

**COMMODITY FUTURES TRADING COMMISSION****17 CFR Part 1****Proposed Rulemaking Concerning Contract Market Rule Review Procedures**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is proposing a rulemaking which would amend the Commission's procedures relating to its review of those contract market rules that do not relate to contract terms and conditions. A separate proposal is currently pending for rules relating to terms and conditions. The instant proposal would shorten the Commission's time frame for reviewing complex rules and streamline the review process so that such rule changes generally could be deemed approved or be permitted to be put into effect without Commission approval.

Specifically, all such rule changes meeting the form and content requirements would be deemed approved or be permitted to be put into effect without approval ten days after Commission receipt, unless the Commission took action to commence review of the proposal for a 45-day period (or a 75-day period in the case of rules published for comment in the Federal Register) or the contract market agreed to another, specified review period. At the end of such a period, a proposed rule meeting the form and content requirements would be deemed approved or become effective without approval unless the Commission informed the submitting contract market of its intention to initiate disapproval proceedings, the contract market withdrew the proposal, or the contract market requested that the review period be extended to the current 180-day period.

**DATE:** Comments on the proposed rulemaking must be received by January 16, 1997.

**ADDRESSES:** Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; transmitted by facsimile to (202) 418-5521; or transmitted electronically to [secretary@cftc.gov].

**FOR FURTHER INFORMATION CONTACT:** David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre,

1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5490.

**SUPPLEMENTARY INFORMATION****I. Current Statutory and Regulatory Requirements**

Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(a)(12)(A), provides that all rules<sup>1</sup> of a contract market that relate to terms and conditions<sup>2</sup> in futures or option contracts traded on or subject to the rules of a contract market must be submitted to the Commission for its prior approval. If the Commission does not approve or begin disapproval proceedings for such a proposed rule within 180 days of the Commission's receipt of the submission, the contract market may make the rule effective.<sup>3</sup>

Section 5a(a)(12)(A) further requires that contract markets submit all other rules to the Commission. Such other rules may be made effective ten days after Commission receipt unless, within the ten-day period, the contract market requests Commission approval or the Commission notifies the contract market that it intends to review the rules for approval. Section 5a(a)(12)(A) also provides that at least thirty days before

<sup>1</sup> Commission Regulation 1.41(a)(1) defines "rule" of a contract market to mean:

\* \* \* any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

<sup>2</sup> Commission Regulation 1.41(a)(2) defines "terms and conditions" to mean:

\* \* \* any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions shall be deemed to include provisions relating to the following:

- (i) Quality or quantity standards for a commodity and any applicable exemptions or discounts;
- (ii) Trading hours, trading months and the listing of contracts;
- (iii) Minimum and maximum price limits and the establishment of settlement prices;
- (iv) Position limits and position reporting requirements;
- (v) Delivery points and locational price differentials;
- (vi) Delivery standards and procedures, including alternatives to delivery and applicable penalties or sanctions for failure to perform;
- (vii) Settlement of the contract; and
- (viii) Payment or collection of commodity option premiums or margins.

<sup>3</sup> In addition, if the Commission institutes a disapproval proceeding for a proposed rule within 180 days of receipt, but does not conclude the disapproval proceeding within one year of receipt, the contract market may make the rule effective until such time as the Commission disapproves the rule.

approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register.

Commission Regulation 1.41 sets forth procedures for submitting proposed contract market rules for Commission approval, permitting proposed contract market rules to go into effect without Commission approval, and dealing with contract market emergency rules. All proposed contract market rules relating to the terms and conditions of a commodity futures or option contract must, and any other rule may, be submitted for prior Commission approval, under section 5a(a)(12)(A) of the Act, pursuant to procedures set forth in Commission Regulation 1.41(b). (Significantly, certain other sections of the Act require rules addressing specified matters to be explicitly approved by the Commission.) Commission Regulation 1.41(c) sets forth the submission requirements for rules that do not require Commission approval and that may be placed into effect ten days after receipt by the Commission.

On November 22, 1996, the Commission published a proposed rulemaking which would revise the procedures for contract market designations and the review of rules relating to contract terms and conditions under Regulation 1.41(b).<sup>4</sup> Specifically, that proposed rulemaking would establish "fast-track" review procedures which would permit certain contract market rules to be deemed approved 45 days after receipt by the Commission (or 75 days after receipt in cases where the Commission decided to extend the review period). These fast-track review procedures would be an alternative to the current 180-day review procedures under section 5a(a)(12)(A) of the Act and Commission Regulation 1.41(b).

The instant rulemaking would revise the review procedures for rules that do not relate to contract terms and conditions. It addresses those rules that, although they do not relate to terms and conditions, nevertheless require approval under a specific provision of the Act and those rules that do not require approval and for which the review period has been extended by the contract market or the Commission.<sup>5</sup>

<sup>4</sup> 61 FR 59386.

<sup>5</sup> In the past three fiscal years, the Commission has processed 866 non-term and condition submissions. The Commission handled 587 of these in ten days or fewer. This represents approximately 68% of all such submissions received. The Commission processed 613 submissions in 30 days or fewer. This represents approximately 71% of all

The different review periods set forth in the two proposed rulemakings reflect differences established in the statute between terms and conditions and other types of rules and the volume of contract market rulemakings that are not terms and conditions.<sup>6</sup>

## II. Description of Proposed Rulemaking

### A. Overview

The Commission believes that the rule review process is essential to ensure the integrity of the markets and to ensure that the public interest is protected. At the same time, the Commission wants to encourage innovation by the contract markets. The proposed rulemaking is designed to expedite the Commission's existing two-track procedures for the review of contract market rule proposals that do not relate to contract terms and conditions. As described in more detail below, the proposal would:

- Permit certain rules to be deemed approved within ten days of receipt that currently are subject to a 180-day deadline;
- Require the Commission to identify the issues raised by novel or complex proposals within 10 days of receipt;
- Reduce by up to 75% the time within which the Commission was required to act on the small portion of rules not handled during the ten-day review period;
- Make clear that a contract market could choose to extend the review period rather than be subject to a disapproval proceeding; and
- Require disapproval proceedings to be initiated no later than 15 days after the submitting contract market advised the Commission that it did not wish to withdraw the proposed rule.

The Commission believes that under the proposed procedures, the Commission would identify issues early in the process and make decisions on proposed rules in an expeditious manner.<sup>7</sup> Similarly, the compressed

such submissions. In many of the instances where the review period exceeded thirty days, in lieu of commencing disapproval proceedings or remitting the rules, the Commission kept such rules under review while the contract market addressed relevant issues or the Commission undertook changes to regulations that otherwise precluded the immediate implementation of the proposed rule.

<sup>6</sup> See section 5a(a)(12)(A) of the Act. Submissions related to terms and conditions constitute approximately 40% of all submissions. Other types of rules constitute approximately 60% of all submissions.

<sup>7</sup> The rulemaking would not alter the existing statutory requirement that any determination to extend the ten-day review period for certain rules is not delegable to staff. See section 5a(a)(12)(A) of the Act. The Commission would continue to make this determination. Upon implementation of the

time frames would increase the incentive for contract markets to ensure that their initial submissions fully articulated the operation, purpose, and effect of their proposals and to attempt to resolve open issues more quickly.<sup>8</sup>

The Commission expects that the proposed procedures would increase the percentage of submissions handled within ten days. Moreover, by simplifying the procedures for routine submissions and by imposing stricter deadlines at various stages, the proposal would enable the Commission and the contract markets to focus resources on the smaller subset of novel and complex submissions that require additional time for review. This would result in quicker identification and resolution of issues in such cases.

The following description consists of a section-by-section analysis of the Commission's proposed rulemaking. In addition to explaining the rationale and operation of the proposal, this description is intended to provide interested persons with a framework for addressing issues which may be raised by particular provisions of the rulemaking.

### B. Proposed Regulation 1.41(b)—Rules That Relate to Terms and Conditions

Current Commission Regulation 1.41(b) establishes approval procedures for proposed contract market rules relating to contract terms and conditions, other rules that require approval under a specific provision of the Act, rules for which the submitting contract market requests approval, and rules the Commission determines to review for approval. The Commission is proposing to amend Regulation 1.41(b) so that it would apply only to proposed rules relating to terms and conditions. The procedures for the review of such rules are addressed in the related proposed rulemaking mentioned above.<sup>9</sup>

### C. Proposed Regulation 1.41(c)—Rules That Do Not Relate to Terms and Conditions

Current Commission Regulation 1.41(c) establishes review procedures for proposed contract market rules

proposed rulemaking, the Commission anticipates it would adjust its internal processes, as appropriate, to accommodate the new procedures.

<sup>8</sup> For example, under current procedures, contract markets may have an incentive to submit proposals before all the details have been finalized in order to start the running of the 180-day review period. In such cases, the submission would be supplemented during the course of the review. Under the proposal, there would be an incentive to make the initial submission as complete as possible in order to obtain approval within the initial ten-day period.

<sup>9</sup> 61 FR 59386 (November 22, 1996).

which do not require Commission approval and may be placed into effect ten days after receipt by the Commission. The Commission's proposed rulemaking would revise Regulation 1.41(c) in two significant respects.

First, the rulemaking would expand the scope of rules eligible to be reviewed pursuant to Regulation 1.41(c) to include all proposed rules, other than terms and conditions, that the Commission reviews for approval. These types of rules would include rules that required approval under a provision of the Act other than Section 5a(a)(12)(A),<sup>10</sup> rules that the Commission decided to review for approval, and rules that the submitting contract market requested be reviewed for approval.

Second, the rulemaking would compress the time for review. Under the proposal, the Commission would be required to act on all non-term and condition rule changes within ten days of receipt. Unless the Commission found that a rule proposal involved complex or novel issues or was of major economic significance and affirmatively decided to retain it for further review, all non-term and condition rule changes would be deemed approved or be permitted to be placed into effect without approval, as appropriate, ten days after the Commission's receipt.

For those rule proposals that the Commission decided merited further review, the proposed rulemaking would reduce the Commission's maximum review time from the current 180 days to 45 or 75 days, unless the submitting contract market requested otherwise. Finally, disapproval proceedings for a proposed rule would have to be instituted within 75 or 105 days rather than the current 180 days.

#### 1. Proposed Regulation 1.41(c)(1)(i)—Form and Content of Submissions

Under proposed Regulation 1.41(c)(1)(i), contract markets would be required to submit to the Commission for review all proposed rules that did not relate to terms and conditions and were not otherwise exempt.<sup>11</sup> Because

<sup>10</sup> Several provisions of the Act other than section 5a(a)(12)(A) require Commission approval of contract market rules: Section 4b(b) (crossing of orders); Section 4c(a) (exchange of futures for physicals, transfer trades and office trades); and Section 4f(b) (financial requirements for futures commission merchants). Several provisions of the Commission's regulations also require Commission approval of contract market rules: Regulation 8.02 (disciplinary proceedings); Regulation 155.2 (trading standards for floor brokers); and Regulation 190.05(b) (deliveries on behalf of a customer of a bankrupt firm).

<sup>11</sup> Commission Regulations 1.41(d) and 1.41(f), respectively, set forth the submission requirements

this rulemaking would substantially reduce the period of time the Commission would have to review and dispose of rule proposals, it would be very important for contract markets to ensure that their submissions fully complied with the form and content requirements.

Each submission would have to comply with all the form and content requirements that currently apply to rules submitted to the Commission pursuant to Regulation 1.41(b) and Regulation 1.41(c). In addition, because proposed Regulation 1.41(c) would establish review procedures for both rules that receive Commission approval and rules that may be put into effect without Commission approval, the proposed rulemaking would require that Regulation 1.41(c) submissions included certain other information to facilitate the Commission's review of both these categories of rules.

Proposed Regulation 1.41(c)(1)(i)(F) would require that contract markets specified in their submissions any sections of the Act or the Commission's regulations that were related to a proposed rule, particularly citing any such provisions that required Commission approval of the rule. To the extent a submission was potentially inconsistent with a provision of the Act or the Commission's regulations, the proposal would require that the submission contained a reasoned analysis addressing that issue and supporting adoption of the rule.

Proposed Regulation 1.41(c)(1)(i)(G) would require that contract markets indicated in their submissions whether they were requesting Commission approval for a proposed rule. This requirement would help the Commission to distinguish rules which did not require Commission approval but for which a submitting contract market was requesting approval from rules that a contract market wished to put into effect without Commission approval.<sup>12</sup>

The proposed rulemaking also would amend the current requirement of Commission Regulation 1.41 that contract markets include in their rule submissions any substantive views

for contract market rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act and that relate to temporary emergencies. These regulations are not affected by the subject rulemaking.

<sup>12</sup> With the exception of certain emergency actions, contract markets may request Commission approval of proposed rules that otherwise could be put into effect without Commission approval. In some cases, contract markets request approval in order to receive some degree of immunity from the antitrust or other relevant laws. See Johnson and Hazen, *Commodities Regulation*, § 2.56.

expressed by their members or others in opposition to a proposed rule.<sup>13</sup> As a clarification of this requirement, the proposed rulemaking would specify that the views of opposing governing board members also must be included in proposed rule submissions.<sup>14</sup> In addition, the proposed rulemaking would provide that the currently-required description of opposing views must indicate the membership interest categories of persons who were opposed to the proposed contract market rule.

Identification of the actual individual would not be required. The Commission believes that information about the views and categories of persons who opposed a rule would help the Commission to ascertain quickly any issues which were raised by the proposal and, thus, generally would benefit the rule review process.<sup>15</sup>

#### 2. Proposed Regulation 1.41(c)(1)(ii)— Failure to Meet Form and Content Requirements

Under proposed Regulation 1.41(c)(1)(ii), the Commission would retain the authority to remit rule proposals which did not comply with the form and content requirements of Regulation 1.41(c)(1)(i). This provision would simply replicate the remittal provisions of current Regulation 1.41(b) and Regulation 1.41(c).

#### 3. Proposed Regulation 1.41(c)(1)(iii)— Extension of Review Period

Proposed Regulation 1.41(c)(1)(iii) specifies that the Commission might extend the ten-day review period to 45 or 75 days for a proposed rule if it determined within ten days of receipt that the rule "raises novel or complex issues which require additional time for review or is of major economic significance" and so notified the

<sup>13</sup> Current Commission Regulation 1.41(b)(5) requires that rule submissions "[n]ote and briefly describe any substantive views expressed by the members of the contract market or others with respect to the proposed rule."

<sup>14</sup> The Commission believes that the disclosure of the views and categories of board members who opposed a proposed rule during board deliberations would aid the Commission in its oversight of the self-governance processes of the contract markets and in determining whether rules should be subject to public comment.

<sup>15</sup> The proposed revisions to Regulation 1.41's form and content requirements merely would reflect information that Commission staff customarily requests from contract markets submitting rule proposals that potentially raise regulatory concerns. By clarifying that such information must be included in a contract market's original submission of a rule, the proposed rulemaking would ensure that the Commission would have such information at the outset of the rule review process and, thus, should facilitate the Commission's review of proposed rules within the compressed time frames of this rulemaking.

submitting contract market.<sup>16</sup> Such rules frequently generate inquiries or comments from the public, the industry, or government agencies. In some cases, the views of such commenters may not have been taken into account in the contract market decision-making process. A review period longer than ten days is often necessary to address such concerns adequately.

The provision would require the Commission's notification to specify the nature of the issues that necessitated additional review of a rule proposal. The standard is essentially the same as that set forth in the Commission's proposed rulemaking relating to term and condition rule changes for extending the 45-day review period to 75 days.<sup>17</sup>

#### 4. Proposed Regulation 1.41(c)(2)— Action Within Ten Days

Proposed Regulation 1.41(c)(2) would provide that proposed rules (other than terms and conditions) that required approval or that could be placed into effect without approval would be deemed approved or allowed to go into effect without approval, as appropriate, ten days after their receipt by the Commission unless the Commission notified the submitting contract market otherwise. As previously noted, the ten-day period within which rules would be deemed approved is much shorter than the 180-day period provided for in the Act.

Under this provision, the only bases for such notification would be if the submission did not comply with Regulation 1.41(c)(1)(i)'s form and content requirements, the Commission decided to extend the review period pursuant to Regulation 1.41(c)(1)(iii), or the contract market agreed to another, specified review period. The last provision reflects an informal procedure that has been followed in the past with respect to ten day rules where a contract market grants an extension or tolls the time period while it amends the proposed rule, rather than having the Commission remit the rule or convert it to a 180-day track.

<sup>16</sup> Examples of the types of rules that might require more than ten days for review would include:

- Rules relating to the financial integrity of markets or their participants;
- Rules establishing novel trading procedures or providing for non-competitive trading;
- Rules providing for the differential treatment of different classes of market participants;
- Rules establishing linkages among exchanges; and,
- Rules relating to the application of new technology to the marketplace.

<sup>17</sup> See 61 FR 59386 (November 22, 1996).

5. Proposed Regulation 1.41(c)(3)—  
Action Within 45 or 75 days

Generally, under proposed Regulation 1.41(c)(3), any proposed rule which the Commission retained for further review under Regulation 1.41(c)(1)(iii) would be deemed approved or allowed to go into effect, as determined by the Commission, 45 days after Commission receipt (or 75 days in the case of rules which were published for comment in the Federal Register).<sup>18</sup> By providing the Commission with the discretion to approve a proposed rule or to allow it into effect at the end of the 45- or 75-day review period, the rulemaking would replicate the options currently available to the Commission under section 5a(a)(12)(A) of the Act at the end of 180 days. The proposed rulemaking would simply compress the time frame to 45 or 75 days.

Proposed Regulation 1.41(c)(3) provides for two exceptions to this deadline: rule submissions that have not satisfied the form and content requirements of Regulation 1.41(c)(1)(i)<sup>19</sup> or proposed rules as to which the Commission notified the contract market of its intention to initiate a disapproval proceeding. Again, both the 45-day and 75-day time periods are considerably shorter than the 180-day period currently provided

<sup>18</sup> Under section 5a(a)(12)(A) of the Act, the Commission is required to publish in the Federal Register for public comment any proposed rule of major economic significance. In addition, the Commission generally publishes significant rule changes when it believes that it is in the public interest to do so and that it would be beneficial to ascertain the views of persons or entities that might be affected by the proposal. While section 5a(a)(12)(A) of the Act specifies that rules of major economic significance must be published at least 30 days prior to approval of any such rules, neither the Act nor the Commission's regulations specify any minimum length for public comment periods.

<sup>19</sup> Historically, the Commission and its staff have always attempted to have contract markets cure defects in the form and content of their submissions as early as possible in the rule review process. However, the Commission's experience also has been that questions about the operation, purpose and effect of significant rule proposals can arise at any point in the review process, especially when issues are raised during the course of a public comment period. For example, other government agencies such as the Securities and Exchange Commission ("SEC"), the Department of the Treasury, the Federal Reserve Board, and the Department of Justice have expressed their regulatory interests in or identified issues relating to contract market rule proposals during the course of Commission review. Moreover, in some circumstances, such as the development of capital or reporting requirements, the gathering of information from the SEC and commodities and securities self-regulatory organizations may be necessary to avoid duplicative requirements and to assure adequate coverage. Accordingly, under proposed Regulation 1.41(c)(3)(i), the Commission would retain the discretion to remit a proposal for failure to satisfy form and content requirements throughout the specified review period.

for rules reviewed pursuant to Commission Regulation 1.41(b).

6. Proposed Regulation 1.41(c)(4)—  
Disapproval Proceedings

Under proposed Regulation 1.41(c)(4), any Commission notice to a contract market that the Commission intended to commence disapproval proceedings with respect to a proposed rule change would be required to specify the nature of the issues raised by the proposal and the sections of the Act or the Commission's regulations that the rule appeared to violate. Under the provision, the submitting contract market would have 15 days from the issuance of the notification either to withdraw the proposal or to request that the Commission consider the proposal pursuant to the regular 180-day review procedures of section 5a(a)(12)(A) of the Act. If the submitting contract market chose neither of these options, the Commission would commence disapproval proceedings no later than 30 days after its issuance of the notification. Section 5a(a)(12) sets forth procedures for Commission disapproval of proposed rules and provides, among other things, an opportunity for the submitting contract market to appear on its own behalf at a Commission hearing.

Under the proposed rulemaking, disapproval proceedings would commence within 75 days of a rule's submission (or 105 days in the case of rules which were published for comment in the Federal Register). Currently, the Commission may institute disapproval proceedings up to 180 days after a rule's submission. The Commission's proposed shortened time frame for rule disapproval is intended to advance the general purpose of this proposed rulemaking: to accelerate the Commission's review of proposed rule changes and to allow contract markets to implement rule changes in a more timely manner than is the case under the current rule review scheme of Regulation 1.41.

### III. Conclusion

The Commission believes that the proposed amendments to Regulation 1.41 would shorten the review time for non-term and condition rule changes and streamline the rule review process. Accordingly, the proposed rulemaking should enable contract markets to implement rule proposals in a more timely manner than can be done at the present time, without sacrificing the ability of the Commission to assure an adequate public comment process and consistency of a proposed rule with the Act and the regulations. The proposal

also would provide the Commission with the necessary experience to determine whether further streamlining could be achieved. The Commission invites public comment on any aspect of its proposed rulemaking and, in particular, on the appropriateness of the proposed time frames.

### IV. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets.<sup>20</sup> Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities.

#### B. Agency Information Activities: Proposed Collection; Comment Request

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the proposed rulemaking has no burden, the group of rules (3038-0022) of which this is a part has the following burden:

Average burden hours per response...	3,546.26
Number of respondents .....	10,971.00
Frequency of response.....	On Occasion

Persons wishing to comment on the information that would be required by the proposed rulemaking should contact David Rostker, Office of Management and Budget ("OMB"), Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Gerald P. Smith, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418-5160.

#### List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract markets, Rule review procedures.

In consideration of the foregoing, and based on the authority contained in the

<sup>20</sup> See 47 FR 18618, 18619 (April 30, 1982).

Commodity Exchange Act and, in particular, sections 4c, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6c, 7, 7a, 8 and 12a, the Commission is hereby proposing to amend title 17, chapter I, part 1 of the Code of Federal Regulations as follows:

**PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT**

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41 would be proposed to be amended by revising the first sentence of paragraph (b) and paragraph (c) to read as follows:

**§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.**

\* \* \* \* \*

(b) *Rules that relate to terms and conditions.* Except as provided herein and in paragraph (f) of this section, all proposed contract market rules that relate to terms and conditions must be submitted to the Commission for approval pursuant to section 5a(a)(12)(A) of the Act prior to their proposed effective dates. \* \* \*

(c) *Rules that do not relate to terms and conditions.* (1)(i) Except as provided in paragraphs (d) and (f) of this section (exempt or temporary emergency rules), each contract market shall submit to the Commission pursuant to section 5a(a)(12)(A) of the Act prior to the proposed effective dates all proposed rules that do not relate to terms and conditions. One copy of the rule shall be furnished to the Commission at its Washington, DC headquarters, and one copy shall be transmitted by the contract market to the regional office of the Commission having local jurisdiction over the contract market. Each such submission under this paragraph (c) shall, in the following order:

(A) State that it is being submitted pursuant to Commission regulation 1.41(c);

(B) Set forth the text of the proposed rule (in the case of any change in, addition to, or deletion from any current rule of the contract market, the current rule shall be fully set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added);

(C) Describe the proposed effective date of the proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract

market, or by the governing board thereof or any committee thereof, and cite the rules of the contract market which authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants, or others, how the rule fits into the contract market's scheme of self-regulation, information which demonstrates that the proposed rule is not inconsistent with the policies and purposes of the Act, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the contract market, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed by governing board members, members of the contract market, or others with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission. Any such description also should identify the membership interest categories, as that term is defined by Commission regulation 1.64(a)(4), of persons who were opposed to the proposed rule;

(F) Identify any sections of the Act or the Commission's regulations that are related to the rule, including any provisions that require Commission approval of the rule, and, to the extent of any potential inconsistency between the proposed rule and the Act or the Commission's regulations, provide a reasoned analysis addressing the issue and supporting the submission; and

(G) State whether the contract market is requesting approval of the proposed rule by the Commission.

(ii) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept for review any rule submission that does not comply with the form and content requirements of paragraphs (c)(1)(i) (A)–(F) of this section.

(iii) The Commission may notify the contract market within ten days after receipt of a submission filed pursuant to paragraph (c)(1) of this section, that the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance and therefore that the review period has been extended as specified in paragraph (c)(3) of this section. This notification will briefly specify the nature of the issues for

which additional time for review is required.

(2) All proposed contract market rules submitted for review under paragraph (c) of this section may be deemed approved or be placed into effect, as appropriate, ten days after Commission receipt (or at such earlier time as may be determined by the Commission) unless:

(i) The Commission notifies the contract market that the submission does not comply with the form and content requirements of paragraphs (c)(1)(i) (A)–(F) of this section;

(ii) The Commission notifies the contract market that the review period for the submission has been extended pursuant to paragraph (c)(1)(iii) of this section; or

(iii) The contract market agrees to another, specified review period.

(3) Any rule for which the Commission extends the review period pursuant to paragraph (c)(1)(iii) of this section may be deemed approved or be placed into effect, as determined by the Commission, forty-five days after Commission receipt of such rule or seventy-five days after Commission receipt in the case of rules that have been published for comment in the Federal Register (or at such earlier time as may be determined by the Commission) unless the Commission notifies the contract market that:

(i) The submission, including any supplementary materials and in consideration of any comments from the public or other government agencies, does not comply with the form and content requirements of paragraphs (c)(1)(i) (A)–(F) of this section; or

(ii) The Commission intends to institute a proceeding to disapprove the rule pursuant to the procedures specified in section 5a(a)(12)(A) of the Act.

(4) A notice of intention to commence a disapproval proceeding issued pursuant to paragraph (c)(3) of this section will:

(i) Identify the nature of the issues raised by the proposed rule and the specific sections of the Act or the Commission's regulations that the rule appears to violate; and,

(ii) State that the Commission will commence disapproval proceedings for the proposed rule within thirty days after the Commission's issuance of the notification, unless within fifteen days of such issuance the contract market:

(A) Withdraws the rule, or

(B) Requests the Commission to review the rule pursuant to the one hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act.

Issued in Washington, DC, on December 10, 1996, by the Commission.  
Jean A. Webb,  
Secretary of the Commission.  
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BILLING CODE 6351-01-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 48**

[REG-247678-96]

RIN 1545-AU53

**Gasoline and Diesel Fuel Excise Tax; Special Rules for Alaska; Definition of Aviation Gasoline and Kerosene**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Proposed rule and notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the application of the diesel fuel excise tax to fuel used in Alaska. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. This document also contains other proposed regulations relating to gasoline and diesel fuel excise taxes. The proposed regulations implement certain changes made by the Omnibus Budget Reconciliation Act of 1993 and the Small Business Job Protection Act of 1996 and affect certain enterers, refiners, retailers, terminal operators, throughputters, and users.

**DATES:** Written comments and requests for a public hearing must be received by March 17, 1997.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-247678-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-247678-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments/html](http://www.irs.ustreas.gov/prod/tax_regs/comments/html).

**FOR FURTHER INFORMATION CONTACT:** Frank Boland (202) 622-3130 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

Temporary regulations published in the Rules and Regulations section of this issue of the Federal Register provide rules relating to diesel fuel that is removed, entered, or sold in the state of Alaska. The text of those temporary regulations also serves as the text of these proposed regulations relating to Alaska. The preamble to the temporary regulations explains the temporary rules.

In addition, this document proposes definitions of *aviation gasoline*, for purposes of the tax on aviation gasoline as added by the Small Business Job Protection Act of 1996, and *kerosene*, for purposes of the tax on diesel fuel. These definitions are based on definitions used by the Department of Energy. This document also proposes changes to the effective date of proposed regulations relating to gasoline and diesel fuel that were published in the Federal Register on March 14, 1996 (61 FR 10490).

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, a notice of the date, time, and place for the hearing will be published in the Federal Register.

**Drafting Information**

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 48**

Excise taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

**PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES**

Paragraph 1. The authority citation for part 48 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 48.4082-5 also issued under 26 U.S.C. 4082. \* \* \*

Par. 2. Section 48.4081-1 is amended as follows:

1. Paragraph (b) is amended by adding new definitions in alphabetical order.

2. The second sentence of paragraph (c)(2)(i) is amended by adding the language "aviation fuel (as defined in section 4093(a)), " after "does not include".

3. Paragraph (d) is revised.

The additions and revision read as follows:

**§ 48.4081-1 Taxable fuel; definitions.**

\* \* \* \* \*  
(b) \* \* \*  
\* \* \* \* \*

*Aviation gasoline* means all special grades of gasoline that are suitable for use in aviation reciprocating engines, as described in ASTM Specification D 910 and Military Specification MIL-G-5572 (For availability see paragraph (c)(2)(i) of this section.).

\* \* \* \* \*

*Kerosene* means No. 1-K and No. 2-K kerosene described in ASTM Specification D 3699 (the specification), applied without regard to any agreement permitted by the specification (For availability see paragraph (c)(2)(i) of this section.). Any other fuel is not kerosene even if an agreement permitted by the specification modifies the applicable requirements and the fuel is treated as kerosene under the agreement.

\* \* \* \* \*

(d) *Effective date.* This section is effective January 1, 1994, except that in paragraph (b) of this section the