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COMMODITY FUTURES TRADING COMMISSION

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: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend its procedures relating to its review and approval of applications for contract market designation and proposed exchange rules relating to contract terms and conditions. These fast-track review procedures are intended further to streamline Commission review of applications for contract market designation and proposed exchange rule amendments of contract terms and conditions.

Specifically, the Commission is proposing a new rule 5.1, providing that exchanges which have already been designated as a contract market may request fast-track review for additional designation applications as an alternative to the current review procedures. Under proposed rule 5.1, applications for designation of certain cash-settled contracts will be deemed to be approved ten days after receipt, unless the exchange is notified otherwise. All other fast-track designation applications will be deemed to be approved, unless the exchange is notified otherwise, forty-five days after receipt.

The Commission also is proposing to amend rule 1.41 to provide an alternative fast-track review of proposed amendments to contract terms or conditions. Similar to the fast-track designation procedures, many categories of exchange rules relating to contract terms already are deemed to be approved ten days after receipt. The Commission is proposing that all other proposed exchange rules relating to contract terms be deemed to be approved forty-five days after receipt by the Commission, unless the exchange is

notified otherwise. Notification by the Commission that a contract application or proposed exchange rule relating to a contract term or condition may not be made effective will extend the applicable period for review for an additional thirty days.

DATE: Comments must be received by December 23, 1996.

ADDRESS: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418-5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Fast-track Designation and Rule Approval Procedures."

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 since the Futures Trading Act of 1921, Public Law No. 67-66, 42 Stat. 187 (1921).¹ Currently, the statutory requirements for designation are found in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* ("Act"), and additionally, for indexes of equities, in Section 2(a)(1)(B) of the Act. In the Commission's experience, problems of possible price manipulation, cornering or other market distortions are most readily avoided when the terms of a futures contract are properly designed, reflecting closely the underlying cash market. Thus, one of the most effective market surveillance tools has proven to

be prophylactic, close examination of the terms of a contract before it begins to trade.

In the absence of properly designed contract terms, damage to hedgers or industry pricing may result before corrections to the contract can be made. The impact of a market manipulation or other disruption in a newly introduced futures contract potentially could be far wider than the futures market itself, adversely affecting the underlying cash market, as well.² Correcting this type of problem after trading has already begun may require extraordinary measures such as emergency action. At a minimum, such an occurrence would probably result in diminished credibility for futures trading in that contract, and possibly for futures trading, generally.

The designation process yields important benefits by ensuring a mechanism for public input relating to contract design before trading commences. Thus, in addition to independently evaluating the proposal through its own research, Commission staff identifies and interviews knowledgeable trade sources regarding a proposed contract's terms. Moreover, a notice of the public availability of the terms of proposed contracts is published in the Federal Register along with a request for public comment. The proposed contract is also sent by the Commission to its sister agencies having a regulatory interest in the underlying commodity for analysis and possible comment. Not infrequently, this process has identified deficiencies in proposed contracts, many of them serious, which have been corrected before trading has begun. Exchanges have also determined with some frequency to modify proposed contracts in response to suggestions by Commission staff, other government agencies or the public.

The goals of the designation process are reflected in the Act's requirements that, to be designated, contract markets provide for delivery periods which will prevent market congestion (Section 5a(a)(4) of the Act); permit delivery on

² Section 3 of the Act recognizes the national interest in properly functioning futures markets, noting that

The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce. [P]rices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer * * * rendering regulation imperative for the protection of such commerce and the national public interest therein.

¹ Designation as a contract market under the 1921 Act was contingent upon a board of trade's providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping, for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. See, §§ 5(a), (b), (c), (d) and (e) of the Future Trading Act of 1921. 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 was patterned after this statutory scheme.

the contract of such qualities, at such points and at such differentials as will minimize market disruptions (Sections 5a(a)(10) and 5(1) of the Act); provide for the prevention of dissemination of false information (Section 5(3) of the Act); provide for the prevention of price manipulation (Section 5(4) of the Act); and in general, that trading in a proposed contract not be contrary to the public interest (Section 5(7) of the Act).³ Contract markets must meet these requirements both initially and on a continuing basis.⁴

To provide guidance to the exchanges in meeting the designation requirements of the statute, in 1975 the newly formed CFTC issued its Guideline No. 1, now codified at 17 CFR Part 5, Appendix A. Guideline No. 1 sets forth the information which must be submitted by an exchange to demonstrate that a proposed contract meets the statutory requirements for designation. It requires that the application for designation include information demonstrating the conformity of contract terms with commercial practices, the adequacy of deliverable supplies or, if applicable, the appropriateness of the cash settlement procedure, and other information as requested.

The Commission, based upon its administrative experience, has periodically 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 was last amended in January 1992, substantially reducing and streamlining its requirements. Indeed, much of the application for options contracts has been reduced to

the form of a checklist. Moreover, under the Commission's internal procedures established in 1992, notification of the public availability of proposed contract terms normally appears in the Federal Register within one week of receipt of an application. In addition, under these procedures, substantive issues are identified and communicated informally to the exchange very shortly after receipt, permitting their prompt resolution.

With the changes noted above, the total review time for new contracts has declined significantly. The review and approval of new contracts generally is completed shortly after the Federal Register public comment period ends or as soon as the exchange makes the modifications necessary to address a proposed contract's deficiencies. Over the last five years, the average total review time has been reduced to about three months. Strikingly, this reduction in processing time coincides with the submission of record numbers of new contract proposals.⁵

II. The Proposed Rules

A. Fast-Track Contract Market Designation—Cash-Settled Contracts

As part of its continuing effort to impose the least costly means necessary to achieve the regulatory objectives of the contract designation review process, the Commission previously established a very abbreviated, ten-day review procedure for the designation of contracts that are eligible to be listed for trading under its Part 36 exemptive rules. See, Commission rule 36.4, 17 CFR 36.4 (1996). Such a highly abbreviated review process was appropriate for those contracts, the Commission reasoned, because Part 36 contracts are required to be cash-settled and may not be based on the agricultural commodities enumerated in Section 1a(3) of the Act, thus avoiding issues related to delivery terms. "Notice of Proposed Rulemaking," 59 FR 54139, 54148 (Oct. 28, 1994).

Despite determining to provide this highly abbreviated procedure initially only in the context of the pilot program for Part 36 transactions, the Commission nevertheless indicated that, based upon its administrative experience and consistent with the views expressed by several commenters, such procedures might be appropriately expanded to

some additional categories of applications for designation.⁶ Thus, in promulgating these rules, the Commission noted that it would "evaluate whether * * * the ten-day notification provision should be extended to certain non-section 4(c) contract market transactions when it evaluates trading experience under the pilot program." (60 FR at 51338.)

Although it may have preferred to test these procedures first in the context of Part 36 markets that are by rule limited to the relatively more sophisticated trader, there has been no trading experience in connection with the pilot program for Part 36 transactions.⁷ Moreover, the degree of pre-approval scrutiny appropriate for particular types of proposed contracts is not necessarily based upon restrictions on the nature of the traders who may trade in the market. Accordingly, in light of the increasing expertise of both the exchange and Commission staffs over the years, the Commission has determined to propose a ten-day fast-track review of applications for designation of certain cash-settled contracts for non-Part 36 markets.

This highly-abbreviated, ten-day fast-track procedure is intended only to speed the review and to provide for automatic approval of new contract applications; it does not modify the regulatory protections currently provided under the Act. Accordingly, under the fast-track review procedures, only applications for contract market designation which are complete upon submission; which are not amended, except upon request of the Commission; which do not raise novel or complex issues; and which do not appear, on their face, to contravene a statutory or regulatory requirement, would be automatically deemed to be approved ten days after receipt. The Commission can extend fast-track review for one thirty-day period. This will permit fast-track review to remain available even for those applications which do raise novel or complex issues.

As noted above, because cash-settled contracts avoid issues regarding delivery terms, the ten-day fast-track review is proposed to be available only for cash-settled contracts.⁸ Moreover,

⁶In this regard, several commenters suggested that the ten-day review process "apply to all exchange-traded contracts or to certain categories of such contracts, such as financial futures and options." 60 FR at 51338.

⁷The three-year pilot program to test the operation of the Part 36 rules begins the date when the first contract trades pursuant to them. No exchange has yet listed for trading such contracts.

⁸Although they may be settled by physical delivery, futures contracts for foreign currencies

³In addition to these contract-specific requirements, boards of trade, to be designated, must also meet several general conditions. These, for example, require the board of trade to: provide for various forms of recordkeeping (Section 5(2) and 5a(a)(2) of the Act); provide for compliance with Commission orders (Section 5(6) of the Act); submit its rules to the Commission (Sections 5a(a)(1) and 5a(a)(12)(A) of the Act); and enforce exchange rules (Section 5a(a)(8) of the Act).

⁴Section 6 of the Act provides, in part, that: [a]ny board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

⁵About 230 new contracts have been approved in the four years since Guideline No. 1 was last amended in 1992. These included entirely new products, such as contracts on electricity, air pollution allowances, insurance, cross-currency rates, fertilizers, shrimp, dairy products, and various broad-based or commodity-specific indexes of emerging markets.

applications for designation for those agricultural commodities which are enumerated in section 1a(3) of the Act are not eligible for ten-day fast-track treatment, even if the proposed contracts are cash-settled. In the Commission's administrative experience, cash-price series of agricultural commodities to be used for the purpose of cash-settlement often have raised issues requiring careful analysis.

In addition, fast-track review would not be available for applications for contract market designation for those commodities which are subject to the procedural requirements of section 2(a)(1)(B) of the Act—securities, including any group or index of securities. The procedures specified under that section of the Act provide that the Securities and Exchange Commission make a determination regarding those proposed contracts subject to its provisions.

A separate provision of the Act, section 2(a)(8)(B)(ii), 7 U.S.C. 4a(g), provides forty-five days for the Department of the Treasury and the Board of Governors of the Federal Reserve System to comment on any application by a board of trade for designation as a contract market involving transactions for the future delivery of any security issued or guaranteed by the United States or any agency thereof. It does not, however, require that the two agencies make a determination regarding such contracts. A ten-day fast-track review period, even if extended for an additional thirty days, is inconsistent with the time generally permitted those agencies for comment, and unless such contracts were exempted therefrom, they would likely have to be excluded from this provision of the proposed rule.⁹

The agencies did not comment adversely on inclusion of the section 2(a)(8)(B)(ii) commodities under the

similar, ten-day automatic listing procedures of the Commission's Part 36 rules. Accordingly, the Commission finds that it is in the public interest, and is proposing, that these commodities also be eligible for the comparable fast-track procedures proposed herein. The Commission, therefore, is proposing to exempt these transactions under section 4(c) of the Act from the statutory time permitted the agencies for filing comments provided in section 2(a)(8)(B)(ii) of the Act. Of course, the Commission will continue to provide notice to the other regulators of applications and would be responsive to their requests for additional time to review complex or novel issues raised by an application. Accordingly, the Commission seeks comment on whether the section 2(a)(8)(B)(ii) commodities should be exempted from the forty-five day time for comment and thus be eligible for fast-track treatment, and particularly, for ten-day fast-track review.¹⁰

B. Fast-Track Contract Market Designation—Other Contracts

Use of a ten-day review process is not appropriate for every type of contract. Because many cash agricultural markets are widely dispersed, cash price series for certain of them may be less reliable, available or timely, than for other types of commodities. Moreover, in contracts requiring physical delivery, convergence of the futures and cash market prices is dependent upon properly aligned delivery terms. Accordingly, for these types of contracts, careful analysis and review of contract terms in advance of trading will likely remain an important market surveillance tool. This is particularly true for those commodities which are characterized by seasonal variation in their production or other factors which, from time to time, may impinge on deliverable supplies.

Although a ten-day review period for such contracts might be inconsistent with accomplishing the regulatory objectives embodied in the Act's designation requirements, in light of the increasing expertise and experience of both the Commission and exchange staffs, the Commission believes that,

even for these contracts, substantial reductions in the time currently needed to review such applications for designation can be made. The Commission believes that these savings can be achieved by further streamlining its procedures. This would also preserve the opportunity for public participation in the designation of those contracts. After a thorough review of its present procedures, the Commission believes that for these contracts the current review period can be cut in half.

The Commission, therefore, is proposing an additional fast-track procedure available for applications for designation of contracts for physical delivery or for cash-settlement on the agricultural commodities enumerated in the Act.¹¹ Under this additional fast-track review procedure, applications for contract market designation would be deemed to be approved by the Commission forty-five days after receipt, unless the exchange is notified otherwise. As under the ten-day process, the forty-five day review process would be available only for applications for designation that are complete when filed and not subsequently amended, except as requested by the Commission.

As part of the forty-five day fast-track procedures, the Commission will continue its current practice of publishing in the Federal Register, within a few days of an application's receipt, notice of the public availability of the proposed contract's terms and a request for public comment thereon. The Commission will also continue its practice of interviewing knowledgeable sources regarding cash market practices and whether the proposed contract's terms are consistent with those practices.

However, in order to meet the very compressed time for review, the Commission is proposing to reduce the public comment period for fast-track applications from thirty days, as currently provided under Appendix D to Part 5, to fifteen days. The Commission is aware that some of those entities which have commented in the past on contract applications, particularly membership organizations, may have difficulty in meeting this deadline. However, the proposed reduction in the comment period is necessary to provide the Commission with an opportunity to assess comments which have been filed before the end of the review period and is proportional to

generally do not raise the types of issues common to physical delivery markets. Accordingly, the Commission determined to include contracts for foreign currency within the Part 36 exemption along with cash-settled contracts. Commission rule 36.2(a)(1), 17 CFR 36.2(a)(1). Consistent with that determination, the Commission is also including foreign currency contracts within the ten-day fast-track review procedures, providing there is no legal impediment to delivery of the currency and there exists a liquid cash market in the currency.

⁹The forty-five day comment period of section 2(a)(8)(B)(ii) may also conflict with the review procedures of a second fast-track procedure discussed below. That procedure provides for a forty-five day fast-track review. Although the other regulators generally have filed comments, if any, in fewer than forty-five days, the full period for comment would be inconsistent with a forty-five day fast-track review if the Commission were unable to provide notice of an application on the very same day of its receipt.

¹⁰Because no regulatory requirement other than the time period for comment by other agencies is being waived, for purposes of this exemption "appropriate persons" eligible to enter into the exempted instruments include all those who may otherwise trade designated futures or option contracts. The Commission believes that this exercise of its exemptive authority will not have a material adverse effect on the ability of the Commission, the other regulators, or any contract market to discharge its, or their, duties under the Act.

¹¹However, designation applications for commodities which are subject to the procedural requirements of Section 2(a)(1)(B) of the Act would not be eligible for this fast-track review, either.

the overall reduction in time for Commission review of an application. Moreover, the Commission's recent initiatives to accept public comment for filing through facsimile and electronic mail transmissions should assist commenters in complying with this condensed comment period.

Both the ten-day and forty-five day fast-track periods can be extended by the Commission for one thirty-day period. In those instances where issues raised by the application are complex or novel, where there is an inadequate basis in the application upon which to review the contract terms, or where a contract term raises the issue of whether it violates a statutory or regulatory requirement, the Commission, by notifying the exchange, can extend the review period and halt automatic approval of the application for thirty days. The notification must specify briefly the reason for the extension, including the contract term or terms that are in issue.

If at any time during the review period, the Commission believes that a contract term raises serious issues, such that it may violate a statutory or regulatory requirement, it will so notify the exchange. This notification will halt the automatic approval of the designation, terminate the fast-track procedures and convert the application from fast-track to the current review and approval procedures. Because the fast-track procedures are intended to be used only for those applications for designation which do not raise complex or novel issues, contracts that include such issues which have not been susceptible to ready resolution during the fast-track review period are not appropriate candidates for this automatic approval process.

The exchange, if it disagrees with the Commission's determination to terminate fast-track consideration, may request within ten days of the termination notification that the Commission either approve the application or initiate disapproval procedures, rather than continuing with its review and approval of the application under its current procedures. Historically, the Commission has never disapproved an application for contract market designation. Rather, it has offered exchanges an opportunity to cure defects in applications, including instances where a contract term as initially proposed was in conflict with statutory or regulatory requirements.¹²

¹² Similarly, when public comments identify deficiencies or raise concerns regarding contract terms, exchanges at times have responded by

Proposed rule 5.1 builds on this long-time administrative practice, applying it in the context of fast-track designation review, as well. Where a proposed contract originally filed for fast-track review appears to violate a statutory or regulatory requirement, the Commission presumes that the exchange would prefer to convert the application to one for review under current procedures, thus having an opportunity to cure the defect, rather than to face disapproval. However, when exchanges prefer that the Commission render a decision whether to disapprove the application as filed, the Commission will institute a formal disapproval proceeding upon notification that the exchange views its application as complete and final as submitted.

Moreover, at any time during the fast-track review period, the exchange may instruct the Commission to consider the application under the current, rather than the fast-track, review procedures. Current procedures for review and approval of designation applications have developed into an iterative process whereby the dialogue between Commission and exchange staff may result in modifications being made by the exchange to the proposed contract's terms after submission of the application. In contrast, the fast-track procedure is intended to be an automatic process and is based on the supposition that designation applications submitted for fast-track review are complete and final, as filed. Accordingly, because amending the terms of a pending contract submitted for fast-track review after its initial submission—other than correcting typographical mistakes, renumbering, or such other nonsubstantive revisions—make an application ineligible for further fast-track consideration, exchanges are free at any time to instruct that the application be converted to current review procedures. This ensures exchanges the freedom and flexibility to amend contracts after submission by voluntarily converting the review procedure, rather than mandating that they continue with the application in a form that they no longer desire.

By providing an alternative mechanism for reviewing a designation application, the Commission does not intend to affect the standard of review for such contracts. Under Section 5 of the Act, the Commission is "directed to designate any board of trade as a 'contract market' when * * * [it] complies with * * * the [specified]

modifying the proposed contract, sometimes substantially.

conditions." The Commission has been, and will continue to be, mindful that the requirements for designation are performance, rather than design, standards. In this regard, a number of different contract terms or approaches may meet a particular statutory or regulatory designation requirement. Choosing among these acceptable alternatives is a business decision of the exchange. Commission staff will not use either the current designation procedures or the fast-track procedure as a means of expressing any view regarding exchange business decisions. Accordingly, both the current procedures and the fast-track review procedures ultimately impose the same standard of review—that is, should the contract be disapproved because it violates a statutory or regulatory condition of designation.

C. Fast-Track Review of Amendments to Contract Terms and Conditions

In general, exchange rule amendments currently are required by section 5a(a)(12)(A) of the Act to be submitted to the Commission for review and may be made effective after ten-days.¹³ The primary exception to this automatic ten-day provision is contract terms and conditions (other than rules setting margin) which are required to be submitted for Commission review and approval. See, section 5a(a)(12)(A) of the Act.¹⁴ If the Commission does not act to approve or disapprove such a rule within 180 days of submission, the exchange may make the rule effective.

Contract terms are treated differently from other exchange rules so that changes to contract specifications, which can modify a contract significantly, can be given the same type of review they would have received if submitted as part of an application for a new designation. Indeed, several exchanges have used the rule amendment process to transform a contract completely, for example, substituting cash settlement for physical

¹³ See also, section 5a(a)(1) of the Act (requiring notice to the Commission of all contract market bylaws, rules, regulations and resolutions).

¹⁴ The Commission routinely reviews for approval certain other categories of exchange rules that must be approved under other sections of the Act or Commission regulations, such as exchange rules relating to exchange-of-futures-for-physical transactions. See, e.g., Section 4c(a) of the Act and Commission rule 1.38(a). Additionally, an exchange may request Commission approval of a rule amendment which, absent this request, would be subject to the automatic ten-day review process.

It should also be noted that there is an entirely separate procedure for exchange rules that are temporary in nature and which have been adopted in response to emergency conditions. None of the existing or proposed procedures discussed above apply to exchange emergency rules.

delivery. Such a profound change is virtually identical to seeking a new designation and raises the same regulatory concerns.

However, not all proposed exchange amendments to contract terms and conditions are subject to a single procedure for review. Based upon its regulatory experience, the Commission, by rule, has created various categories of exchange amendments to contract terms that are subject to automatic approval for both futures and option contracts. See, Commission rule 1.41(h)–(t). For example, among other categories of amendments to contract terms, changes in the composition of a stock or other index are approved upon adoption by the exchange (rules 1.41(h) and (i)), as are changes to survey lists (rule 1.41(j)) and changes to trading hours, if within a specified window (rule 1.41(k)). Other categories of rule amendments, such as changes to trading months (rule 1.41(l)) and changes to contract terms established by independent third parties (rule 1.41(m)) are deemed to be approved ten days after receipt by the Commission. Indeed, rule 1.41(n) enables the Commission to establish such automatic approval procedures for any rule for which such treatment is appropriate.

The exchange rule amendments eligible for such automatic approval procedures typically involve changes to exchange rules which are recurring, predictable, clearly defined and subject to conditions which can be specified in advance. As new commodities or types of contracts are listed for trading, the Commission, based upon its experience, has added new categories of automatic rule approvals, as appropriate. Thus, in addition to the vast majority of exchange rule submissions that are not contract terms and therefore are subject only to a ten-day review, many if not a majority of amendments to contract terms and conditions are already eligible for automatic approval.

In light of the Commission's determination to propose two fast-track periods to review applications for contract market designation, the Commission believes that two similar fast-track periods for amendments to contract terms should be provided as well. Accordingly, the Commission is proposing to add to Commission rule 1.41(b) a fast-track review procedure consistent with the proposed forty-five day fast-track review of designation applications. The current provisions of rule 1.41 providing for ten-day review and automatic approval of many categories of amendments to contract terms would remain unchanged.

The existing procedures for review of designation applications and amendments to contract terms differ in their treatment of requests for public comment. Similar to applications for designation, request for public comment on certain amendments to contract terms and conditions is discretionary. Thus, the Commission may, as a matter of discretion, publish proposed amendments of contract terms for comment "when publication * * * is in the public interest and will assist the Commission in considering the views of interested persons." Commission rule 140.96(b), 17 CFR 140.96(b). For amendments to contract terms published for public comment as a matter of Commission discretion, the Commission will provide a fifteen-day comment period consistent with its proposed practice for fast-track designation applications.

However, Section 5a(a)(12)(A) of the Act requires amendments to contract terms, when determined to be of major economic significance, to be published in the Federal Register. That section of the Act also requires that the comment period be for thirty days. If all proposed amendments to contract terms required a full thirty-day comment period, the Commission's ability to meet a forty-five day deadline would be impossible with its present staff resources. However, only a limited percentage of exchange rule amendments are of major economic significance and would therefore be required to be published for public comment for the thirty-day period. Although acting on even this limited number of submissions within forty-five days will be difficult when a thirty-day comment period is required, the Commission is proposing a forty-five day review period for all proposed amendments of contract terms and designation applications in order to achieve the most consistent and simplest procedures for fast-track review.

D. Implementation

The Commission is proposing these automatic approval procedures to streamline further Commission review of applications for contract market designation and proposed exchange rules relating to contract terms and conditions. It believes that the proposed procedures, by providing the exchanges an alternative means of achieving greater certainty and ease in listing new products, will permit them greater flexibility to compete with foreign exchange-traded products and with both foreign and domestic over-the-counter transactions, while maintaining the Commission's authority to review

proposed contracts and proposed exchange rules relating to existing contracts for their consistency with the Act and Commission regulations and maintaining the public's ability to participate in the process.

To streamline comprehensively the designation and rule approval procedures, the Commission must also examine the form and content of the required submissions. The Commission last amended Guideline No. 1 in 1992. The Commission's 1992 revisions were undertaken with the view of removing duplication of effort between its staff and the exchanges, streamlining procedures, reducing paperwork, and refining the requirements for designation.

As noted above, one of the significant innovations of the 1992 revision was to reduce the form of application for designation of option contracts to a checklist. Although the designation application for futures contracts may be less susceptible to a checklist format, the Commission believes that the concept of an extended checklist may have value in the context of applications for designation of futures contracts, as well. In this regard, to the extent that the required information can be provided in a format requiring less verbiage, both the exchanges and the Commission may save additional staff resources.

Because the Commission believes that significant potential benefits will accrue from the proposed fast-track revisions to its contract designation procedures, it does not wish to delay public consideration of such revisions in order to formulate a proposal concerning Guideline No. 1. Accordingly, the Commission is currently proposing fast-track procedures at this time and will undertake separately the time-consuming task of reviewing the form and content requirements relating to applications for designation contained in Guideline No. 1. Despite this determination to proceed on these proposed fast-track rules separately, the Commission nevertheless is committed to review the broader Guideline No. 1 issues expeditiously. In addition to these proposals regarding fast-track procedures for contract market designation and amendments to contract terms and conditions, the Commission is also considering separately procedures to streamline the review and approval of contract market rules other than contract terms and conditions.

IV. 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 these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These amendments propose to establish alternative streamlined procedures for Commission review and approval of applications by contract markets for additional designations and of amendments to contract terms and conditions. Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 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. However, the Commission invites comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 501 *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 Paperwork Reduction Act. While this proposed rule has no burden, the group of rules (3038-0022) of which this is a part has the following burden:

Average burden hours per response—
3,546.26

Number of Respondents—10,971

Frequency of response—on occasion

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Gerald P. Smith, CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418-5160.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract market rules, Rule review procedures.

List of Subjects in 17 CFR Part 5

Contract markets, Designation application.

In consideration of the foregoing, and pursuant to the authority contained in

the Commodity Exchange Act and, in particular, sections 4(c), 4c, 5, 5a, 6 and 8a of thereof, 7 U.S.C. 6(c), 6c, 7, 7a, 8, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 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. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a-1, 13a-2, 16, 19, 21, 23 and 24.

2. In Section 1.41(b), the introductory text, paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and the concluding text are proposed to be redesignated as (b)(1)(i), (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(i)(C), (b)(1)(i)(D), (b)(1)(i)(E), and (b)(1)(ii), respectively; newly redesignated paragraph (b)(1)(ii) is proposed to be revised; and paragraphs (b)(2) through (b)(4) are proposed to be added, to read as follows:

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

* * * * *

(b) *Submission of rules for prior Commission approval.* (1)(i) * * *

(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 (b)(1)(i) (A) through (E) of this section.

(2) All proposed contract market rules that relate to terms and conditions submitted for review under paragraph (b)(1) shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(i) The contract market labels the submission as being submitted pursuant to Commission rule 1.41(b)—Fast Track Review;

(ii) The submission complies with the requirements of paragraphs (b)(1)(i) (A) through (E) of this section, or for dormant contracts, the requirements of § 5.2 of this chapter;

(iii) The contract market does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(iv) The contract market has not instructed the Commission in writing during the review period to review the proposed rule under the usual

procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

(3) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (b)(2) of this section, may notify the contract market making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraph (b)(2) of this section shall be extended for a period of thirty days.

(4) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (b)(3) of this section, the Commission shall notify the contract market that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section, if it appears that the proposed rule may violate a specific provision of the Act, regulation, or form or content requirement of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of this section that the proposed rule appears to violate. Within ten days of receipt of this termination notification, the contract market may request that the Commission render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the contract market views its submission as complete and final as submitted.

* * * * *

3. Section 1.41b is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.41b. Delegation of authority to the Director of the Division of Trading and Markets and Director of the Division of Economic Analysis.

* * * * *

(b) The Commission hereby delegates, until the Commission orders otherwise:

(1) To the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of

such Director as may be designated from time to time by the Director, the authority to approve, pursuant to section 5a(a)(12)(A) of the Act and § 1.41(b), contract market proposals, submitted pursuant to § 5.2, to list additional trading months or expiration for, or to otherwise recommence trading in, a contract that is dormant within the meaning of § 5.2; and

(2) To the Director of the Division of Economic Analysis, and to the Director of the Division of Trading and Markets, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director, authority to request under § 1.41(b)(2)(iii) that the contract market amend the proposed rule or supplement the submission, to notify a contract market under § 1.41(b)(3) that the time for review of a proposed contract term submitted under that section for fast-track review has been extended, and to notify the contract market under § 1.41(b)(4) that fast-track procedures are being terminated.

* * * * *

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

3. The authority citation for Part 5 is proposed to be amended by revising it to read as follows:

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

4. Part 5 is proposed to be amended by adding a new section 5.1, and in Appendix D, by revising the second sentence, to read as follows:

§ 5.1 Fast-track designation review.

(a) *Cash-settled contracts.* Boards of trade seeking designation as a contract market under sections 4c, 5, 5a, and 6 of the Act, and regulations thereunder, shall be deemed to be designated as a contract market under section 6 of the Act ten days after receipt by the Commission of the application for designation, unless notified otherwise within that period, if:

(1) The board of trade labels the submission as being submitted pursuant to Commission rule 5.1—Fast Track Ten-Day Review;

(2) (i) The application for designation is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an options contract that is itself cash-settled, is exercised into a futures contract which meets the requirements of paragraph (a)(2)(i) of this section, or is for delivery of a foreign currency which meets the requirements of paragraph (a)(2)(i) of this section;

(3) The application for designation is for a commodity other than those enumerated in section 1a(3) of the Act or subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The board of trade currently is designated as a contract market for at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1 and § 1.61 of this chapter;

(6) The board of trade does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission, during that period; and

(7) The board of trade has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) *Contracts for physical delivery.* Boards of trade seeking designation as a contract market under sections 4c, 5, 5a, and 6 of the Act, and regulations thereunder, shall be deemed to be designated as a contract market under section 6 of the Act forty-five days after receipt by the Commission of the application for designation, unless notified otherwise within that period, if:

(1) The board of trade labels the submission as being submitted pursuant to Commission rule 5.1—Fast Track Forty-five Day Review;

(2) The application for designation is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The board of trade currently is designated as a contract market for at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A of this part—Guideline No. 1 and § 1.61 of this chapter;

(5) The board of trade does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission, during that period; and

(6) The board of trade has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) *Notification of extension of time.* The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the board of trade making the submission that the review period has been extended for a period of thirty days where the designation application raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) *Notification of termination of fast-track procedures.* During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the board of trade that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulation, or form or content requirement of Appendix A of this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A of this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the board of trade may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the contract market amend the proposed contract or supplement the application, to notify a board of trade under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has

been extended, and to notify the contract market under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1).

Appendix D—Internal Procedure Regarding Period for Public Comment

* * * Generally, the Commission will provide for a public comment period of thirty days on such applications for designation; *provided, however*, that the public comment period will be fifteen days for those applications submitted for review under the fast-track procedures of § 5.1(b) of this part.

Issued in Washington, D.C. this 18th day of November, 1996, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-29835 Filed 11-21-96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC54

Big Cypress National Preserve, Recreational Frogging

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to amend the special regulations for Big Cypress National Preserve (Preserve) by adding a section to regulate frogging. The proposed rule will allow the recreational taking of the pig frog (*Rana grylio*) throughout the Preserve. The rule will allow the designation of seasons, times, locations, methods and means of taking, and establishment of harvest limits and permit requirements. The rule is designed to allow a level of public use and enjoyment of Preserve resources and to assure the preservation of natural and recreational values consistent with the Big Cypress National Preserve Act and the Big Cypress National Preserve General Management Plan/Final Environmental Impact Statement. The rule will allow the Superintendent to limit or control the taking of pig frogs

based on, but not limited to, population dynamics, water conditions or other factors influencing this and other species.

DATES: Written comments will be accepted through January 21, 1997.

ADDRESSES: All comments should be addressed to: Superintendent, Big Cypress National Preserve, HCR 61 Box 110, Ochopee, Florida 34141.

FOR FURTHER INFORMATION CONTACT: William J. Carroll, Chief Ranger, Big Cypress National Preserve, HCR 61 Box 110, Ochopee, Florida 34141. Telephone: 941-695-2000, extension 17.

SUPPLEMENTARY INFORMATION:

Background

Big Cypress National Preserve is a 716,000 acre unit of the National Park System that was established in 1974 (570,000 acres) and expanded by 146,000 acres in 1988. Prior to 1974, this vast area of more than 45,000 privately owned tracts of land was open to the general public and traditionally used by hunters, anglers, back-country campers, off-road vehicle enthusiasts and froggers. In the late 1960's and early 1970's, these traditional recreationist and mainstream environmental groups, fearful of the development consequences associated with the construction of a major airport (Jetport) in the heart of the Everglades, successfully lobbied for Federal protection. Consequently, on October 11, 1974, Big Cypress National Preserve (16 U.S.C. 698f), one of the largest nonwilderness, multiple-use units in the National Park System, was established with the following purpose:

"In order to assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof, the Big Cypress National Preserve is hereby established" (Pub. L. 93-440; 16 U.S.C. 698f(a)).

Immediately upon establishment of the Preserve, the NPS was required to deal with complex land use, policy and political issues. In 1985, the NPS began the development of a General Management Plan (GMP). During the seven-year (1985-1992) GMP process, the NPS recognized that frogging was an activity that needed to be managed. Consequently, the final Big Cypress National Preserve General Management Plan, Volume 1, page 44 (1992) addressed the issue of frogging as follows:

Currently, the noncommercial taking of frogs is legal under state law, but is not

consistent with NPS regulations. Frogging, like hunting and fishing, was a traditional recreational activity before the national preserve was established, and it may be consistent with the purposes of the Preserve. So that noncommercial frogging conforms to NPS policy, the NPS would promulgate special regulations in the future.

Furthermore, 16 U.S.C. 698i(b) states that:

In administering the Preserve, the Secretary shall develop and publish in the Federal Register, such rules and regulations as he deems necessary and appropriate to limit or control the use of Federal lands and waters with respect to: * * * (8) such other uses as the Secretary determines must be limited or controlled in order to carry out the purposes of sections 698f to 698m of this title * * *

In 1988 Public Law 93-440 was amended by Public Law 100-301 (16 U.S.C. 698m-1(a)) which is commonly referred to as the Big Cypress National Preserve Addition Act. In Section 698m-2, the Secretary is directed to:

Cooperate with the State of Florida to establish recreational access points and roads, rest and recreation areas, wildlife protection, hunting, fishing, frogging, and other traditional recreational opportunities in conjunction with the creation of the Addition Act and in the construction of Interstate Highway 75.

While this amendment clearly identifies frogging as a recognized traditional recreational use, the NPS is required to promulgate a rule to manage the activity. Since the traditional public use of the Preserve has included the taking of pig frogs, and as this activity is legal under the regulations of the State of Florida (Title 39-26.002 F.A.C.), this proposed rule is being published.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information: The process used to develop this rule included numerous reviews by Preserve staff, consultation and cooperation with the Florida Game and Freshwater Fish Commission as required by 16 U.S.C. 698m-2, and informal consultation with the U.S. Fish and Wildlife Service. The primary author of this rulemaking is William J. Carroll, Chief Ranger, Big Cypress National Preserve.