

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Dawson, GA, to accommodate a VOR/DME RWY 31 SIAP and for IFR operations at Dawson Municipal Airport. The operating status of the airport will be changed from VRF to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Dawson, GA [New]

Dawson Municipal Airport, GA

(Lat. 31°44'46"N, long. 84°25'30"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Dawson Municipal Airport.

* * * * *

Issued in College Park, Georgia, on June 5, 1996.

Benny L. McGlamery,
*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 96–15983 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

16 CFR Chapter I

Determination Concerning Telemarketing Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of determination that existing Commodity Exchange Act provisions, Commission Regulations, and National Futures Association ("NFA") rules provide protection from abusive and deceptive telemarketing practices "substantially similar" to that provided by the Federal Trade Commission's recently promulgated telemarketing rule.

SUMMARY: Pursuant to its obligations under section 3(e) of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"),¹ 15 U.S.C. 6102(e), and corresponding section 6(f) of the Commodity Exchange Act ("CEA"),² 7 U.S.C. 9b, the Commodity Futures Trading Commission ("Commission" or "CFTC") hereby provides notice of its determination that existing CEA provisions, Commission Regulations under the CEA,³ and CFTC-approved NFA rules,⁴ interpretations, and other requirements in the area of telemarketing, provide protection from deceptive and abusive telemarketing practices "substantially similar" to that provided by the Federal Trade Commission's ("FTC's") recently promulgated Telemarketing Sales Rule, 16 CFR Part 310 (Prohibition of Deceptive and Abusive Telemarketing

Acts).⁵ Accordingly, the CFTC will not promulgate additional rules under the Telemarketing Act at this time. Background information and a discussion of the basis for the CFTC's determination that existing provisions of its regulations and enabling statute, together with NFA telemarketing requirements, provide protection against deceptive and abusive telemarketing acts and practices substantially similar to that provided by the FTC's rule are set forth below.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy L. Walsh, Attorney, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Telephone: (202) 418–5330.

SUPPLEMENTARY INFORMATION:

I. The Telemarketing Act

The Telemarketing Act, signed into law on August 16, 1994, "to strengthen the authority of the Federal Trade Commission to protect consumers in connection with sales made with a telephone, and for other purposes,"⁶ required that the FTC adopt rules prohibiting deceptive and abusive telemarketing practices. As discussed below, the Telemarketing Act also added a new Section 6(f) to the CEA, 7 U.S.C. 9b, which requires, subject to certain exceptions, that the CFTC "promulgate, or require each registered futures association to promulgate, rules substantially similar" to the FTC's telemarketing rules within six months of the effective date of the FTC rules.⁷

A. Congressional Findings

In imposing rulemaking and other obligations on the FTC, the CFTC, and the SEC, the Telemarketing Act lists the following Congressional findings: (1) That telemarketing differs from other sales activities given sellers' mobility and ability to make sales across state lines without direct contact with consumers; (2) that interstate telemarketing fraud is a problem of such magnitude that FTC resources are

⁵ 60 FR 43842 (August 23, 1995).

⁶ H.R. Rep. No. 20, 103d Cong., 1st Sess. at 1 (1993).

⁷ See Section 6(f) of the CEA, 7 U.S.C. 9b. The Telemarketing Act similarly requires the Securities and Exchange Commission ("SEC") to promulgate telemarketing rules within the same time frame unless it determines: (1) that federal securities laws or SEC rules provide substantially similar protection; or (2) that SEC telemarketing rules would not be necessary or appropriate in the public interest, or would be inconsistent with the maintenance of fair and orderly markets. See Section 3(d) of the Telemarketing Act, 15 U.S.C. 6102(d).

¹ 15 U.S.C. 6101–08.

² Citations to the CEA in this notice refer to the Commodity Exchange Act, codified at 7 U.S.C. 1 *et seq.* (1994).

³ Citations to "Commission Regulations" or "CFTC Regulations" refer to the CFTC's regulations, codified at 17 CFR 1.1. *et seq.*

⁴ Section 17 of the CEA, 7 U.S.C. 21, requires the CFTC to review and approve the rules of registered futures associations, which have explicit self-regulatory obligations under the CEA and Commission Regulations. To date, NFA, which began operations in 1982, is the only registered futures association.

insufficient to protect consumers; (3) that telemarketing fraud results in approximately \$40 billion/year in losses; and (4) that consumers are victims of other forms of telemarketing deception and abuse as well.⁸ Consequently, Congress found that it should enact legislation to offer customers necessary protection from telemarketing deception and abuse.⁹

B. Rulemaking Obligations

1. Imposed on the FTC¹⁰

The Telemarketing Act required the FTC, within 365 days of the statute's enactment, to "prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices."¹¹ Those rules, the statute provides, must define deceptive telemarketing acts or practices and must include: a prohibition of any pattern of unsolicited telephone calls; restrictions on calling times for unsolicited calls; and a requirement that telemarketers "promptly and clearly" disclose the purpose of calls and make other appropriate disclosures. Under the Telemarketing Act, telemarketing rules promulgated by the FTC shall not apply to any person "registered or exempt from registration" under the CEA as a futures commission merchant ("FCM"), introducing broker ("IB"), commodity trading advisor ("CTA"), commodity pool operator ("CPO"), leverage transaction merchant, floor broker, or floor trader, or any person associated with such firms, entities or persons.¹²

2. Imposed on the CFTC

As noted above, the Telemarketing Act requires the CFTC to promulgate, or require each registered futures association to promulgate, rules "substantially similar" to those of the FTC, within six months of the effective date of the FTC's rules, absent certain exceptions discussed below.¹³ Any

CFTC telemarketing rules promulgated would apply to any person registered or exempt from registration under the CEA in connection with such person's business as an FCM, IB, CTA, CPO, leverage transaction merchant, floor broker, or floor trader, and to any person associated with such firms, entities, or persons.¹⁴

The CFTC, however, is not required to promulgate rules if it determines either: (1) That CFTC rules provide "substantially similar" protection from deceptive and abusive telemarketing practices by certain persons registered or exempt from registration under the CEA as the FTC's telemarketing rule;¹⁵ or (2) that CFTC telemarketing rules are not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with "the maintenance of fair and orderly markets." If the CFTC determines that one of these exceptions applies, it must publish the reasons for its determination in the Federal Register.

II. The FTC's Final Rule

The FTC's Telemarketing Sales Rule, 16 CFR Part 310, became effective December 31, 1995.¹⁶ Most of the substantive provisions of the rule appear in sections 310.3 and 310.4. Section 310.3 makes it a deceptive telemarketing act or practice and a violation of the FTC's rule for telemarketers or sellers to engage in certain prohibited deceptive acts or practices, including, in particular, failing to disclose or misrepresenting specified material information. Section 310.4 identifies certain "abusive" conduct (for example, engaging in threats or using profane language),

promulgate rules or publish a notice of its determination that one of the listed exceptions applies.

¹⁴ Section 6(f)(1) of the CEA, 7 U.S.C. 9b(1). These persons (as well as certain securities professionals) are specifically excluded from coverage by the FTC's telemarketing rule. See *supra* n. 12.

¹⁵ The CFTC has properly considered NFA rules and other requirements, as well as CFTC Regulations and provisions of the CEA, in analyzing whether this exception applies. Because the Telemarketing Act requires either the CFTC or "a registered futures association" to promulgate rules, see section 6(f)(1) of the CEA, 7 U.S.C. 9b(1), consideration of CFTC-approved NFA rules is necessary to evaluate whether existing protection is "substantially similar" to that provided by the FTC's rule. NFA, as noted above, is the only registered futures association. See *supra* n. 4. In addition, Commission Regulation 170.15 and NFA By-Law 1101 essentially work to require that all commodity professionals who deal with customers be members of NFA, thus assuring that NFA rules apply to the listed categories of professionals, except for floor traders and floor brokers who are exchange members and generally not engaged in telemarketing.

¹⁶ 60 FR 43842 (August 23, 1995).

establishes "pattern of call" and calling time restrictions, and requires sellers and telemarketers to make specific oral disclosures (including the identity of the seller, the purpose of the call, the nature of the goods or services being sold, and, if a prize promotion is offered, that no purchase or payment is necessary to participate in the promotion).

III. CFTC's Existing Protection Against Deceptive and Abusive Telemarketing Acts and Practices Is "Substantially Similar" to Protection Under the FTC Rule

A. Generally

As stated above, the CFTC has determined that existing statutory provisions, regulations, and NFA rules governing telemarketing practices of registered commodity professionals provide protection from deceptive and abusive telemarketing that is "substantially similar" to the protection provided by the FTC's Telemarketing Sales Rule. To reach that determination, the CFTC carefully analyzed and compared the FTC's Telemarketing Sales Rule and analogous provisions of the CEA, Commission Regulations, and NFA rules. The Commission also considered information from NFA on the scope and application of its telemarketing and sales practice rules. Given the substantially similar protection provided by existing CEA provisions, Commission Regulations, and NFA rules, and the fact that the FTC's rule addresses some areas not within the Commission's jurisdiction, the Commission has determined, pursuant to Section 6(f)(2) of the CEA, 7 U.S.C. 9b(2), not to promulgate additional telemarketing rules at this time.

Since it began operations in 1975, the CFTC has attacked fraudulent telemarketing schemes within its jurisdiction consistently and vigorously, and with considerable success. In doing so, the CFTC brings federal court injunctive actions and administrative actions; it assists the United States' Attorneys in criminal prosecutions; and it files joint actions with states.

While, as reflected by the chart below, certain CEA provisions, Commission Regulations, and NFA rules address and prohibit the same acts and practices targeted by the FTC's Telemarketing Sales Rule, those provisions are part of a comprehensive regulatory scheme developed specifically for the futures and commodity options markets. The FTC's Telemarketing Rule, on the other hand, defines the terms, "telemarketer" and "goods or services" broadly without

⁸ See Section 2 of the Telemarketing Act, 15 U.S.C. 6101.

⁹ See Section 2(5) of the Telemarketing Act, 15 U.S.C. 6101(5).

¹⁰ See Sections 3(a)-(c) of the Telemarketing Act, 15 U.S.C. 6102(a)-(c).

¹¹ The statute was enacted on August 16, 1994, and, as noted above, see *supra* n. 5, the FTC issued its final Telemarketing Sales Rule on August 23, 1995.

¹² See Section 3(e)(1) of Telemarketing Act, 15 U.S.C. 6102(e)(1), and section 6(f)(1) of Commodity Exchange Act, 7 U.S.C. 9b(1). See also 60 FR at 43843, n. 18 (FTC statement of basis and purpose for final FTC telemarketing rule confirming that such persons—as well as certain securities professionals regulated by the SEC—are excluded from coverage of the FTC's rule).

¹³ The FTC's Telemarketing Sales Rule became effective December 31, 1995. 60 FR 43842. Accordingly, the CFTC, by June 30, 1996, must

regard to the subject matter of particular solicitations.¹⁷ In light of the agencies' different regulatory missions, the FTC's Telemarketing Sales Rule addresses the telemarketing of certain goods and services that are not within the CFTC's jurisdiction or expertise, such as prize promotions and awards. Accordingly, not every provision of the FTC's Telemarketing Sales Rule has a precisely equivalent analogue in the CEA, Commission Regulations, or NFA Rules.

B. Comparison Chart: FTC Telemarketing Sales Rule and Existing CEA Provisions, Commission Regulations, and NFA Rules

The following chart provides a side-by-side description and comparison of substantive provisions of the FTC's Telemarketing Sales Rule and certain analogous provisions of the CEA, Commission Regulations, and NFA rules.¹⁸ Given the CFTC's and the FTC's different regulatory missions and the fact that the FTC's rule addresses certain subjects and products outside the

CFTC's jurisdiction, not every subject addressed by the FTC's Telemarketing Sales Rule is governed or addressed by a corresponding provision of the CEA, Commission Regulations, or NFA Rules. The chart is intended to provide an overview and concise summary of the FTC's rule and relevant provisions of the CEA, Commission Regulations, and NFA Rules. The chart is not intended to be an exhaustive list of every CEA provision, Commission rule, and NFA rule or requirement relating to each provision of the FTC's rule.

SECTION 310.3: DECEPTIVE TELEMARKETING ACTS OR PRACTICES

- (a): Prohibited Deceptive Acts/Practices. It is a deceptive act or practice to:
- (1) Fail to disclose the following "material information" in clear and conspicuous manner before customer pays: total costs; all material limits, restrictions, conditions to purchasing, receiving or using goods or services; any refund, cancellation, exchange policy; (for prize promotion) odds of receiving prize; and all material costs/conditions to redeeming prize;.
 - (2) Misrepresent, directly or by implication, listed material information.
 - (3) Fail to obtain or submit verifiable authorization before submitting check, draft or other negotiable paper drawn on person's account for payment; or
 - (4) Make false/misleading statement to induce payment.
- (b): Assisting/Facilitating deceptive act/practice to provide substantial assistance or support to seller or telemarketer when person knows or avoids knowing seller or telemarketer is engaged in act/practice that violates Rule.
- (c): Credit Card Laundering
- Antifraud provisions of the CEA and Commission Regulations require disclosure of material information.
- Reg. 1.55* requires FCMs and IBs, before opening accounts, to furnish customers with standard written risk disclosure statement disclosing the substantial risk of loss from trading commodity futures contracts and secure signed acknowledgement. *See Reg. 30.6* (disclosure requirements for FCMs and IBs opening foreign futures or option account); *Part 4 of Regs.* (CPOs and CTAs, before soliciting, accepting, or receiving funds, must furnish disclosure document and risk disclosure statement, disclosing, among other things, break-even point, the pool or trading advisor's business background, principal risk factors, fees and expenses, and performance information); *Reg. 4.21 et seq.* (for CPOs); *Reg. 4.31 et seq.* (for CTAs). *Reg. 32.5* requires options disclosure statement, including description of transaction, costs, effect of foreign currency fluctuations, and disclosure of volatile nature of commodities markets, risk of loss, and other information. *Reg. 31.11* (leverage transaction merchants must furnish disclosure document and secure signed acknowledgement).
- CEA, 4b(a)(i)*, 7 U.S.C. 6b(a)(i), makes it unlawful, in connection with certain commodity futures transactions, to cheat or defraud or attempt to cheat or defraud another person.
- CEA, 4o*, 7 U.S.C. 6o, among other things, makes it unlawful for CPOs and CTAs to employ a device, scheme, or artifice to defraud or to engage in any transaction, practice or course of business which operates as a fraud or deceit.
- Regs. 32.9 and 33.10* make it unlawful, among other things, to cheat or defraud or attempt to cheat or defraud any other person, make or cause to be made any false report or statement, or deceive or attempt to deceive any other person, in connection with commodity option transactions.
- NFA Rule 2-2(a)* provides that no member or associate shall cheat, defraud, deceive or attempt to cheat, defraud, or deceive any commodity futures customer.
- See also CEA, 4b(a)(ii)*, 7 U.S.C. 6b(a)(ii) (unlawful willfully to make or cause to be made any false report or statement); *CEA, 4b(a)(iii)*, 7 U.S.C. 6b(a)(iii) (unlawful willfully to deceive or attempt to deceive another person).
- Signed risk disclosure requirements (discussed above). *Reg. 166.2* (prohibits FCMs and IBs from trading for customer account without prior specific authorization or written authorization allowing trading without separate authorization for each individual transaction). Segregation requirements for handling customer funds also provide protection. *CEA, 4d(2)*, 7 U.S.C. 6d(2), *Regs. 1.20-1.30, 1.32, and 1.36*.
- Compare to discussion of Section 310.3 above.*
- CEA, 13(a)*, 7 U.S.C. 13c(a) (Aiding and Abetting): person who commits, or willfully aids, abets, counsels, commands, induces or procures commission of a violation of CEA, may be held responsible as principal. *CEA, 13(b)*, 7 U.S.C. 13c(b) (Controlling Person): person who directly or indirectly controls any person who has violated CEA or Commission rules may be liable for violation to the same extent as controlled person. *CEA, 2(a)(1)(A)(iii)*, 7 U.S.C. 4 (Vicarious Liability): corporations, partnerships, associations, and individuals liable for acts and omissions of employees and agents. *Reg. 166.3* (Supervision): registrants must supervise diligently their employees and agents in all aspects of their futures activities.
- To the extent credit card laundering is part of a scheme to violate the CEA or Commission Regulations, *CEA, 13*, 7 U.S.C. 13c (Aiding and Abetting) could be used to address conduct.

SECTION 310.4: ABUSIVE TELEMARKETING ACTS OR PRACTICES

- (a): Abusive Conduct Generally—
It is abusive conduct to:

¹⁷ Section 310.2(t) of the FTC's Telemarketing Sales Rule, for example, defines "telemarketer" as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer." The FTC similarly defines the phrase,

"goods or services" broadly to cover "any tangible and intangible goods or services including, but not limited to, leases, licenses, or memberships," as well as prizes and awards. *See Statement of Basis and Purpose*, 60 FR at 43844.

¹⁸ Provisions of the FTC's rule are listed and described on the left, and analogous provisions of the CEA, Commission Regulations or NFA rules are listed and described on the right.

- (1) Engage in threats, intimidation or use profane or obscene language;.. *NFA Compliance Rule 2-29(a)(2)* prohibits high pressure sales practices, including threatening or intimidating solicitations and the use of profane or obscene language. See NFA's recent *Notice to Members*¹⁹ (confirming that NFA Compliance Rule 2-29(a)(2) prohibits threats and intimidation, calling at irregular hours, and the use of profane or obscene language).²⁰
NFA Compliance Rule 2-9 requires each NFA member to supervise diligently its employees and agents in all aspects of their futures activities. *Interpretive Notice to NFA Compliance Rule 2-9* imposes enhanced telemarketing supervisory requirements, including tape-recording certain sales solicitations, on a member firm if a certain threshold number or percentage of its APs formerly were employed by firms disciplined by NFA or the CFTC for sales practice fraud.
- (2) Request/receive payment to remove derogatory information from credit history unless listed conditions met;. See Comparison with 310.3(c).
- (3) Request/receive payment for recovering money or any item of value paid in previous telephone transaction; or. See Comparison with 310.3(c).
- (4) Request/receive payment before securing loan and indicating high chance of getting loan. See Comparison with 310.3(c).
- (b): Pattern of Calls Abusive act/practice to: (i) make calls repeatedly or continuously with intent to annoy, abuse or harass; or (ii) initiate call when person has stated that he/she does not want to receive call. See Comparison with 310.4(a) (*NFA Compliance Rule 2-29(a)(2)*, *NFA Notice to Members*, and *NFA Compliance Rule 2-9*). NFA considers pattern of calls in initiating complaints under *NFA Compliance Rule 2-29(a)(2)*.²¹
- (c): Calling Time Restrictions Calls must be between 8:00 a.m. and 9:00 p.m. See Comparison with 310.4(a) (*NFA Compliance Rule 2-29(a)(2)*, *NFA Notice to Members*).²²
- (d) Required Oral Disclosures
 Abusive telemarketing act NOT to disclose: seller's identity; call's purpose; nature of goods/services; and that no purchase necessary to win prize or participate in promotion. See Comparison with 310.4(a) (*NFA Compliance Rule 2-29(a)(2)* and *NFA Compliance Rule 2-9*). General antifraud provisions apply to oral statements, and additional requirements govern promotional materials and advertisements (*Reg. 4.41* for CPOs/CTAs; *NFA Compliance Rule 2-9* and *Interpretive Notice*). NFA Rules on disclosure and promotional materials also require certain information concerning a customer's "break-even" point as well as balanced presentation.
- In addition, prior to trading, extensive written disclosure and acknowledgement requirements must be met. See *Regs. 1.55, 4.13, 4.21, 4.24, 4.25, 4.31, 4.34, 4.35, 33.7, 32.5, 30.6, 31.11*. *Regs. 1.55 and 33.7* require FCMs and IBs to furnish "Risk Disclosure Statement" and receive acknowledgement.²³ *Reg. 4.21* requires CPOs to provide disclosure document before soliciting, accepting, or receiving funds. *Reg. 4.13* applies to exempt CPOs. *Reg. 4.31* requires CTAs to provide disclosure document before soliciting or entering into agreement with prospective client.
- SECTION 310.5: RECORDKEEPING**
- (a) Seller/telemarketer must keep the following for 24 months from date produced: advertisements, brochures, scripts, promotional materials; name/address of prize recipients and prizes of \$25 or more awarded; name/address of customers and goods purchased; name/address/telephone and job titles of sales employees; and verification authorizations. Recordkeeping Requirements under CEA and Commission Regulations. See *CEA, 4g, 4n, 7 U.S.C. 6g, 6n; Regs. 1.12, 1.18, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23, and 4.32*.²⁴ Generally, *Reg. 1.31* requires all required books and records be kept for 5 years, and be readily accessible for CFTC and Department of Justice inspection for the first 2 years.
- Registration requirements for APs, see *Reg. 3.12*, cover certain information required by FTC rule. *NFA Compliance Rule 2-29* and accompanying *Interpretive Notice* impose recordkeeping and other requirements for brochures, scripts, and promotional material. *NFA Rule 2-10* requires members to maintain all books and records appropriate to the conduct of their business. See also *Reg. 1.40* (FCMs and contract markets must furnish CFTC, upon request, copies of letters, circulars, telegrams or reports published or given general circulation on crop or market information or conditions affecting the price of any commodity).
- (b) Keep records as in manner seller/telemarketer keeps records in ordinary course of business. See Comparison for 310.5(a).

- (c) Seller and telemarketer may, by written agreement, allocate recordkeeping obligations. See Comparison for 310.5(a).
- (d) Governs recordkeeping upon dissolution or sale of business. See Comparison for 310.5(a).

SECTION 310.7: ACTIONS BY STATES AND PRIVATE PERSONS

- (a): Requires Attorney General, other State officers authorized to bring suit, and any private person who brings an action under Telemarketing Act to serve written notice of action on FTC. CEA, 6d, 7 U.S.C. 13a-2, authorizes states to prosecute violations of CEA in federal court; notice of filing and copy of pleading must be given to the CFTC.
- (b): Nothing in this section prohibits Attorney General or other authorized State officials from proceeding in State court for violations of any civil or criminal state statute. CEA, 14, 7 U.S.C. 18 (Reparations Procedure) authorizes reparations actions by any person complaining of violation of CEA, Commission Regulations, or Commission order by a registrant. See also Part 12 of Regs. (Rules Relating to Reparations Proceedings). CEA, 17(b)(10), 7 U.S.C. 21(b)(10), requires NFA to provide procedure through arbitration or otherwise to settle customer claims and grievances against its members. NFA Code of Arbitration, Section 2 provides generally that members must submit to arbitration for any dispute filed with NFA by a customer. See also Reg. 170.8 (Settlement of Customer Disputes). CEA, 6d(8), 7 U.S.C. 13a-2(8), allows states to proceed in state court against certain registrants for violations of antifraud provisions. CEA, 12(e), 7 U.S.C. 16(e), authorizes states to proceed in state court for illegal "off-exchange" transactions.

¹⁹ See NFA Notice to Members (June 19, 1996).

²⁰ Of the thirty-eight complaints that NFA has issued alleging a violation of NFA Compliance Rule 2-29(a)(2), NFA considered a pattern of inappropriate calling (i.e., calling at irregular hours or making excessive calls) as a factor in initiating eighteen cases and the use of profane language as a factor in three cases.

²¹ As confirmed by NFA's recent Notice to Members, repeated or continuous calls made with an intent to annoy, abuse, or harass are specifically prohibited by Rule 2-29(a)(2).

²² NFA considers the time when calls were placed when issuing complaints under NFA Compliance Rule 2-29(a)(2). See *supra* n. 20.

²³ Neither Reg. 1.55 nor Reg. 33.7 relieves FCMs and IBs from otherwise applicable disclosure and other requirements. See Reg. 1.55(f) (FCMs and IBs not relieved from any other disclosure obligation under applicable law); Reg. 33.7(f) (FCMs and IBs not relieved from any other obligation under CEA or CFTC regulations, including obligation to disclose all material information).

²⁴ Regs. 1.10, 1.12, 1.18, 1.31, 1.32, 1.35 govern recordkeeping and reporting obligations for FCMs and IBs. Reg. 1.33 requires FCMs to furnish monthly and confirmation statements. Reg. 1.34 requires FCMs to keep "point balance" and monthly listings of open option positions carried for option customers marked to market. CEA, 4n, 7 U.S.C. 6n, requires CPOs and CTAs to keep books and records for at least 3 years, but is superseded by the general five-year requirement of Reg. 1.31. Regs. 4.23 and 4.33 also govern recordkeeping by CPOs and CTAs.

D. Conclusion

As the chart and discussion above reflect, existing provisions of the CEA, Commission Regulations, and NFA rules address and prohibit many of the same categories of telemarketing abuse targeted by the FTC's recently promulgated Telemarketing Sales Rule. Accordingly, the CFTC has determined that existing rules provide protection from deceptive and abusive telemarketing acts and practices that is "substantially similar" to the protection provided by the FTC's rule. Given its determination, the CFTC has also determined that it is unnecessary for it to promulgate additional telemarketing rules under the Telemarketing Act at this time.

To ensure that it remains apprised of developments in the area of telemarketing, however, the CFTC has asked NFA to continue to focus, in the course of performing member audits,²⁵ on telemarketing acts and practices that it believes may fall outside the scope of

existing rules and to inform the Commission of the results of those audits.²⁶ Should the information provided by NFA indicate a need for additional telemarketing rules, advisories, or other guidance, the Commission will work with NFA to undertake rulemaking or other activities necessary to provide appropriate protection. Through such ongoing monitoring and evaluation of telemarketing acts and practices, the CFTC will ensure that its rules continue to provide protection from deceptive and abusive telemarketing acts and practices as those practices may arise in the future.

Issued in Washington, DC, on June 18, 1996.

Jean A. Webb,

Secretary to the Commission.

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BILLING CODE 6351-01-P

²⁶ NFA's obligation to report on any such telemarketing acts and practices is separate from, and additional to, its existing reporting and auditing obligations under the CEA and Commission Regulations.

DEPARTMENT OF STATE**Office of Protocol****22 CFR Part 4**

[Public Notice 2402]

Notification of Foreign Official Status; Elimination and Reinvention of Regulations

AGENCY: Office of Protocol, State.

ACTION: Final rule.

SUMMARY: The Department of State is eliminating and reinventing its regulations as part of the President's Regulatory Reinvention Initiative. In furtherance of this project, the Office of Protocol has determined that 22 CFR Part 4 should be updated and clarified to reflect changes which have occurred since that part originally was published. **EFFECTIVE DATE:** June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence Dunham, Assistant Chief of Protocol (202) 647-1985.

SUPPLEMENTARY INFORMATION: 22 CFR, Part 4 is that portion of the Department's regulations setting forth

²⁵ As part of its audit and compliance functions, NFA conducts "front-office audits," which address sales practices, including telemarketing.