

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Regulation 1.41a to revise certain procedures relating to the review of contract market rules. Related amendments revising the procedures and time periods applicable to the Commission's review of contract market rules previously have been adopted.¹ The instant amendments revise Regulation 1.41a, which governs the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis for purposes of processing certain contract market rule submissions. Specifically, the instant amendments revise Regulation 1.41a to conform to the procedures and time periods previously adopted by the Commission. The instant amendments also include several clarifying revisions of Regulation 1.41a.

EFFECTIVE DATE: April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581. Telephone: (202) 418-5484.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 7a(a)(12)(A), provides that all rules² of a contract market that relate to terms and conditions³ in futures or

options contracts traded on or subject to the rules of a contract market must be submitted to the Commission for its prior approval. 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 Exchange requests Commission approval or the Commission notifies the Exchange that it intends to review the rules for approval.

As noted above, the Commission recently revised the procedures under which it conducts reviews of contract market rules. These revisions generally streamline the procedures and shorten the review periods applicable to the Commission's review of contract market rules. The Commission is now revising its rules applicable to the delegation of authority to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis (collectively, "the Directors") as set out in Commission Regulation 1.41a. Specifically, Regulation 1.41a delegates to the Directors the authority to make certain decisions regarding rule submissions. The primary effect of the instant amendments is to delegate additional authority to the Directors in order to apply the revised procedures and time periods for Commission review of contract market rules in an effective manner.

II. Amendments to Regulation 1.41a

A. Regulation 1.41a(2)(ii)—Notification That Rules Require Approval

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

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;
- (viii) Payment or collection of commodity option premiums or margins.

requirements for futures commission merchants). Paragraph (a)(2) is being amended to state that the Directors have delegated authority to determine and to notify a contract market that a rule submitted pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41(c) for implementation without Commission approval constitutes a rule that requires prior Commission approval pursuant to a specific Section of the Act or under a Commission regulation other than Regulation 1.41(b). Current Regulation 1.41a delegates to the Directors the authority to remit such a rule but does not expressly state that the Directors may notify a contract market of their determination to review such rule for Commission approval.

B. Regulation 1.41a(3) (i) and (ii)—Notification That Rules May Be Placed into Effect Without Approval

Currently, paragraph (a)(3) states that the Directors may determine whether rules submitted under Regulation 1.41(c) do not require prior Commission approval under Section 5a(a)(12)(A) of the Act and Regulation 1.41(b) and that such rules may become effective prior to the expiration of the ten day period following the Commission's receipt of such rules. Under the amendments, paragraph (a)(3) is being divided into three subparagraphs in order to incorporate the revised procedures and time periods previously adopted by the Commission for the review of contract market rules.

New paragraph (a)(3)(i), which includes the pre-existing provisions of paragraph (a)(3), is being amended to provide that the Directors may notify a contract market, as well as determine, that rules submitted for implementation without Commission approval do not require such approval under either Regulation 1.41(b) or 1.41(c). This change simply incorporates the condition that contract market rules that do not relate to terms and conditions, but that require approval under another provision of the Act or regulations, are to be submitted pursuant to Regulation 1.41(c) under the Commission's revised procedures for reviewing contract market rules instead of Regulation 1.41(b), as was formerly the case.

New paragraph (a)(3)(ii) provides that the Directors may determine and notify a contract market that rules submitted for Commission approval under Regulation 1.41(c) do not require prior Commission approval under Section 5a(a)(12)(A) of the Act and Regulation 1.41(b) or Regulation 1.41(c) and may be made effective at the expiration of the applicable review period. As in the case of paragraph (a)(3)(i), paragraph (a)(3)(ii)

¹ See 62 FR 10427. That notice announced the adoption of amendments to Commission Regulations 1.41(a) and 1.41(b). These amendments, which revise the procedures for the review of contract market rules, will become effective on April 7, 1997.

² 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.

³ 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 future

is being added to Regulation 1.41a to incorporate the requirement that rules which do not relate to terms and conditions, but which nonetheless require Commission approval under another provision of the Act or regulations, must be submitted pursuant to Commission Regulation 1.41(c).

More significantly, paragraph (a)(3)(ii) delegates to the Directors the authority to determine whether a rule submitted for Commission approval, but which neither the Act nor the Commission's regulations require to be reviewed for approval prior to implementation, should be implemented without Commission approval at the expiration of the applicable review period. Previously, absent Commission approval, such implementation was only available at the expiration of 180 days following Commission receipt of the contract market rule. Thus, the amendments enable the Directors to make this determination in conformity with the Commission's previously revised review procedures and time periods, prior to the expiration of the 180 day period.⁴

C. Regulation 1.41a(3)(iii)—Notification that Rules Raise Novel or Complex Issues

New paragraph (a)(3)(iii) delegates authority to the Directors to administer those contract market rules submitted for Commission approval under Regulation 1.41(c) but which raise novel or complex issues, or are of major economic significance. This amendment simply provides that the Directors may determine and notify a contract market that the review period for the rule submission is being extended per the applicable review periods set out in Regulation 1.41(c)(1)(iii).

III. Related Matters

A. Notice and Comment

The Administrative Procedure Act, 5 U.S.C. § 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, for rules of agency organization,

procedure, or practice. The instant amendments apply expedited procedures to the authority delegated to the Directors of the Divisions of Trading and Markets and Economic Analysis for the review of certain contract market rules. The Commission has determined that these amendments relate to internal Commission procedure and therefore that notice and comment is not required.

Section 553(b) also sets forth an exception to the requirement of notice and opportunity for public comment when the Commission for good cause finds such notice and public comment are unnecessary or contrary to the public interest. Section 553(d) provides that publication of a substantive rule shall be made not less than thirty days before its effective date unless as otherwise provided by the agency for good cause found. The Commission finds that notice and public comment on the rule changes announced herein are unnecessary and they can be made effective immediately because the changes do not limit any person's substantive rights and do not establish any new obligations under the Act. To the contrary, these changes simplify compliance with the Act by delegating authority to the Directors to process contract market rules according to standards which shorten the time periods applicable to the review of contract market rules and which have been previously adopted following notice and comment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 601 *et seq.*, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The RFA defines the term "rule" to mean "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to [5 U.S.C.] § 553(b)." As noted above, however, § 553(b) does not require that the Commission publish a notice of proposed rulemaking for the amendments to Regulation 1.41a, and a flexibility analysis of these amendments is therefore not required. See § 601(2). See also §§ 603 and 604.⁵

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. § 3501 *et seq.*,

⁴ This amendment of Regulation 1.41a, combined with the Commission's revised contract market rule review procedures, authorize the Directors to make the determination to notify a contract market that a rule voluntarily submitted by a contract market for Commission approval could be implemented without Commission approval at the expiration of ten, 45, or 75 days, whichever was applicable. Absent such amendment, the contract market rule could not be implemented absent Commission approval until the expiration of the 180 day period following Commission receipt of the rule.

⁵ A flexibility analysis would not be required in any case in this matter, since the amendments would affect contract markets, which the Commission previously has determined are not "small entities" for purposes of the RFA. Thus, these rule amendments would not have a significant economic impact on a substantial number of "small entities." See § 605(b).

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 rule amendments adopted herein have 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, D.C. 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 Center, 1155 21st Street N.W., Washington D.C. 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 pursuant to 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 1.41a is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 1.41a Delegation of authority to the Directors of the Division of Trading and Markets and the Division of Economic Analysis to process certain contract market rules.

(a) * * *

(2) Pursuant to §§ 1.41(b) or 1.41(c) to determine, and to notify a contract market, that:

(i) Pursuant to § 1.41(b), a rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(c) relates to terms and conditions, as defined in § 1.41(a)(2);

(ii) Pursuant to § 1.41(c), a rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(c) for implementation without Commission approval constitutes a rule that requires prior Commission approval pursuant to a specific section of the Act or Commission regulations;

(3) Pursuant to § 1.41(c) to determine, and to notify a contract market, that:

(i) Rules submitted for implementation without Commission approval under § 1.41(c) do not require prior Commission approval under section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c) and that such rules may become effective prior to the expiration of the ten day period following the receipt of such rules by the Commission;

(ii) Rules submitted for Commission approval under § 1.41(c) do not require prior Commission approval under section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c) and may be made effective at the expiration of the applicable review period;

(iii) Rules submitted for Commission approval under § 1.41(c) raise novel or complex issues, or are of major economic significance, and that the review period has been extended pursuant to § 1.41(c)(1)(iii); and

* * * * *

Issued in Washington, D.C., on April 7, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-9398 Filed 4-10-97; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority To Conduct Investigations in Assistance of Foreign Futures Authorities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending certain provisions of the Commission's Regulations to formalize the authority of the Director of the Division of Enforcement to conduct investigations in assistance of foreign futures authorities. The purpose of the amendments is to set forth agency procedure and practice with respect to conducting such investigations.

DATES: Effective: April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ethiopis Tafara, International Operations Attorney, Division of

Enforcement, US Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418-5362.

SUPPLEMENTARY INFORMATION: Sections 6(c) and 8 of the Commodity Exchange Act as amended, 7 U.S.C. §§ 12, 15 (1994), authorize the Commission to investigate violations of the Act and Commission regulations and orders. Part 11 of the Commission Rules delegates this authority to the Division of Enforcement. In the Futures Trading Practice Act of 1992, Pub. L. 102-546, 106 Stat. 3590, Congress added Section 12(f) of the Commodity Exchange Act, 7 U.S.C. § 16(f) (1994), authorizing the Commission to conduct investigations in assistance of foreign futures authorities. The Commission has amended Part 11 of the Commission Rules formally to authorize the Director of the Division of Enforcement to conduct these investigations. The amended Rules are not substantive in content and simply set forth agency procedure and practice with respect to investigations conducted in assistance of foreign futures authorities. Consequently, the Commission is not seeking public comment. Similarly, the Commission finds good cause to make these amendments effective immediately.

List of Subjects in 17 CFR Part 11

Investigations.

PART 11—[AMENDED]

For the reasons set forth above, Part 11 of Title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 11 is revised as follows:

Authority: 7 U.S.C. 4a(j), 9 and 15, 12, 12a(5), 12(f).

2. Section 11.1 is revised as follows:

§ 11.1 Scope and applicability of rules.

The rules of this part apply to investigatory proceedings conducted by the Commission or its staff pursuant to Sections 6(c) and 8 and 12(f) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12 and 16(f) (1994), to determine whether there have been violations of that Act, or the rules, regulations or orders adopted thereunder, or, in accordance with the provisions of Section 12(f) of the Act, whether there have been violations of the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an application for designation or registration under the Act should be denied.

3. Section 11.2, paragraph (a) is revised as follows:

§ 11.2 Authority to conduct investigations.

(a) The Director of the Division of Enforcement and members of the Commission staff acting pursuant to his authority and under his direction may conduct such investigations as he deems appropriate to determine whether any persons have violated, are violating, or are about to violate the provisions of the Commodity Exchange Act, as amended, or the rules, regulations or orders adopted by the Commission pursuant to that Act, or, in accordance with the provisions of Section 12(f) of the Act, whether any persons have violated, are violating or are about to violate the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an applicant for registration or designation meets the requisite statutory criteria.

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Issued in Washington, DC on March 28, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-9399 Filed 4-10-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07-97-005]

RIN 2115-AE46

Special Local Regulations; Charleston to Bermuda Sailboat Race, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Charleston to Bermuda Sailboat Race. The race will start on May 11, 1997, between the hours of 11 a.m. and 3 p.m. Eastern Daylight Time (EDT) near Waterfront Park on the Charleston Peninsula, and will transit out to sea by the South, Mount Pleasant, and Fort Sumter Ranges in Charleston Harbor. The nature of the event and the closure of portions of Charleston Harbor creates an extra or unusual hazard on the navigable waters of Charleston Harbor, Charleston, SC. These regulations are necessary for the safety of life on the navigable waters during the event.