 1996. The MY 1997 average soybean oil price is expected to be \$0.220 per pound, down \$0.005 per pound from MY 1996.

4. The domestic disappearance of cottonseed oil during MY 1997 is forecast to be 517,500 st, up 2 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed oil beginning stocks are expected to be 55,000 st, up 10 percent from MY 1996. The MY 1997 average cottonseed oil price is expected to be \$0.260 per pound, down \$0.0025 per pound from MY 1996.

5. The domestic disappearance of soybean meal during MY 1997 is

forecast to be 27,000,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 soybean meal beginning stocks are expected to be 225,000 st, down about 12.5 percent from MY 1996. The MY 1997 average soybean meal price is expected to be \$227.50 per st, down \$7.50 per st from MY 1996.

6. The domestic disappearance of cottonseed meal during MY 1997 is forecast to be 1,690,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed meal beginning stocks are expected to be 40,000 st, unchanged from MY 1996. The MY 1997 average cottonseed meal price is expected to be \$182.50 per st, down \$7.50 per st from MY 1996.

7. The world use of peanuts for MY 1996 is expected to be 26.36 million metric tons, up slightly from MY 1995. World peanut production for MY 1996 is forecast to be 26.36 million metric tons, up 1.7 percent from MY 1995. Ending stocks for MY 1996 are forecast at 0.46 million metric tons, unchanged from 1995.

Discussion of Comments

During the comment period there were six comments received concerning the 1997 additional peanut price support level. One sheller association, two sheller firms, and the three producer-owned cooperatives made specific recommendations on the additional price support level. They recommended a range in the price support level from no-change (\$132 per st for the 1996 crop) up to \$200 per st. Strong prices in the oil seed complex were cited as the reason to increase the additional price support level. The final determination was made for the reasons given above. Based on the consideration of these same factors, the 1996-crop additional peanut support level was also \$132 per st. An analysis of the data for that year is available from the contact person listed above. In the proposed rule it was indicated incorrectly that the 1996 additional peanut price had been codified previously in 7 CFR part 1421. Likewise, the 1996 price for sales by the CCC for export edible use of 1996-crop loan inventory peanuts had also not been codified. Both of these determinations are also codified in this rule and are given the new locations used for the 1997 determinations rather than the location for the corresponding determinations for the prior years. This change of location is the result of a reorganization of Departmental regulations following the 1996 legislation referred to earlier.

C. Announcement of CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The establishment of a minimum price at which 1997-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts. The minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets was established at \$400 per st on April 30, 1997. This price should encourage exports while providing price stability for additional peanuts sold under contract. It will also assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for export edible sales below the minimum sales price.

Discussion of Comments

During the comment period seven comments were received concerning the minimum export edible sales price. Four suggested keeping the price at \$400 per st, and three suggested lowering it to between \$300 and \$375 per st. Producer groups preferred keeping the minimum price at \$400 per ton while shellers preferred lowering it. The final price was set based on the factors set forth above. However, the Department plans to seek comments on this discretionary price for subsequent years to determine whether there should be a new method proposed for determining the price. As indicated, the 1996-crop CCC price was the same amount for the same reasons and that amount is also codified in this rule.

In addition, this rule provides a minor revision of the provisions of 7 CFR 1421.27 with respect to the listing of the minimum sales price for certain sales in situations where the farmer has a farm-stored price support loan. The current regulations have an unnecessary reference to the sales price for export edible use of 1996 crop farm-stored peanuts. The reference is removed in this final rule, which does not change the substance of the rule. The regulations in 7 CFR part 1421 will simply rely on the announcement of the general price or export edible use sales

by CCC of loan peanuts which will now be codified in 7 CFR part 1446.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1421

Loan programs, Agriculture loan and loan deficiency payments, Peanuts, Reporting and recordkeeping requirements, Warehouses.

7 CFR Part 1446

Loan program—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements.

Accordingly, this final rule amends 7 CFR parts 729, 1421 and 1446 as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 is amended by revising paragraph (c) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota for quota peanuts for marketing year 1997 is 1,133,000 short tons.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 7231–7235, 7237; and 15 U.S.C. 714b and 714c.

4. Section 1421.27 is amended by: in paragraph “(a)(2),” adding the word “and” after the semicolon; removing paragraph “(a)(3),” and redesignating paragraph “(a)(4)” as paragraph “(a)(3).”

PART 1446—PEANUTS

5. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

§ 1446.103 [Amended]

6. Section 1446.103 is amended by adding the words “as set out in § 1446.310” after “announced by the Secretary” to the definition of “Support rate” in that section.

7. Two new sections, §§ 1446.310 and 1446.311, are added to subpart C to read as follows:

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is \$132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop is \$132 per short ton.

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is \$400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 crop is \$400 per short ton.

Signed at Washington, DC, on October 26, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97-30965 Filed 11-24-97; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560-AF23

Noninsured Crop Disaster Assistance Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; correction.

SUMMARY: In the interim rule published in the **Federal Register** on October 17, 1997 (62 FR 53929) the comment period was inadvertently omitted. This correction announces the comment period.

DATES: The interim rule was effective on October 17, 1997. Comments on this rule must be received on or before January 26, 1998 to be assured of consideration.

ADDRESSES: Comments should be mailed to Sean O'Neill, Chief, Noninsured Assistance Branch (NAB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517,

1400 Independence Avenue, SW, Washington, D.C. 20250-0526; telephone (202) 720-9003.

FOR FURTHER INFORMATION CONTACT:

Sean O'Neill, Chief, Noninsured Assistance Branch (NAB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250-0526; telephone (202) 720-9003.

Signed at Washington, DC, on November 18, 1997.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97-30966 Filed 11-24-97; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 971014243-7243-01]

Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow the delegation of the authority to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 (the effective date of the MBNMS designation) from the Director of the Office of Ocean and Coastal Resource Management (Director) to other Federal officials below the Director's level; for example, the Sanctuary Manager.

DATES: This rule will be effective on November 25, 1997.

FOR FURTHER INFORMATION CONTACT:

Scott Kathey at (408) 647-4251 or Elizabeth Moore at (301) 713-3141 ext. 170.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Regulatory Amendment

The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities and thus make it unlawful for any person to conduct them or cause them to be conducted.

Under 15 CFR 922.49 (Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity), the MBNMS prohibitions do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of the Sanctuary designation (i.e., January 1, 1993 for the MBNMS) by any Federal, State or local authority of competent jurisdiction, provided that the applicant for such authorization complies with the procedures of section 922.49. The Director is required to notify the applicant whether he or she has an objection to issuance of the authorization and what terms and conditions he or she deems necessary to protect Sanctuary resources or qualities.

Section 922.134(a) of the MBNMS regulations states "The authority granted the Director under § 922.49 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 may not be delegated or otherwise assigned to other Federal officials below the Director's level." This provision prevents the Director from delegating this authority to the Sanctuary Manager of the MBNMS or any other Federal official below the Director's level. The Sanctuary Manager currently has the delegated authority to issue Sanctuary permits. Further, the MBNMS is the only Sanctuary of the twelve in the National Marine Sanctuary Program in which the authority to object to or impose terms and conditions under § 922.49 cannot be and has not been delegated to the Sanctuary Manager. Consequently, this rule amends the MBNMS regulations to allow for the delegation to the Sanctuary Manager or any other Federal official below the Director's level of the authority to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993, pursuant to § 922.49.