

SUMMARY: This document contains a correction to the final rule which was published Tuesday, June 11, 1996 [61 FR 29461]. The final rule added a Harmonized Tariff Schedule code number for imported flavored honey to provide authority for the U.S. Customs Service to collect an assessment on all imported flavored honey.

EFFECTIVE DATE: June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Richard B. Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, D.C. 29909-6456; telephone (202) 720-9915.

SUPPLEMENTARY INFORMATION:

Background

The Honey Research, Promotion, and Consumer Information Order (Order) provides that each producer and importer shall pay to the Honey Board (Board) a one cent per pound assessment rate on honey and honey products produced in or imported into the United States. Section 1240.5 of the Order defines honey products as products wherein honey is a principal ingredient.

In order for the U.S. Customs Service (Customs) to collect the assessments on imported honey and honey products, each product must be identified by a Harmonized Tariff Schedule (HTS) code number. Since the Board—s inception, honey has been assessed by Customs under HTS code number 0409.00.00. However, there were no HTS codes for honey products.

The Board identified flavored honey as a product containing approximately 99 percent honey and estimated that 500,000 pounds of flavored honey are imported into the United States annually without the importer paying the required assessment. At the recommendation of the Board, the Department of Agriculture (Department) requested the Committee for Statistical Annotation of Tariff Schedules (Committee) of the International Trade Commission to establish an HTS code for flavored honey. The Committee notified the Department on February 13, 1996, that a code had been established for flavored honey. On June 11, 1996, the Department published a final rule at 61 FR 29461 that added the new HTS code for flavored honey to the rules and regulations under the Order to provide authority for Customs to collect the assessment on all imported, flavored honey. However, the HTS code number published was incorrect, and Customs will be unable to collect assessments on imported, flavored honey until the correct number is published.

Need for Correction

In the final rule, the HTS code for flavored honey was incorrectly listed as 21006.90.9988 rather than as 2106.90.9988.

Correction of Publication

Accordingly, in the June 11, 1996, publication, FR Doc. 96-14758, page 29462, first column, 7 CFR Part 1240, § 1240.115, paragraph (e) is corrected by removing the figure “21006.90.9988” and adding in its place “2106.90.9988”.

Dated: July 15, 1996.
Robert C. Keeney,
Director, Fruit and Vegetable Division.
[FR Doc. 96-18463 Filed 7-23-96; 8:45 am]
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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 311

Rules Governing Public Observation of Meetings of the Corporation's Board of Directors

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC or Corporation) is amending its regulations, which implement the requirements of The Government in the Sunshine Act (Sunshine Act) regarding public observation of meetings of its Board of Directors (Public Observation Rules) to amend the definition of “Board” by deleting references to specific standing committees which no longer exist and eliminating otherwise superfluous language; make two minor technical changes; update delegations of authority to conform to a changed position structure in the Corporation's Legal Division; and include a cross-reference to the Corporation's Freedom of Information Act (FOIA) regulations to clarify that documents considered in connection with Board meetings may be made available to the public under FOIA.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, Counsel and Special Assistant to the Executive Secretary, Office of the Executive Secretary, (202) 898-3719.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303 of the Riegle Community Development and Regulatory

Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2214, requires that each Federal banking agency conduct a review of its written regulations and policies for purposes of improving efficiency, reducing unnecessary costs, eliminating unwarranted constraints on credit availability, and removing inconsistencies and outmoded and duplicative requirements. The FDIC, in compliance with that mandate, has reviewed part 311 of its regulations and determined that, although it is statutorily mandated and imposes no unnecessary costs or unwarranted constraints on credit availability, several minor, technical amendments are necessary to ensure internal consistency and consistency with current organizational structure and the underlying statute, and to clarify the procedures under which certain documents may be made available.

The definition of “Board” at § 311.2(a) excludes any standing or special committee (such as the Board of Review, the Board of Review (Mergers), or the Committee on Liquidations, Loans and Purchases of Assets) which has been or may be created by the Board of Directors but whose membership consists primarily of Corporation employees, including not more than one Board member. This exclusionary language was originally included in the definition to make it clear that the Corporation's then existing standing committees, because of their functions and membership, did not constitute “subdivisions” of the Board. However, it has since been well established that Congress did not intend to bring agency employees within the meaning of the term “subdivisions”, thereby rendering the exclusion unnecessary. In addition, all but one of the named committees have been abolished, and the Corporation's standing committee structure is always subject to change at the discretion of the Board. Substituting the names of currently existing committees would render the reference outdated each time a change was made to the committee structure. Therefore, in order to simplify the definition of “Board” and eliminate the need to make constant revisions to the regulation, the entire exclusionary clause has been deleted.

Under the Sunshine Act, a “meeting” is defined as the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business. Although the Sunshine Act is silent on the issue of notational voting, judicial interpretations of the

term "meeting" have consistently held that it does not apply to a notational voting system in which agency members vote individually on matters circulated to them sequentially in writing. *See e.g., Railroad Comm'n of Texas v. U.S.*, 765 F.2d 221 (D.C. Cir. 1985); *Communications Systems, Inc. v. FCC*, 595 F.2d 797 (D.C. Cir. 1978). The Corporation, at § 311.2(b)(2) of its regulation, has attempted to include this judicial interpretation in its regulatory definition of what constitutes a "meeting" by excluding from the definition infrequent decisionmaking by the circulation of written material to individual Board members. However, the reference to "[i]nfrequent" use of notational voting is inconsistent with judicial interpretations which exclude notational voting from the definition of "meeting" without regard to the frequency with which such a procedure is used to make decisions. Therefore, the FDIC has removed the reference to "[i]nfrequent" at § 311.2(b)(3) to make the exclusion consistent with relevant court decisions. Despite this change, the FDIC contemplates no change in the frequency with which it has used notational voting procedures in the past.

The position structure of the Corporation's Legal Division has changed slightly since part 311 was initially implemented. Thus, the delegations of authority to certify that a meeting of the Board may be closed to the public has been amended in a way that reflects the changed structure and accommodates any future changes.

Although § 311.8 is currently titled in such a way as to limit its application to transcripts and minutes of "closed" Board meetings, it does in fact address minutes of meetings of open Board meetings as well. The heading has, therefore, been revised to read, "Transcripts and minutes of meetings."

Finally, at § 311.8, a new paragraph (e), entitled "Procedures for obtaining documents identified in minutes", has been added to clarify that, in addition to the availability under the Sunshine Act of transcripts and minutes of Board meetings, documents referred to in minutes or considered in connection with any action taken at Board meetings may be made available under the Corporation's FOIA regulations, to the extent permitted by FOIA.

II. Public Comment Waiver

The amendments are not substantive. Rather, they remove obsolete and superfluous provisions, make technical amendments, change a delegation of authority to make it consistent with current organizational structure; and clarify procedures for obtaining certain

documents. The Board finds that because Part 311 addresses internal agency procedure and practice, public comment on these changes is unnecessary and contrary to the public interest. Thus, the Board has determined that there exists good cause for not following the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments.

III. Matters of Regulatory Procedure *Regulatory Flexibility Analysis*

The requirements of Chapter 6 of Title 5 of the United States Code relative to "The Analysis of Regulatory Functions" does not apply to Part 311. Part 311 is not a "rule" for purposes of that statute (see 5 U.S.C. 601(2)) as it is not a rule for which the FDIC is required to publish a general notice of proposed rulemaking under section 553(b) of Title 5 of the United States Code. Part 311 is a rule of agency procedure and/or practice and is thus exempt under the statute.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 311 Sunshine Act.

For the reasons set forth above, 12 CFR part 311 is amended as set forth below.

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

1. The authority citation for Part 311 continues to read as follows:

Authority: 5 U.S.C. 552b and 12 U.S.C. 1819.

2. Section 311.2 is amended by revising paragraph (a) to read as follows:

§ 311.2 Definitions.

* * * * *

(a) *Board* means Board of Directors of the Federal Deposit Insurance Corporation and includes any subdivision of the Board authorized to act on behalf of the Corporation.

* * * * *

§ 311.2 [Amended]

3. Section 311.2(b)(3) is amended by removing the words "Infrequent decisionmaking" and adding in their place, the words "Decision-making".

4. Section 311.7 is amended by revising the second and third sentences to read as follows:

§ 311.7 General Counsel certification.

* * * In the absence of the General Counsel, the next ranking official in the Legal Division may perform the certification. If the General Counsel and such next ranking official in the Legal Division are both absent, the official in the Legal Division who is then next in rank may provide the required certification. * * *

5. Section 311.8 is amended by revising the heading; by revising the first sentence of paragraph (d)(1); and by adding a new paragraph (e) to read as follows:

§ 311.8 Transcripts and minutes of meetings.

* * * * *

(d) * * * (1) An individual may inspect materials made available under paragraph (c) of this section at the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, during normal business hours. * * *

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(e) *Procedures for obtaining documents identified in minutes.* Copies of documents identified in minutes or considered by the Board in connection with any action identified in the minutes may be made available to the public upon request, to the extent permitted by the Freedom of Information Act, under the provisions of 12 CFR part 309, Disclosure of Information.

By order of the Board of Directors.

Dated at Washington, D.C. this 16th day of July, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96-18656 Filed 7-23-96; 8:45 am]

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