

71°13'28"W; to lat. 42°55'15"N, long. 71°06'58"W; to lat. 42°38'30"N, long. 71°21'48"W; to lat. 42°40'30"N, long. 71°27'03"W, and within 4 miles each side of the CHERN NDB 303° bearing extending from the 7-mile radius to 10 miles northwest of the NDB; excluding that airspace within the Portsmouth, NH, and Boston, MA, Class E airspace areas.

* * * * *

ANE RI E5 Newport, RI

Newport State, RI

(Lat. 41°31'56"N, long. 71°16'53"W)

Providence VORTAC

(Lat. 41°43'28"N, long. 71°25'47"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Newport State Airport, and within 2.2 miles on each side of the Providence VORTAC 150° radial extending from the 6.3-mile radius to 5.6 miles southeast of the Providence VORTAC, and within 4 miles northwest to 6 miles southeast of Newport State Airport 025° bearing extending from the 6.3-mile radius to 16.2 miles northeast of the Newport State Airport; excluding that airspace within the New Bedford, MA, Class E airspace area.

* * * * *

ANE RI E5 Providence, RI

Providence, Theodore Francis Green State Airport, RI

(Lat. 41°43'25"N, long. 71°25'36"W)

Providence VORTAC

(Lat. 41°43'28"N, long. 71°25'47"W)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Theodore Francis Green State Airport, and within 4 miles northwest to 4.5 miles southeast of the Providence VORTAC 211° radial extending from the 8.8-mile radius to 16.7 miles southwest of the Providence VORTAC, and within 4 miles on each side of the VORTAC 330° radial extending from the 8.8-mile radius to 15.4 miles northwest of the Providence VORTAC, and within 2.9 miles on each side of the Providence VORTAC 132° radial extending from the 8.8-mile radius to 9.6 miles southeast of the Providence VORTAC; excluding that airspace within the North Kingstown, RI, Pawtucket, RI, and Newport, RI, Class E airspace areas.

* * * * *

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 97-5713 Filed 3-6-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 17

[Airspace Docket No. 96-ANE-45]

Removal of Class E Airspace; Fall River, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action removes the Class E airspace area at Fall River, MA due to the closure of the Fall River Municipal Airport (KFLR) and the cancellation of the standard instrument approach procedure to that airport.

EFFECTIVE DATE: This rule was effective 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE-530.3, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7533; fax (617) 238-7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final with a request for comments in the Federal Register on December 19, 1996 (61 FR 66910). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 30. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97-5715 Filed 3-6-97; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rulemaking Concerning Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to Commission Regulation 1.41(c) that establish procedures for the Commission's review of contract market rules that do not relate to contract terms and conditions. The amendments shorten the Commission's time frame for reviewing complex rules and streamline

the rule review process such that rule changes generally can be deemed approved or permitted to be put into effect without Commission approval.

Specifically, all non-term and condition rule changes that meet the form and content requirements will be deemed approved or be permitted to be put into effect without approval ten days after Commission receipt, unless the Commission takes 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 agrees to another, specified review period. At the end of the 45-day (or 75-day) review period, a proposed rule meeting the form and content requirements will be deemed approved or become effective without approval unless the Commission informs the submitting contract market of its intention to initiate disapproval proceedings, the contract market withdraws the proposal, or the contract market requests that the review period be extended to the current 180-day period.

EFFECTIVE DATE: April 7, 1997.

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. Introduction

On December 17, 1996, the Commission published for public comment in the Federal Register¹ proposed amendments to Commission Regulation 1.41 revising the Commission's procedures for the review of contract market rules that do not relate to terms and conditions.² The original comment period was scheduled to end on January 16, 1997, but was extended by the Commission until January 31, 1997.³

¹ 61 FR 66241 (December 17, 1996).

² On November 22, 1996, the Commission published a separate proposed rulemaking establishing similar "fast-track" review procedures for contract market designation applications and proposed rules relating to contract terms and conditions under Regulation 1.41(b). (61 FR 59386.) The Commission also is adopting that rulemaking today in a separate Federal Register release with slight modifications from the original proposed rulemaking (the "fast-track" rulemaking). The two rulemakings establish similar rule review procedures and any differences between the two schemes generally reflect differences set forth in the statute with respect to term and condition rule proposals and non-term and condition rule proposals.

³ 62 FR 2334 (January 16, 1997).

II. Comments Received

The Commission received seven comment letters. The comment letters were submitted by four futures exchanges (the Chicago Board of Trade ("CBT"), the Chicago Mercantile Exchange ("CME"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), and the New York Mercantile Exchange ("NYMEX")); two futures trade associations (the Futures Industry Association ("FIA") and the Managed Futures Association ("MFA")); and, a registered futures association (the National Futures Association ("NFA")).

The Commission has carefully reviewed the comments received and has decided to issue amended Regulation 1.41(c) as final with three modifications from the original proposal.⁴ The comments and an explanation of the Commission's decision to adopt amended Regulation 1.41(c) are discussed below.

III. Commission Regulation 1.41(c)

A. Overview

The following description consists of a section-by-section analysis of the Commission's final rulemaking. Each section describes a provision of the Commission's proposed rulemaking, discusses relevant suggestions made by the commenters, and indicates how the provision has been adopted in the final rulemaking.

In addition to commenting on specific sections of proposed Regulation 1.41(c), several commenters questioned the necessity for Regulation 1.41's basic requirement that contract market rules receive Commission review before being put into effect. As discussed in more detail in the fast-track rulemaking, the Commission believes that prior review of proposed contract market rule changes can be essential to ensuring the financial integrity of the markets and to protecting the public interest. Contract market actions can affect the interests of a large number of non-member market participants and the general public. As self-regulatory organizations, contract markets have a responsibility to comply with and enforce the requirements of the Act and the Commission's regulations. As member organizations, however, contract markets may not always be cognizant of, or sensitive to, the impact of particular rule changes on

the general public or on market participants who are not contract market members and who are not involved directly in the contract markets' formulation of such rules. The Commission believes that its prior review procedures help to ensure that contract markets meet their self-regulatory responsibilities with respect to all market participants and that rule changes are not inconsistent with the public interest.

The Commission's prior review procedures also ensure that the Commission is able to solicit the views of market users, other regulators, and other interested parties with respect to rule proposals. These parties often provide valuable insights concerning the impact of rule proposals that are essential to the Commission's completing meaningful analyses of contract market submissions. The Commission believes such oversight also provides additional incentives for the contract markets to take market users' needs and the public interest into account in the first instance, thereby improving the functioning of the self-regulatory process.

The Commission concurs with FIA's comment that Commission disapproval of contract market rule changes after their implementation is not a viable alternative to prior Commission review and approval. The Commission believes that this approach would be inefficient and could impact market users or the public adversely during the pendency of a disapproval proceeding by increasing uncertainty in the marketplace.

Several commenters contended that the Commission's current rule review procedures cause unwarranted delays in the implementation of contract market rule changes and put the contract markets at a competitive disadvantage to foreign futures exchanges and over-the-counter markets. No evidence was provided, however, to suggest that the time frames provided for by the proposed rulemaking would create competitive disadvantages. Notably, all of the commenters conceded that the Commission's proposed rulemaking would further the goal of implementing contract market rule changes more promptly. The commenters differed, however, on whether contract markets would be able to implement their rule changes promptly enough under the proposed rulemaking. The Commission believes that its streamlined procedures will allow contract markets to implement their rule proposals in an expeditious manner, while still ensuring that the public is protected from rules that are discriminatory, anti-competitive, or illegal or that create

serious concerns with respect to financial or market integrity.

NFA stated in its comment letter that the need for timely rule review and approval is as important to registered futures associations as it is to contract markets. Accordingly, NFA recommended that the Commission extend proposed Regulation 1.41(c)'s rule review procedures to cover the rule changes of registered futures associations. While the Commission agrees with NFA that it should adopt a streamlined rule review scheme for registered futures associations, it does not believe that it would be appropriate to include registered futures associations within the terms of this rulemaking. Regulation 1.41 was established expressly for contract market rule proposals and includes procedures that are inapplicable to registered futures association rules. However, although the Commission has determined not to make amended Regulation 1.41(c) applicable to registered futures associations, the Commission will propose a rulemaking in the near future to establish similar rule review procedures tailored to the types of rules adopted by registered futures associations. In the interim, the Commission intends to follow Regulation 1.41(c)'s basic review procedures and deadlines when reviewing registered futures association rule changes.

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

Proposed Commission Regulation 1.41(c)(1)(i) established form and content requirements for all rules submitted to the Commission pursuant to Regulation 1.41(c). That proposal preserved 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). Proposed Regulation 1.41(c)(1)(i) also required that Regulation 1.41(c) submissions include certain other information to help expedite the Commission's review of such submissions.

Under the current form and content requirements of Commission Regulation 1.41, contract markets must include in their rule submissions any substantive views expressed by their members or others in opposition to a proposed rule.⁵ As a clarification of this requirement, proposed amended Regulation 1.41(c)(1)(i)(E) specified that the views

⁴The Commission's original proposal regarding non-term and condition rule changes also proposed to revise the heading to Commission Regulation 1.41(b) so that it expressly applied to term and condition rule changes. That revision has been incorporated in the Commission's separate fast-track rulemaking for term and condition rule changes.

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

of opposing governing board members also must be included in proposed rule submissions. In addition, proposed amended Regulation 1.41(c)(1)(i)(E) provided that the currently-required description of opposing views must indicate the membership interest categories⁶ of persons who were opposed to the proposed contract market rule.

Proposed Regulation 1.41(c)(1)(i)(F) required that contract markets specify in their submissions any sections of the Act or the Commission's regulations that relate to a proposed rule, particularly citing any such provisions that require 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 required that the submission contain a reasoned analysis addressing that issue and supporting adoption of the rule. Proposed Regulation 1.41(c)(1)(i)(G) required that contract markets indicate in their submissions whether they were requesting Commission approval for a proposed rule.

The CBT, CME, and CSC each objected to proposed amended Regulation 1.41(c)(1)(i)(E)'s requirement that contract market rule submissions identify the membership interest categories of persons who opposed a rule proposal. They contended that the provision intruded upon their internal decision making processes without providing any information that would be useful to the Commission in its rule review process. CME and CSC particularly stated that the proposal would force revisions to their boards' deliberative and voting procedures.

FIA supported the proposed amendment to Commission Regulation 1.41(c)(1)(i)(E). The FIA believed that opposing view information is especially important given the fact that contract market rules that are submitted to the Commission pursuant to Regulation 1.41(c) are rarely published for public comment.

The Commission believes that information about the views and categories of persons who oppose rule proposals will help the Commission to ascertain whether others believe that a proposal raises important issues and to identify rules that should be published for comment and, thus, will generally benefit the rule review process overall. Upon receipt, Commission staff now often requests contract markets submitting rule proposals to supplement their submissions with information

about the views and identities of persons who have expressed opposition to rule proposals, whether they be board members or members of the contract market. This information helps alert Commission staff to potential regulatory issues that are not apparent from the text of a proposed rule and, thus, helps to focus the staff's analysis of the proposal. In addition, this information allows the Commission to avoid the time-consuming process of publishing rule proposals for public comment, since Commission staff can contact representative members of the appropriate membership interest category to obtain their views on particular rule proposals.⁷

The Commission agrees with the CME's comment that board members do not necessarily vote on issues based upon the membership interest categories they represent. However, the Commission's experience has been that persons from the same membership interest category often have common business circumstances which influence their views on contract market regulatory matters. Accordingly, contract market directors and members who oppose new rule proposals often express views that reflect their membership interest categories. The fact that a contract market member might have views on rule proposals that are particular to his or her membership interest category is recognized in section 5a(a)(14)(A) of the Act and Regulation 1.64 which require that contract markets provide board representation for a diversity of membership interests.

The provision will ensure that the Commission will have opposing view information when it initiates its review of a rule proposal, thus obviating the need for Commission staff to obtain such information from the submitting contract market during the course of a rule's review, which will be especially helpful to assuring that the Commission will meet the compressed time frames established by the proposed rulemaking.

The CME contended that proposed amended Regulation 1.41(c)(1)(i)(E) will put an additional burden on contract market staffs to speak with each board member who votes against a proposed rule to determine the reasons for his or her opposition. To clarify, the proposed rulemaking only will require contract

markets to record the views of board members opposing a rule proposal when such views are openly expressed during board deliberations. Contract market staffs will not be required to ascertain the views of an opposing board member when the member does not express any rationale for his or her opposition.

In its comment letter, NYMEX characterized proposed amended Regulation 1.41(c)(1)(i)(E) through (G) as informational burdens that will add to the length of time expended by contract market staff to prepare a submission and will provide Commission staff with additional reasons for remitting a rule submission for failing to meet form and content requirements.

As indicated above, each of these provisions will require contract markets to include in their initial submissions to the Commission information which Commission staff often requests of contract markets during the course of rule reviews. Including this information in Regulation 1.41(c)'s form and content requirements should speed up the rule review process considerably by reducing the need to request such information after a rule is submitted.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(1)(i)(A) through (E) as proposed. The Commission has determined, however, to adopt a revised version of proposed amended Regulation 1.41(c)(1)(F) and not to adopt proposed amended Regulation 1.41(c)(1)(i)(G).

In its final rulemaking, the Commission has revised Regulation 1.41(c)(1)(i)(F) to require that contract markets identify in their submissions any provisions of the Act or the Commission's regulations that may require amendment or interpretation in order to implement a proposed rule change. Under this requirement, contract markets must provide the Commission with a reasoned analysis of why such an amendment or interpretation is necessary. The requirement will permit the Commission to focus on and to address speedily rules which may violate provisions of the Act or regulations or require their amendment or interpretation. The Commission believes that this requirement not only will facilitate its consideration of various contract market rule proposals, but also will enable it, to the extent consistent with the Act and the public interest, to amend its regulations as needed to permit contract market innovation in an evolving marketplace.

The Commission also believes that proposed amended Regulation

⁶ See Section 5a(a)(14)(A) of the Act and Commission Regulation 1.64(a)(4).

⁷ For example, there have been a number of occasions when contract market submissions have indicated that a rule proposal was the subject of a membership vote and that a substantial minority of members opposed the measure. Based on this information, Commission staff made further inquiries to determine the views of those opposing members and took those views into account while reviewing the rule proposal.

1.41(c)(1)(i)(G), which required a contract market to indicate expressly whether it was requesting approval of a proposed rule, is not necessary and may be deleted from the final rulemaking. Commission staff will review each rule proposal to determine whether or not it requires Commission approval under any provision of the Act or the regulations and will treat it accordingly. Of course, to the extent that a proposed rule does not require Commission approval, but the submitting contract market desires approval, the contract market must clearly request approval in its submission.

C. Regulation 1.41(c)(1)(ii)—Failure To Meet Form and Content Requirements

Proposed Regulation 1.41(c)(1)(ii) permitted the Commission to remit rule proposals that did not comply with the form and content requirements of Regulation 1.41(c)(1)(i). This provision simply replicated the remittal authority set forth in current Regulation 1.41(b) and Regulation 1.41(c). The CBT, CME, and CSC each objected to this provision on the grounds that the Commission uses its remittal authority to delay and to prevent the implementation of contract market rule proposals. The CBT in particular stated that Commission staff uses its remittal authority to raise questions that are unrelated to the threshold question of whether a rule proposal would violate the Act or the Commission's regulations.

The Commission believes that retaining the authority to remit incomplete submissions is essential to its ability to make reasoned analyses as to whether proposed contract market rules are consistent with the Act and the Commission's regulations. The Commission believes that it is sometimes impossible to determine the operation, purpose and effect of proposed rules based solely on their text. Regulation 1.41's form and content requirements have been formulated accordingly. The Commission believes that reserving the authority to remit incomplete submissions disciplines the submission process by assuring that contract markets adequately explain their proposals at the outset. This discipline is even more essential under the proposed rulemaking's compressed time frames.

As previously noted, the public comment process frequently identifies or focuses issues. The Commission's remittal authority also helps to ensure that contract markets will supplement their submissions where necessary to address issues identified by commenters during the comment process.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(1)(ii) as proposed.

D. Regulation 1.41(c)(1)(iii)—Extension of Review Period

Proposed Regulation 1.41(c)(2) provided that proposed non-term and condition rule changes would be deemed approved or be allowed to go into effect without approval, as appropriate, ten days after their receipt by the Commission unless they were retained by the Commission for further review. Proposed Regulation 1.41(c)(1)(iii) specified that the Commission could extend the ten-day review period to 45 days (75 days when a rule was published for public comment), if the Commission 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 submitting contract market. Such types of rule proposals might include:

(1) Rules relating to the financial integrity of markets or their participants (e.g., CME establishment of Globex Foreign Exchange Facility to serve as market maker for certain CME foreign currency futures contracts traded through the Globex system (approved by the Commission on August 9, 1996)); (2) rules establishing novel trading procedures or providing for non-competitive trading (e.g., CME LOX program which substitutes an electronic order execution facility for open outcry execution of large lot currency contracts (approved by the Commission on March 18, 1993), CME rule amendment restricting exchange for physical transactions in Eurodollar futures contracts (approved by the Commission on November 29, 1995), CME rule amendment establishing all-or-none order-filling procedures whereby certain designated orders can only be executed in their entirety (approved by the Commission on May 2, 1996)); (3) rules providing for the differential treatment of different classes of market participants (e.g., broker incentive programs at various contract markets); (4) rules establishing linkages among exchanges (e.g., establishment of mutual offset system between CME and Singapore Monetary Exchange (approved by the Commission on August 28, 1989)); (5) rules relating to the application of new technology to the marketplace (e.g., CME's Globex trading system (approved by the Commission on February 8, 1989), CBT's Project A trading system (approved by the Commission on October 19, 1992),

NYMEX's ACCESS trading system (approved by the Commission on December 17, 1992)); and, (6) rules raising customer protection issues (e.g., CME rules allocating liability in connection with the operation of the Globex trading system (allowed to go into effect without approval by the Commission on September 27, 1991), CBT rule establishing post settlement trading sessions (allowed to go into effect without approval by the Commission on April 14, 1992)).

CME commented that the proposed bases for extending Commission review of a rule proposal would not necessarily have any nexus with a determination of whether the proposal would violate the Act or the Commission's regulations. To the contrary, Commission review always is directed towards making such a determination. The Commission believes that these are the types of rules that the Commission may require additional time to review carefully.⁸ Indeed, FIA pointed out in its comment letter that the types of rules listed in the Commission's proposed rulemaking release as possibly needing more than ten days of review are precisely the types of rules that FIA saw as raising sufficiently important issues to require it to submit comments to the Commission in the past. Similarly, MFA commented that Commission retention of rule proposals that raise novel or complex issues for further review would be beneficial as it would enable the Commission to focus its inquiries, while still permitting the contract markets to implement rule changes in an efficient manner.

As the CBT pointed out in its comment letter, under section 5a(a)(12)(A) of the Act, Commission staff may not itself extend the ten-day review period for non-term and condition rule changes that do not require approval. Absent the consent of the submitting contract market, the Commission may only retain such rule proposals for further review if "the Commission notifies such contract market in writing of its determination to review such rules for approval." This determination is not delegable to Commission staff.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(1)(iii) as proposed.

⁸Of course, proposed Regulation 1.41(c)(1)(iii) would not mandate Commission retention of all rules that raise such novel or complex issues or that are of major economic significance. The Commission would only have the discretion to retain such rules for further review.

E. Regulation 1.41(c)(2)—Action Within Ten Days

Proposed Regulation 1.41(c)(2) provided that proposed non-term and condition rule changes that required approval or that could be placed into effect without approval would “be deemed approved or be placed into effect, as appropriate, ten days after Commission receipt,” unless the Commission notified the submitting contract market otherwise.

NFA in its comment letter requested clarification as to the meaning of “as appropriate” in this provision. Rule changes submitted to the Commission pursuant to proposed Regulation 1.41(c) generally would be deemed approved or be allowed to go into effect without approval, as requested in the contract market’s submission, at the conclusion of the ten-day review period. In those instances where a submitting contract market did not request particular treatment for a rule proposal or requested improper treatment (*i.e.*, requested that the Commission allow into effect without approval a rule change that required Commission approval), the Commission would determine what treatment would be appropriate for the submission and would deem approved those rules that required approval and allow into effect those rules that did not require approval.⁹ The Commission’s use of the term “as appropriate” in proposed Regulation 1.41(c)(2) is intended to cover these various possible applications.

The Commission has determined to adopt amended Regulation 1.41(c)(2) as proposed.

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

Under proposed Regulation 1.41(c)(3), any proposed rule that the Commission retained for further review under Regulation 1.41(c)(1)(iii) generally would be “deemed approved or placed into effect, as determined by the Commission,” 45 days after Commission receipt (or 75 days in the case of rules that were published for comment in the Federal Register).

NFA requested clarification as to the meaning of “as determined by the

⁹ Regulation 1.41(c) would apply to all non-term and condition rule changes. Accordingly, the provision would cover: (1) Rule changes that do not require Commission approval under section 5a(a)(12)(A) of the Act and may be placed into effect ten days after Commission receipt; (2) rule changes that require approval under a provision of the Act other than section 5a(a)(12)(A); (3) rule changes as to which the submitting contract market requests approval; and (4) changes which the Commission determines to review for approval.

Commission” in proposed Regulation 1.41(c)(3). Any rule proposal that was retained for the extended 45-day (or 75-day) review period would necessarily be considered for Commission approval.¹⁰ Under section 5a(a)(12)(A) of the Act, rule proposals that are being considered for approval must either be approved by the Commission or be subjected to a disapproval proceeding within 180 days of Commission receipt.¹¹ If the Commission does not take either course of action within 180 days, the proposed rule “may be made effective by the contract market until such time as the Commission disapproves such rule.”

By providing the Commission with the discretion to “determine” either to approve a proposed rule or to allow it into effect at the end of the 45-day (or 75-day) review period, proposed Regulation 1.41(c)(3) would replicate the options currently available to the Commission under section 5a(a)(12)(A) of the Act at the end of the 180-day review period. The proposed rulemaking would simply compress the time frame for this determination from 180 to 45 (or 75) days.

The CBT suggested in its comment letter that the Commission does not need to use the public comment process for exchange rule proposals and, therefore, the Commission’s proposed rulemaking need not provide for an extended review period for rules published in the Federal Register. By contrast, FIA stated that it was essential to retain this process to provide an opportunity for the public to comment on rule proposals that raise novel or complex issues.

The Commission notes that, under section 5a(a)(12)(A) of the Act, it is required to publish in the Federal Register for public comment any proposed rule of major economic significance. The Commission also publishes significant rule changes, from time to time, when it believes that it is in the public interest to do so.

¹⁰ As indicated in footnote 9 above, the Commission would consider two types of rules under proposed Regulation 1.41(c)—rules which would receive Commission approval (based upon either the submitter’s request, the Commission’s discretion, or a statutory requirement) and rules which could be placed into effect without Commission approval. Under section 5a(a)(12)(A) of the Act, the Commission must act upon rules which may be placed into effect without Commission approval within ten days of receipt. Absent the consent of the submitting contract market, the only way to extend the review period for such types of rule submissions is if the Commission itself decides to review the submission for approval, in which case the Commission has 180 days to act on the rule proposal.

¹¹ Under section 5a(a)(12)(A), the Commission must “institute” disapproval proceedings within 180 days of receipt.

The Commission rarely publishes Regulation 1.41(c) proposals for comment.¹² Nonetheless, the Commission believes that it is important for it to solicit the views of persons and entities that might be affected by significant contract market rule proposals. By providing a 30-day extension of the review period for rules that are published in the Federal Register, the proposed rulemaking would provide the Commission with a reasonable amount of time to review and analyze contract market rule proposals in light of any comments received. The Commission believes that the ability to extend review to accommodate public comment should balance the need of contract markets to adapt to new circumstances with the Commission’s need to assure that the public’s concerns and views are considered in appropriate cases. Under revised Regulation 1.41(c), the review period for proposed rules which are published for comment would still be considerably shorter than the current 180-day statutory review period.

For the reasons stated above, the Commission has determined to adopt amended Regulation 1.41(c)(3) as proposed.

G. 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

¹² Since January 1, 1995, the Commission has published only the following three Regulation 1.41(c) submissions for public comment in the Federal Register: (1) A CME proposal to revise margin requirements for certain CME members (60 FR 54339 (October 23, 1995)); (2) a CME proposal to establish a wholly-owned subsidiary which would function as a market maker for certain CME foreign exchange currency futures contracts traded through the Globex system (61 FR 9678 (March 11, 1996)); and (3) a CME proposal to permit commodity trading advisors to obtain Globex terminals to trade for their proprietary accounts and the accounts that they manage (61 FR 21162 (May 9, 1996)).

30 days after its issuance of the notification. Thus, under the proposed rulemaking, disapproval proceedings would commence no later than 75 days after a rule's submission (or 105 days in the case of rules that were published for comment in the Federal Register).

The Commission received a number of comments asking for clarifications of how proposed Regulation 1.41(c)(4) would be applied.

NFA questioned whether a Commission notice to a contract market to institute disapproval proceedings under Regulation 1.41(c)(4) should be issued publicly. NFA believed that public notification at this stage would be inappropriate given that the submitting contract market might withdraw its proposal or grant the Commission additional review time. Under Regulation 1.41(c)(3), if the Commission decided to institute a disapproval proceeding for a rule proposal, it would notify the submitting contract market no later than 45 days after the rule's submission (or 75 days if the rule was published for comment). While the Commission would not publicize this notice in the Federal Register, it would be a matter of public record under Regulation 145.2 and Appendix A to the Part 145 Regulations, unless subject to the confidentiality restrictions of Regulation 145.5. If the contract market did not withdraw its proposal or extend the proposal's review period within 15 days of the issuance of such notice, the Commission would commence formal disapproval proceedings consistent with the procedures required by the Act and the Commission's regulations.¹³ When commencing such proceedings, the Commission would provide the submitting contract market and any other possibly interested parties with an opportunity to present their views on the matter to the Commission. However, if the submitting contract market withdrew the rule and offered to amend it, the Commission would not commence such a proceeding while the contract market attempted to resolve any regulatory issues.

NFA also commented that the Commission and submitting contract markets may want to extend any of proposed Regulation 1.41(c)(4)'s various deadlines for disapproval proceedings in order to reach compromise agreements on the disposition of rule

proposals. The Commission agrees with NFA and believes that Regulation 1.41(c)'s deadlines, including disapproval proceeding deadlines, could be extended upon the mutual agreement of the Commission and the subject contract market.

FIA asked for clarification on Regulation 1.41(c)(4)'s deadline for the conclusion of a disapproval proceeding. Upon the commencement of a disapproval proceeding under this provision, the Commission would follow the procedures currently mandated by section 5a(a)(12)(A) of the Act. That provision states that the Commission must "conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to." If such a proceeding is not concluded within the prescribed time, the rule proposal may be deemed effective until such time as the Commission disapproves the rule.

For the reasons stated above, the Commission has determined to adopt Regulation 1.41(c)(4) with one clarification. Under the final rulemaking, a contract market would have 15 days from the receipt of a disapproval proceedings notice to withdraw or to extend the review period for its proposal. Under the proposed rulemaking, a contract market had to respond within 15 days from the date of issuance of such a notice.

IV. Conclusion

The Commission has determined to adopt Regulation 1.41(c) with three modifications from the original proposed rulemaking. Specifically, Regulation 1.41(c)(1)(i)(F) has been revised to require that contract markets identify any provisions of the Act or the Commission's regulations that may require amendment or interpretation in order to implement a proposed rule change. In addition, the Commission has deleted proposed Regulation 1.41(c)(1)(i)(G) and its requirement that contract markets expressly indicate in their submissions whether they are requesting rule approval. Finally, Regulation 1.41(c)(4) has been revised to clarify when contract markets must respond to notices to institute disapproval proceedings.

Although Commission Regulation 1.41(c), by its own terms, applies only to Commission review of contract market rule proposals, the Commission will propose a regulation with similar rule review procedures for registered futures associations in the near future. In the interim, the Commission will abide by the requirements of Regulation

1.41(c) when reviewing rule proposals from registered futures associations.

In formulating these new rule amendments, the Commission has attempted to balance the objective of meaningful review of contract market rule proposals under the Act with the contract markets' reasonable desire to implement their proposals as expeditiously as possible. Upon the implementation of amended Regulation 1.41(c), the Commission will continue to monitor the rule review process closely and, based upon its experience, may consider further refinements to these procedures in the future.

Amended Commission Regulation 1.41(c) will become effective 30 days after its publication in the Federal Register. All contract market rule proposals submitted to the Commission after that date will be subject to Regulation 1.41(c)'s new review procedures. Contract market rules that are pending with the Commission at the time of amended Regulation 1.41(c)'s effective date will continue to be subject to Regulation 1.41's current review procedures.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating 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.¹⁴ This rulemaking establishes streamlined procedures for the review of contract market proposed non-term and condition rule changes. 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 action taken herein will 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 this rulemaking has no burden, the group of rules (3038-0022) of which it is a part has the following burden:

Average burden hours per response—
3,546.26
Number of respondents—10,971.00

¹³ A contract market also could choose to amend its rule proposal and have it considered pursuant to the 180-day review procedures of section 5a(a)(12)(A) of the Act. A contract market could, of course, choose to withdraw its proposal and re-submit an amended version, thereby resetting the time for review.

¹⁴ See 47 FR 18618, 18619 (April 30, 1982).

Frequency of response—On Occasion

Copies of the information collection submission to Office of Management and Budget are available from Gerald P. Smith, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., 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 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 hereby amends 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(c) is revised to read as follows:

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

* * * * *

(c) *Rules that do not relate to terms and conditions.* (1)(i) Except as provided in paragraphs (d) and (f) of this section (except 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; and,

(F) Identify any sections of the Act or the Commission's regulations that the Commission may need to amend or interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the contract market must provide a reasoned analysis supporting its submission.

(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) through (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 paragraph (c)(1)(i) 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 paragraph (c)(1)(i) 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 may commence disapproval proceedings for the proposed rule within thirty days after the Commission's issuance of the notification, unless within fifteen days of receipt of such notice 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, D.C. on February 27, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-5568 Filed 3-6-97; 8:45 am]

BILLING CODE 6351-01-P

17 CFR Parts 1 and 5

Revised Procedures for Commission Review and Approval of Applications for Contract Market Designation and of Exchange Rules Relating to Contract Terms and Conditions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: On November 22, 1996, the Commodity Futures Trading Commission ("Commission") proposed rules amending its procedures relating to the review and approval of applications for contract market designation and proposed exchange rule amendments relating to contract terms and conditions. Based upon its consideration of the comments received in response to its Notice of Proposed Rulemaking, 61 FR 59386 (November 22, 1996), and upon its independent analysis, the Commission is promulgating new rule 5.1.

Rule 5.1 establishes fast-track procedures for Commission review of exchange applications for contract market designation as an alternative to the current review procedures. Under these alternative procedures, applications for designation of cash-settled and other specified futures and option contracts will be deemed to be approved ten days—and all others, forty-five days—after receipt, unless the exchange is notified otherwise. The final rules have been modified, in response to public comment, by including within the ten-day category proposed option contracts based upon futures contracts that are already designated and by confirming explicitly within the rule that exchanges may modify applications nonsubstantively under the fast-track review procedures.

The Commission also is amending rule 1.41, as proposed, to provide an alternative fast-track review of proposed amendments to contract terms or conditions. These procedures are similar to those for contract market designations and include both ten-day and forty-five-day review periods. These review periods can be extended for one

thirty-day period in appropriate instances. In a companion notice published separately in the Federal Register, the Commission also is adopting fast-track procedures relating to the review of proposed exchange rules which do not relate to contract terms or conditions.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418-5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements for Commission Designation of Proposed Contract Markets

The requirement that boards of trade meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges for the past seventy-five years.¹ Prior to the 1974 amendments to the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* ("Act"), however, the statutory scheme did not require the Commodity Exchange Authority ("CEA"), the Commission's predecessor agency, to approve in advance the trading of all new futures contracts,² nor did it require agency approval of exchange rules before they became effective. Rather, exchange rules amending the terms and conditions of futures contracts were subject only to disapproval after becoming effective.

¹ See, Futures Trading Act of 1921, Pub. L. 67-66, 42 Stat. 187 (1921). Designation as a contract market under the 1921 Act was contingent upon a board of trade's meeting specified statutory criteria, including providing for the prevention of manipulative activity. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill v. Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry followed this pattern.

² Prior to 1974, the Act defined "commodity" by specific enumeration. Accordingly, new contracts that were not so enumerated were unregulated. The definition of commodity periodically would be updated to include additional commodities in which trading had commenced on those exchanges which traded other regulated contracts. For example, livestock and livestock products were added to the Act's definition of "commodity" as part of the 1968 amendments to the Act, after such contracts had already begun trading on the Chicago Mercantile Exchange. Pub. L. 90-258 section 1(a), 49 Stat. 1491 (1968).

Other futures exchanges, including the Commodity Exchange, Inc. and the former Coffee and Sugar and Cocoa exchanges, operated wholly outside of the regulatory scheme.

See, Pub. L. 90-258, sec. 23, 82 Stat. 33 (1968).

The 1974 amendments to the Act rejected that approach. Instead, as part of Congress' overall intent to strengthen federal regulatory oversight of the futures industry, the 1974 amendments provided for a meaningful government review of all new futures contracts before trading could begin and of proposed amendments to the terms or conditions of existing contracts. See, H. Rep. No. 93-975, 93d Cong., 2d Sess. at 78, 82 (1974).

Subsequently, Congress reinforced this determination by enhancing the opportunity for public participation in the Commission's review procedures. As part of the 1978 amendments to the Act, Congress added the provision requiring a public comment period for economically significant proposed exchange rules. That amendment to section 5a(a)(12) of the Act was offered from the floor during debate in the House of Representatives. In offering this amendment, Representative AuCoin reasoned that

[m]any of the notifications [of changes to exchange rules] approved by this Commission are technical and rather noncontroversial.

However, there are a number of proposed rule changes that are controversial because of their expected impact on the way a particular commodity is traded or on the broader effects that a change may bring about in the production and distribution of that commodity.

124 Cong. Rec. H7312 (July 26, 1978).

Over the years, the Commission has demonstrated flexibility in implementing its regulatory mandate to review and approve new contracts and amendments to existing contracts. Based upon its administrative experience, the Commission periodically has revised and updated its procedures to provide exchanges with more specific criteria for meeting the contract market designation requirements; to reflect new developments in futures trading—such as the introduction of financial futures, futures on aggregates or indices of securities and cash settlement as a substitute for physical delivery; and, where appropriate, to lessen the burden on applicants by reducing the information required and streamlining the form of application.

In this regard, Guideline No. 1, 17 CFR part 5, appendix A, which provides guidance on the information to be included in designation applications and on the criteria for meeting the statutory designation requirements, was last amended in January 1992. The 1992 amendment substantially reduced and streamlined the guideline's