7 CFR Part 381

Food labeling, Poultry products inspection.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

Accordingly, Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and Part 381 of the poultry products inspection regulations (9 CFR Part 381) are revised as follows:

1. The authority citation for Part 317 reads as follows:

Authority: 34 Stat. 1260, 79 Stat 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Section 317.2(d)(2)(ii) of the Federal meat inspection regulations (9 CFR 317.2(d)(2)(ii)) is amended by deleting that portion of the present text at the end of the subdivision reading "as provided in paragraphs (f)(3), (g)(2), and (i)(8) and (9)" and inserting a period after the last reference to "panel".

3. Section 317.2(i) of the Federal meat inspection regulations (9 CFR 317.2(i)) is revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(i) The official establishment number of the official establishment in which the product was processed under inspection shall be placed as follows:

(1) Within the official inspection legend in the form required by Part 312 of this subchapter; or

(2) Outside the official inspection legend elsewhere on the exterior of the container or its labeling, e.g., the lid of a can, if shown in a prominent and legible manner in a size sufficient to insure easy visibility and recognition and accompanied by the prefix "EST"; or

(3) Off the exterior of the container, e.g., on a metal clip used to close casings or bags, or on the back of a paper label of a canned product, or on other packaging or labeling material in the container, e.g., on aluminum pans and trays placed within containers, when a statement of its location is printed contiguous to the official inspection legend, such as "EST. No. on Metal Clip" or "Est. No. on Pan", if shown in a prominent and legible manner in a size sufficient to insure easy visibility and recognition; or

(4) On an insert label placed under a transparent covering if clearly visible and legible and accompanied by the prefix "EST".

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for Part 381 reads as follows:

Authority: Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*), the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450); and subsection 21(b) of the Federal Water Pollution Control Act, as amended by Public Law 91-224 and by other laws (33 U.S.C. 1254).

5. Section 381.123 of the poultry products inspection regulations (9 CFR Part 381.123) is revised to read as follows:

§ 381.123 Official inspection mark; official establishment number.

The immediate container of every inspected and passed poultry product shall bear:

(a) The official inspection legend; and

(b) The official establishment number of the official establishment in which the product was processed under inspection and placed as follows:

(1) Within the official inspection legend in the form required by Subpart M of this Part; or

(2) Outside the official inspection legend elsewhere on the exterior of the container or its labeling, e.g., the lid of a can, if shown in a prominent and legible manner in a size sufficient to insure easy visibility and recognition and accompanied by the prefix "P"; or

(3) Off the exterior of the container, e.g., on a metal clip used to close casings or bags, or on the back of a paper label of a canned product, or on other packaging or labeling in the container, e.g., on aluminum pans and trays placed within containers, when a statement of its location is printed contiguous to the official inspection legend, such as "Plant No. on Package Closure" or "Plant No. on Pan", if shown in a prominent and legible manner in a size sufficient to ensure easy visibility and recognition; or

(4) On an insert label placed under a transparent covering if clearly visible and legible and accompanied by the prefix "P".

Done at Washington, DC, on: June 21, 1982.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 82-18359 Filed 7-6-82; 8:45 am]

BILLING CODE 3410-DM-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Dormant and Low Volume Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: These rules will assist the nation's commodity exchanges in discharging their self-regulatory responsibility of monitoring designated contract markets for continued compliance with the Commodity Exchange Act. The rule governing dormant contracts should provide both the exchanges and the Commission with an opportunity before a dormant contract is again listed for trading to ascertain whether the contract's terms and conditions conform to cash market practices and whether the contract is likely to serve an economic purpose, and thereby complies with the requirements of the Act. The reporting requirement for low volume contracts should aid both the Commission and the exchanges in obtaining information concerning the composition and nature of trading volume and open interest in low volume contracts. This information will be useful in determining whether the low volume contract continues to serve an economic purpose and whether additional surveillance procudures are needed to ensue that trading in the contract market remains in compliance with various provisions of the Act and Commission rules.

DATE: These rules shall be effective October 5, 1982.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul Architzel, Acting Chief Counsel, Division of Economics and Education. Telephone (202) 254-3203; 254-6990, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: On November 5, 1980, the Commission published for public comment proposed Rules 5.2 and 5.3 (45 FR 73499 (November 5, 1980)).

The Commodity Futures Trading Commission ("Commission") has adopted two rules to aid it in monitoring continued compliance by designated contract markets with the requirements of the Commodity Exchange Act, 7 U.S.C. 1 et seq. (1976 and Supp. IV 1980) ("Act"). The first of these rules provides that additional delivery months in dormant contracts, as defined under the rule, only may be listed for trading subject to passage by a contract market of an implementing bylaw, rule, regulation or resolution and Commission approval thereof under Section 5a(12) of the Act, 7 U.S.C. 7a(12) (Supp. IV, 1980) and Commission Rule 1.41(b), 17 CFR 1.41(b). As adopted, the definition of dormant contract provides that a contract market is "dormant" when it has not traded for any of six consecutive months. In addition,the rule provides a period of three years from either initial designation or from the date of Commission approval to resume trading before a contract is considered to be "dormant."

The second rule requires low volume contract markets to provide data concerning trading by floor brokers or floor traders and customers; identification of commercial participants in the low volume contract; and a brief statement of additional surveillance procedures instituted by the contract market to detect potential trade practice violations. As adopted, the reporting requirement is triggered when fewer than 1,000 contracts are traded in four of any six months. Reports are not required during the first three years following the initial designation of a contract market by the Commission or following approval by the Commission of the resumption of trading of a dormant contract. In addition, the final rule provides a procedure whereby a contract market, when reporting for any low volume trading period, may petition the Commission to exempt it from future reporting.

The Commission provided approximately three months for public comment on the proposed rules and later extended the comment period by an additional thirty days. 46 FR 9958 (January 30, 1981). Seven commodity exchanges commented on the proposed rules. Of the seven commentators, one favored proposed Commission Rule 5.3, a reporting requirement on low volume contracts, and expressed concern over only certain technical aspects of the rule. The remaining commentators were opposed to the proposed rules.

Generally, opposing commentators questioned whether proposed Commission Rule 5.2, governing dormant contracts, could be a means of avoiding procedural requirements established in various sections of the Act; whether the Commission had correctly apprehended the meaning of the Section 5(g) (7 U.S.C. 7(g) (1976)) "public interest" requirement for designation; and whether the cost of compliance with the rule as proposed was justified. Commentators generally, however, did not describe the procedures, if any, they now take to assure that the terms and conditions of a dormant contract are in compliance with the Act before trading in such contracts is resumed.

Commentators opposed to proposed Commission Rule 5.3, which requires certain reports on low volume contracts, again suggested that the Commission had misconstrued the Section 5(g) "public interest" requirement for continuing designation; that there was a lack of compelling evidence that certain trade practice abuses have been associated with low volume markets; and that the cost of compliance outweighed the benefits to be derived from the rule. The Commission has carefully considered all of the comments submitted and for the reasons set forth below, believes that the rules, as modified, should be adopted.

I. Dormant Contracts

1. Statutory Authority

Commission Rule 5.2 provides that additional months for trading of a dormant contract only may be listed to trade following approval by the Commission under Section 5a(12) of the Act, 7 U.S.C. 7a(12) (Supp. IV 1980), and Commission Rule 1.41(b), 17 CFR 1.41, of an exchange bylaw, rule, regulation, or implementing resolution. Several commentators suggested that the Commission's rule, in effect, would revoke or suspend contract market designations without according the contract market a revocation proceeding.

The Commission does not view Rule 5.2 as a substitute for any of the procedures provided in the Act for contract market revocation. As the Commission stated in its November 5, 1980, **Federal Register** notice, the purpose of the rule is to provide the Commission an opportunity to review the economic purpose of a dormant contract and the adequacy of its terms and conditions prior to its resumption of trading. If, as a result of that review, however, the Commission believes that the contract would serve no economic purpose or that the contract market is otherwise in violation of the Act's continuing requirements for designation, it would commence an independent revocation proceeding under Sections 5b and 6(a) of the Act, 7 U.S.C. 7b and 8(a) (Supp. IV, 1980).[1]

Some commentators opined that Commission Rule 5.2 would have the effect of amending existing exchange bylaws or regulations, and that such amendments must be made pursuant to the procedures provided by Section 8a(7) of the Act, 7 U.S.C. 12a(7) (1976). That section empowers the Commission to alter or supplement the rules of any contract market under certain conditions. The Commission believes that this view is without merit.

In the first instance, many, if not all of the rules of general applicability promulgated by the Commission under Section 8a(5) of the Act, 7 U.S.C. 12a(5) (1976), may affect particular exchange bylaws, rules, or practices. Indeed, Commission Rule 5.2 is similar to other Commission rules which require exchanges to provide certain information to the Commission (*See e.g.*, Commission Rule 1.50), and is consonant with the existing over-all regulatory scheme.

Moreover, the Commission's Section 8a(7) authority to alter or supplement particular rules of a contract market does not abrogate the Commission's broad authority to promulgate rules of general applicability. As the Commission has previously explained:

> Commission approval of a rule of a particular contract market * * * does not preclude the Commission in the future from adopting a rule applicable to all contract markets which would impose additional or different requirements than those set forth in the exchange rule that the Commission had previously approved. To view the matter differently would subordinate the Commission's general rulemaking authority

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[1] At least one commentator likened the potential delay in trading a contract to a suspension of a contract market designation pursuant to Section 5b of the Act, 7 U.S.C. 7b (1974). A delay in the resumption of trading pending Commission review following a period of dormancy, however, is not synonymous to the suspension of designation of an actively traded contract.

This rule is not intended to effectuate a suspension, but rather is intended to provide the Commission certain types of information so that it may determine whether resumed trading in the contract is in compliance with the requirements of the Act. As the Commission noted in its **Federal Register** notice proposing Rule 5.2, the Commission had considered as an alternative approach, to require dormant contract markets routinely to demonstrate continued compliance with the Act through periodic filings of information pursuant to Commission Rule 1.50. Instead, the Commission determined that the better approach is to require such a showing for dormant contracts only prior to an intended resumption of trading. Despite this difference in approach, Commission Rule 5.2 performs an information-generating function similar to that of Commission Rule 1.50.

In any event, it should be noted that the rule provides that if no Commission action has been taken on an exchange submission to resume trading within thirty days, the Commission shall approve the exchange bylaw, rule, regulation or resolution permitting trading to resume. Moreover, the Commission noted in its November 5, 1980, notice, and hereby reaffirms, that it intends to expedite its review and consideration of contract market submissions concerning dormant contracts.

to that of the governing board of a single exchange whose judgment may differ from that which the Commission may subsequently make in discharging its responsibilities under the Act. 43 FR 39956, 39967 (September 8, 1978)

In this regard, the commentators' suggestion that their procedural rights might have been prejudiced by this informal rulemaking proceeding was based on the erroneours belief that Commission modifications of exchange rules under Section 8a(7) are accomplished through more formal procedures than used here. However, the Commission has interpreted Section 8a(7) as requiring only informal rulemaking proceedings to amend or alter exchange rules.[2]

2. Sections 5 and 5a Considerations

The Commission may designate a board of trade as a contract market for futures trading only when it meets the requirements of Sections 5 and 5a of the Act. The Commission noted in its November 5, 1980, **Federal Register** release that document contracts raise particular issues relating to the contracts' continuing compliance with particular requirements of those sections. Specifically, under Section 5(g) of the Act, a contract market must demonstrate that transactions for future delivery will not be contrary to the public interest. The test includes an "economic purpose" test which requires a board of trade to demonstrate that more than occasional use of the contract for hedging or price basing exists, or reasonably can be expected to exist. Comm. Fut. L Rep. [CCH] ¶6145 at 6077.

In proposing Rule 5.2, the Commission reasoned that contracts which have ceased to trade may not be fulfilling, and may be unable to fulfill, the economic purpose which is required of them in order to retain designation. As one commentator agreed:

[l]ogically, if the market for the particular contract is non-existent, the very moribundity of the market indicates that the contract may in fact be serving no economic purpose.

One commentator asserted that when Congress enacted the public interest test in place of the House of Representatives' proposed "economic purpose" test, Congress did not intend to require a demonstration of a contract's economic purpose as one of the conditions for designation. However, Congress made clear when it adopted Section 5(g) that the public interest test includes, and is broader than the "economic purpose" test. *See*, S. Rep. No. 1194, 93d Cong., 2d Sess. 36 (1974); Commission Guideline No. 1, Comm. Fut. L. Rep.¶ 6145, at 6077–6078.[3]

Other commentators suggested that market interest in, or volume of, trading alone should determine whether a contract serves an economic purpose. They reasoned that if an exchange wished to resume trading a dormant contract, its interest in resuming trading on a trial basis was sufficient to establish economic purpose and no further justification was required. The market would then determine definitively the economic purpose of the contract by the success of the trading months which were listed as a "trial balloon."

However, once a contract fails to trade, and becomes dormant, the market has, to some extent, passed judgment on that contract. Accordingly, the Commission and the contract markets must consider that prior market failure when assessing whether the dormant contract complies with the requirements of Section 5(g) of the Act.[4] Moreover, the Act places a higher burden on contract markets for continued designation than merely demonstrating that some trading in the contract occurs.[5]

The Commission also noted in its previous **Federal Register** notice that in addition to a failure to serve an economic purpose, a dormant contract raises concerns over other requirements contained in Sections 5 and 5a of the Act which require the conformity of contract terms and conditions to current cash market conditions. For active contracts the Commission depends to a certain extent upon its surveillance of the trading activity and delivery experience as an early indicator that the terms and conditions of particular contracts may require alteration if they are to remain in compliance with the Act. In the case of dormant contracts, of course, surveillance experience cannot serve as an indicator of possible contract deficiencies to either the Commission or the contract market.

With respect to continuing conformity of contract terms and conditions with current cash market practices, three commentators opined that the Commission should rely solely on the exchange's perceptions of their own costs and benefits in determining whether a dormant contract was suitable for the listing of new delivery months. Another commentator noted that the proposed rule "improperly shifts the burden from the Commission to the Exchange in regard to its continued existence as a contract market."

The Commission is not persuaded by these comments that concerns over continuing compliance of the terms of contracts which have ceased trading are inappropriate. For example, none of the exchanges indicated that they routinely reviewed the terms and conditions of contracts which have ceased to trade to assure their continuing compliance with the Act. To the contrary, one exchange suggested that resumption of trading to test whether there was sufficient interest before the terms and conditions would be reviewed by the contract market was the appropriate, most cost-effective means of reviving a dormant contract.[6] As noted above, however, the Act clearly provides that designation requires continuing compliance with certain provisions of the Act and that the burden of such continuing compliance rests with the board of trade.

3. Associated Costs

Several commentators objected that the costs associated with the rule as

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[2] *See e.g.*, 46 FR 57457, 57458 (Nov. 24, 1981). *Board of Trade of the City of Chicago* v *Commodity Futures Trading Commission*, Case No. 81 C 7175 (N.D. Ill. February 25, 1982) (per McMillen, J.), Transcript, p. 57–58; Order dated April 23, 1982, p. 7, *appeal pending*, No. 82–1682 (7th Cir.).

[3] In adopting the "not contrary to the public interest" test, the Conference Committee reported that:

The broader language of the Senate provision would include the concept of the "economic purpose" test provided in the House bill subject to the final test of the "public interest".

S. Rep. No. 1194, *supra*, at 36.

[4] The Commission notes, however, that the rule does not contemplate that the lack of trading alone indicates that a previously designated contract no longer meets the economic purpose requirements. Instead, as noted in the release accompanying proposed Rule 5.2, the Commission believes that dormant contracts raise particular questions which make it appropriate that the Commission be afforded the opportunity to review the prospective economic purpose of trading in additional delivery months proposed for listing. For instance, the Commission has noted that economic conditions which have changed subsequent to the time which the contract became dormant may make it reasonable to expect that the contract will be used upon more than an occasional basis for hedging or price basing. 46 FR 73499, 73501.

[5] Thus, even where substantial trading activity in a contract occurs:

[I]f a market were being used almost entirely for speculation rather than for legitimate hedging, it would not be in the public interest. 120 Cong. Rec. 30468 (September 9, 1974) (Senator Talmadge)

[6] By enacting Section 5(g) of the Act, however, Congress determined that more than mere trading volume would be required for a contract market to continue to meet the conditions of designation. Moreover, the provisions of Section 5a of the Act, 7 U.S.C. 7a (1976 and Supp. IV 1980), which concern contract terms and conditions, specify additional requirements for continuing designation which are unrelated to trading volume. For example, Section 5a(10), 7 U.S.C. 7a(10) (1976), requires that contract markets specify delivery points, deliverable grades and price differentials which will prevent or diminish manipulation, market congestion and abnormal movements of the commodity, and provides that the Commission may modify such contract terms to accomplish these purposes for contracts which are currently trading, if the contract market fails to do so.

proposed outweighed its benefits and suggested that the additional cost of preparing a submission under Commission Rule 5.2 would discourage exchanges from listing new months for trading in a dormant contract. In addition, some commentators expressed a concern that Commission review of materials submitted under the proposed rules on dormant or low volume contracts would divert Commission resources from other matters, such as the review of applications for the designation of new contract markets. Some commentators also argued that the delay in listing new months once an exchange had decided to seek Commission approval would impose an unacceptable cost on society.[7] The Commission has carefully weighed these arguments, and has determined that the approach being adopted is the least costly, particularly in view of certain modifications to the proposed rule concerning the proposed exemption period and the definition of dormant contracts which are discussed below.

The Commission recognizes that preparation of the justification required by the rule will involve an additional expense to an exchange wishing to resume trading in a dormant contract. However, there is a countervailing cost to society in the event that contracts with inadequate terms and conditions are listed for trading and disruptive trading resulted. Moreover, in order to retain designation and to be in compliance with the requirements of the Act, contract markets must in any event keep their terms and conditions in conformance with cash market practices and must meet the requirements of the economic purpose test. Thus, the contract market necessarily would have to assure itself that resumed trading in a dormant contract would be in compliance with these requirements of the Act. Accordingly, the burden associated with submitting a justification to the Commission is not substantially greater than that which currently is required under the Act of the contract markets as self-regulatory organizations.

The Commission fully anticipates that the review of materials submitted under its new Rules 5.2 and 5.3 may at times draw on Commission resources. For the reasons stated above, the continuing nature of the requirements of Sections 5 and 5a of the Act underscore that this use of the Commission's resources is appropriate. And, as discussed below, alternatives to this rule would require a far greater expenditure of Commission resources in enforcing these provisions of the Act. Moreover, the Commission believes that competing demands for its resources which are caused by its obligations to review the compliance of newly proposed contracts as well as to insure compliance of currently designated contracts may be resolved through other measures.[8]

In proposing Rule 5.2, the Commission noted that one alternative to the proposed rule would require contract markets which have no trading activity to demonstrate periodically continued compliance with the Act through the routine filing of appropriate materials pursuant to § 1.50 of the Commission Rules, 17 CFR 1.50. Thus, the Commission would be assured that whenever a dormant contract was again listed, it would be in compliance with the Act. For the reasons stated in the prior notice, the Commission continues to believe that this alternative approach would impose far greater costs on both the contract markets and on the Commission.

Nor will there be substantial delays in the resumption of trading dormant contracts. The rule provides that the Commission will approve within thirty days of its receipt, the bylaw, rule, regulation or resolution of the contract market to list additional trading months unless it determines within that time that further comment or information is needed. Moreover, the Commission has committed itself to expedite consideration of contract market submissions concerning dormant contracts. Accordingly, with cooperation from the contract markets, any cost to society associated with undue delays can be minimized.

4. Other Considerations

As proposed, Rule 5.2 defined a dormant contract as any futures contract in which no trading occurred in any future listed for trading in any one calendar month which followed the earlier of the twelfth calendar month subsequent to initial trading or the eighteenth calendar month after designation. In connection with this definition, several commentators questioned the appropriateness of the one-month of no trading activity criterion.

Commentators believes that one month was too short a time period on which to base a decision to discontinue the listing of additional trading months. When no trading activity has occurred for one month, however, the likelihood of resumed trading in the contract in the short term is remote. The Commission recognizes, however, that at times there may be exceptions to this. In certain instances it is possible that a lack of trading interest in a particular contract may be due to technical deficiencies. to the extent possible, the Commission desires to give boards of trade sufficient time to correct these deficiencies. In this respect, the Commission believes that a six month time period is more than sufficient for exchanges to determine whether to list additional months for trading. Further, a six-month period to establish a contract's dormancy is consistent with the low volume reporting period adopted in Rule 5.3.[9]

The Commission has also added a provision which enables a contract market to certify to the Commission that a contract is dormant. Without this provision, a contract market which has had any trading during a six month period, no matter how minimal, would not be dormant. The Commission has provided for this voluntary certification procedure in order to relieve contract markets of what might be perceived to

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[7] One such commentator misunderstood the nature of the requirement of Commission Rule 5.2, believing that it required approval "of each additional delivery month listed for trading in contracts which are 'dormant'." This rule as proposed, and as adopted, only requires contract markets to obtain Commission approval at the time trading in a dormant contract is resumed. That is not to say, however, the Rule 5.2 supercedes or limits the obligation of contract markets to submit exchange rules or resolutions pursuant to Section 5a(12) of the Act, and Commission Rule 1.41, 17 CFR 1.41, thereunder.

[8] For example, in response to an increasing number of pending designation applications, the Commission in mid 1980 implemented steps to increase the rate at which applications could be considered with existing staff resources. In the first eighteen months since the new procedures were adopted, the Commission has acted upon a total of thirty applications for the designation of new contracts. In contrast, only twenty-nine such applications were acted upon previously, since the inception of the Commission in April of 1975.

In addition, on September 17, 1981, the Chairman of the Commission sent letters to contract markets and subsequently announced in the **Federal Register** (46 FR 47108 (September 24, 1981)) a new Commission policy concerning voluntary withdrawal of designation applications by contract markets which failed to respond to Commission requests for additional information concerning the submission within ninety-days. Five pending applications have been voluntarily withdrawn by exchanges since that time.

Finally, the Commission has proposed revisions to its current Guideline No. 1, to ameliorate the:

> Substanti•l Commission resources [required] for purposes of soliciting additional information from boards of trade and other sources, * * * [and the] concommitant delays in review.

45 FR 73504 (November 5, 1980). That proposal remains pending.

[9] In this connection, one commentator opined that the proposed one month period might result in hedgers being unable to roll-over their positions, as planned, into delivery months yet to be listed. After a contract has failed to trade for a six month period, however, it is unlikely that any hedger would expect to be able to roll-over positions into newly listed months.

be an additional burden—filing a low volume report even though the exchange has determined during the relevant low volume period not to list additional trading months in that contract.

The proposed rule provided that a contract could be considered dormant only after the first year of trading. Commentators suggested that this grace period was insufficient to determine the potential commercial viability of a contract. These commentators contended that the one year period would place an undue burden on exchanges in terms of rejustifying contracts and could discourage the successful introduction of new contracts. Although one year is generally a sufficient period to determine the success of a new contract, the Commission agrees that a longer period may be necessary in some cases before meaningful evidence of commercial use of the contract for hedging or for price basing is established. More importantly, with respect to the concern over the terms and conditions of dormant contracts, the Commission believes that cash market practices do not normally change significantly over the first several years following a review of a contract. In view of this, the Commission has modified the rule to provide an exemption period of three years following designation by the Commission during which no contract shall be considered to be dormant.

Under Commission Rule 5.2, before a dormant contract resumes trading, the contract market must demonstrate that it likely will serve an economic purpose and that the terms and conditions of the contract conform to the cash market. The Commission therefore has determined that previously dormant contracts which have been approved for resumed trading pursuant to Rule 5.2, should be treated similarly to newly designated contracts. Accordingly, Commission Rule 5.2, as adopted, provides that in no event shall a contract be considered as dormant during the first thirty-six (36) complete calendar months following Commission approval of resumed trading under the rule.[10]

On a related issue, one commentator suggested that upon amendment of terms and conditions of a contract—regardless of whether it is dormant or low volume—contract markets be granted an exemption period under Rules 5.2 and 5.3 similar to that provided for newly designated contract markets, because "* * * a change in contract market rules may alter the character of a contract to such an extent that it may be practically considered a new contract." The Commission has considered this comment and has determined not to amend the rule precisely as suggested because in the case of many exchange submissions pursuant to Section 5a(12) of the Act, the Commission may elect to review only the specific amendments submitted. In such cases, where the Commission has not conducted a general review of the contract, the Commission does not believe that it would be appropriate to renew the exemption period. However, in other cases, such as an extensively revised contract, or in connection with an extensive submission pursuant to Commission Rule 1.50,[11] the level of review concerning all substantive aspects of the contract terms and conditions may, in fact, be equivalent to that afforded a new designation application or to that afforded a dormant contract approved for resumed trading. In those instances, renewal of the exemption period would be appropriate. Accordingly, as adopted, Rule 5.2 provides that, at its discretion, the Commission may renew the exemption period for any contract for thirty-six months following a general review of the contract for compliance with Sections 5 and 5a of the Act.

II. Low Volume Contracts

With respect to Commission Rule 5.3, one commentator approved of the Commission's general concerns and proposed solution, noting that it

> applaud[ed] the Commission's decision to propose these less burdensome reporting requirements rather than implementing a policy of making routine requests for information as to low volume contracts under Commission rule § 1.50. We also appreciate that while the Commission has stated its doubts as to the economic purpose served by low volume contracts, rule §5.3 would permit the existence (or lack) of economic purpose to be demonstrated by data reflecting the actual experience and usage of the market.

Other comments relating to Commission Rule 5.3, however, generally suggested that the Commission had misconstrued the Section 5(g) "public interest" requirement for designation and questioned whether the Commission had adequately considered the cost to the exchanges of compliance with the rule.

1. Need for Commission Rule 5.3

Several commentators opined that Commission Rule 5.3 was based upon the Commission's misreading of the appropriate Section 5(g) and Commission Guideline 1 criteria. These comments questioned whether a reporting requirement was needed as long as there was any trading in a specified contract. Any trading, no matter how minimal, they contended, demonstrated that the contract served an economic purpose and was therefore in compliance with the Act. Others opined that the potential to serve a hedging or price basing function—even in the absence of such actual usage—was sufficient. Some of the comments suggested that by proposing special requirements on contracts which trade below a specified volume level, the Commission had made a determination that such contracts were deficient with respect to the economic requirements of Sections 5 and 5a of the Act. Finally, some commentators suggested that the Commission had not demonstrated that trade practice abuses are likely to occur in low volume markets, and that if these did exist, Rule 5.3 did not adequately address the problem.

The Commission disagrees. The experience of the Commission has demonstrated that exchanges do not routinely conduct the necessary surveys to determine whether low volume contracts continue to fulfill an economic purpose by serving a hedging or price basing function. Moreover, the fact that there is some trading in a contract does not establish that the contract is being used for more than occasional hedging or for price basing. As the Commission explained in its November 5, 1980, notice, the purpose of Commission Rule 5.3, in part, is to solicit the information necessary to provide some evidence

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[10] As originally proposed, Rule 5.2 provided for a period of up to approximately six months after designation for an exchange to initiate trading in a newly approved contract and commence the twelve month grace period discussed above. This initial six month period was intended to allow exchanges to take steps necessary to facilitate trading prior to listing. In view of the extended exemption period adopted, this distinction between the time of Commission designation and initial trading has been eliminated and all calculations in Rule 5.2 are based upon the date of Commission approval.

[11] Commission Rule 1.50 pertains to Commission requests for information demonstrating that a contract market is complying with "the conditions and requirements of Sections 5 and 5a of the Act." However, paragraph (a) of that rule provides that:

> [A]t the discretion of the Commission, the information requested may be limited to certain conditions and requirements of Sections 5 and 5a of the Act.

Accordingly, not every review of a contract pursuant to this rule will necessarily involve all aspects of Guideline 1.

Conversely, the Commission may also review all major aspects of a contract when amendments to only a single term are submitted for approval. Major contract terms are often interrelated and Commission Rule 1.41(b) provides that in submitting reviewable rules for Commission approval, contract markets set forth "any other information which may be beneficial to the Commission in analyzing the proposed reviewable rule.

whether the contract is, in fact, being used for hedging purposes.[12]

The Commission believes that while a contract is trading, objective evidence which demonstrates that the contract is being used for hedging is the most reliable means of determining a contract market's continuing compliance with the economic purpose requirement of the Act.[13] As the Commission noted, however, because it does not require small traders to report, evidence is often lacking of the participation in a low volume contract market of commercial users, who tend to be non-reporting, smaller traders. Thus, the reporting requirement of Commission Rule 5.3 concerning commercial participation may be necessary to ascertain whether commercial users are among those trading a particular low volume contract.

Several commentators pointed out that a relatively low level of trading volume in a futures contract may have much to do with factors outside of contract design. They opined that the required reports do not take into account such reasons. As some commentators pointed out, changing economic circumstances in the underlying cash market could greatly influence whether or not a contract realized its potential usefulness for purposes of hedging.

The Commission is aware of this possibility and, as discussed above in relation to Rule 5.2, considered the alternative of routinely requiring those contract markets that trade at a low volume to demonstrate continued compliance with Sections 5 and 5a of the Act under Commission Rule 1.50, which could require a full description of current economic circumstances, rather than the mere documentation of current commercial usage of the market. However, the Commission does not believe that such a burdensome requirement is necessary since in many instances summary data concerning the nature of trading activity and commercial participation may indicate whether the contract is being used on more than an occasional basis for hedging.[14]

In this regard, the Commission does not agree with those commentators who suggested that the reporting requirements of rule 5.3 imply that it has in some manner passed judgment on the commercial utility or the efficacy of contract terms of those contract markets which trade at a relatively low volume. Instead, the Commission has noted the potential for noncompliance by low volume contract markets with certain requirements of Sections 5 and 5a of the Act, and the absence of information which is readily available through existing sources which may address these concerns. Accordingly, adoption of Rule 5.3 simply represents the institution of a reporting requirement to fill this void, and in no way implies that the Commission has prejudged the compliance of those contract markets.

Commentators also objected to Commission Rule 5.3 on the grounds that the Commission has not sufficiently established that a particular problem exists with respect to trade practices in low volume contract markets or that this method of addressing that problem is cost-effective. For example, one commentator stated that requiring reports of volume and open contract positions will not help monitor trade practices. Others maintained that the self-interest of exchanges in promoting a positive image would insure that adequate surveillance is undertaken by the exchange without the necessity of a Commission rule.

Cases brought by the Commission, however, have involved low volume markets where the lack of competition in those markets has enhanced the potential for trade practice abuses to occur. For example, the Commission has entered into an agreement with one exchange, the New York Mercantile Exchange, in settlement of a compplaint by the Commission alleging failure of the exchange to enforce its rules and to conduct adequate surveillance of low volume contract markets in 400 ounce gold and in silver coins.[15]

The reporting requirement of Rule 5.3 is not intended to remedy directly the trade practice abuses which may occur in low volume markets. To the contrary, information required by the rule is intended to aid the Commission in identifying potential trade practice problems, if any, and to inform the Commission of the self-regulatory steps the exchange will take to insure that the enhanced opportunity for trade practice abuses in a low volume market will be addressed. The Commission believes that Rule 5.3 will be an effective means to aid it and the exchanges in improving the surveillance and policing of low volume contract markets.

2. Associated Costs

Several commentators suggested that certain technical amendments to the Commission's rule would alleviate unnecessary burdens associated with it. These commentators suggested that the volume level which triggers the reporting requirement, and its open-ended nature, may impose an unwarranted burden on certain contract markets. As the Commission has noted, some contract markets habitually may trade at low levels yet raise none of the issues associated with other low volume markets. Accordingly, after further consideration, the Commission has determined to modify the rule as proposed by providing a procedure whereby a contract market which has become low volume may petition the

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[12] The Commission noted in its **Federal Register** Notice of November 5, 1980, that futures prices on low volume contract markets "may not fulfill a significant price basing function because they are not generally disseminated or are disseminated on an infrequent basis." 45 FR 73502. One commentator took exception, noting that it disseminated price information for all of its contracts. However, even when an exchange does disseminate prices for low volume contracts, price dissemination, without more, is not indicative that the contract is used for price basing. To demonstrate that a low volume contract is fulfilling this function, an exchange would have to provide evidence that commercials were using the price information generated by futures trading in pricing their commodities.

This information, however, is not required to be submitted under the rule. The Commission did not require that such information be submitted in light of the intended summary nature of the information generated under the rule. Nevertheless, the Commission believes that such information appropriately could be submitted as evidence which justifies the granting by the Commission of a petition to exempt the contract market from future reporting under Rule 5.3(c).

[13] As adopted, Rule 5.3 permits the contract market to submit statistics compiled by the Commission or by any other reliable source, or to conduct its own survey to identify use of the contract by hedgers.

[14] Where the statistical evidence generated by Commission Rule 5.3 reports fails to establish such hedging use, the Commission may determine that a more complete justification under Commission Rule 1.50 is warranted. One commentator, however, disagreed with the Commission's belief that the approach proposed under Rule 5.3 was preferable to routine calls for information pursuant to Commission Rule 1.50. Among other things, this commentator noted that Rule 1.50 allows the Commission to limit its request to specified information. However, as noted above, another exchange specifically approved of "these less burdensome reporting requirements * * *."

[15] *See e.g., In re New York Mercantile Exchange,* C.F.T.C. Docket No. 81–23. *See also, In the Matter of Stephen M. Sundheimer,* 2 Comm. Fut. L. Rep. ¶21, 245 (September 10, 1981), *appeal pending* No. 81–4186 (2d Cir.); and *In the Matter of Alfred Perlmutter,* Docket No. 79–33, Opinion and Order Accepting Offer of Settlement, (C.F.T.C. Dec. 3, 1979) (prearranged trading in the crude oil futures contract of the Petroleum Associates of the New York Cotton Exchange).

In addition, in connection with cases for criminal tax fraud or other violations, courts have noted the occurrence of trade practice abuses in the crude oil futures contract of the Petroleum Associates of the New York Cotton Exchange and in the Mexican Peso contract traded on the International Monetary Market of the Chicago Mercantile Exchange. *Cf. United States v. Turkish, et al.,* 623 F. 2d 769 (2d Cir. 1980) *cert. denied* —— *U.S.* ——, *101 S. Ct. 856 (1981) (crude oil contract); and United States* v. *Winograd,* 565 F. 2d 279 (7th Cir. 1981), *cert. denied sub nom, Siegel* v. *United States,* —— U.S. ——, 102 S. Ct. 1612 (1982) (Mexican Peso contract).

Commission for an exemption from future reporting at the time it files a report pursuant to Rule 5.3. The Commission may grant such a petition, in whole or in part, for such time as it determines, if the petitioner demonstrates that it reasonably can be expected that use of the contract for hedging or price basing will continue for the foreseeable future at then current levels, and that adequate surveillance procedures have been established.

Commentators suggested that the uniform reporting level for all contract markets imposed an unnecessary burden because some commodities may be expected to trade at a lower level than others. In proposing the rule, the Commission had studied data which indicated that a reporting level based upon approximately 4,000 contracts per month would not be unduly burdensome on contract markets in view of the purposes of this rule. Nevertheless, the Commission has reconsidered the issue of what level is most appropriate to trigger the low volume reporting level. Upon further study, and in light of the comments submitted, the Commission believes that a reporting level based upon a volume of 1,000 contracts a month is appropriate at this time.

This determination is based upon an examination of data from the Commission's large trader reporting system for sample periods from the past six years concerning reported hedging positions in contracts which were trading at various minimum volumes. This data indicated that for contracts trading at a reporting level based upon 1,000 contracts a month, the Commission's large trader reporting system is most clearly deficient in terms of ascertaining actual commercial use of the markets. However, the Commission notes that based upon its review of the information received under this rule, it may propose amendments to the level in the future. In light of the lower reporting level which is being adopted, the Commission believes that no differentiation in the levels between commodities is necessary. Of course, individual contract markets which fall below the level as adopted and believe that the level is unreasonably high in that particular instance, may petition the Commission, as discussed above, to waive the reporting requirement.

With respect to the specific evidence which must be reported under Commission Rule 5.3 demonstrating use of the contract by commercials for hedging, the Commission has determined to modify Rule 5.3 as proposed, to provide that the contract market may submit statistical data gathered from a wider number of possible sources. As proposed, Rule 5.3 required contract markets to fully enumerate commercial interests using the contract on selected dates or to submit statistics concerning the positions of reportable traders from the Commission's Commitments of Traders Booklet. However, upon further consideration, the Commission believes that data demonstrating that a contract is used for hedging or pricing on more than an occasional basis may be available from additional sources or by means other than those provided for in the proposed rule. For instance, a contract market may be able to demonstrate substantive commercial hedging by reference to owners of larger positions, rather than to the total population of commercial accounts. Accordingly, the Commission has amended Rule 5.3 to permit contract markets to submit any statistical evidence gathered from a compilation similar to the Commission's Commitments of Large Traders Booklet or other pertinent information which tends to demonstrate the use of the contract by commercial interests for hedging.

One commentator questioned the requirement that reports identifying commercial participants be for three month-end business days. The Commission believed that the statistical information requested would be most readily available from futures commission merchants, or others, at month-end. However, under the rule as adopted, if reporting contract markets would prefer to use some other days on which to base the report they may do so, providing the days selected are at intervals of approximately one month and fall within the last four months of the low volume period for which reports are being filed.

3. Other Considerations

As with the proposed rule on dormant contracts, several commentators suggested that the one year grace period provided by the rule before a contract could be classified as inactive was insufficient to provide conclusive data concerning its ultimate commercial usage. Accordingly, these commentators contended that such data would not be meaningful. The Commission has amended the proposed rule to provide that no low volume contract market shall be required to file reports for a three year period following designation by the Commission. As with dormant contracts, the Commission believes that a longer period may be necessary in some cases before meaningful experience concerning commercial usage can be established.

In addition, as with Rule 5.2 for dormant contracts, the Commission has also modified the exemption period in proposed Rule 5.3 to provide that no contract shall be required to file low volume reports during the first thirty-six months following Commission approval of the listing of additional trading months pursuant to the dormant contract rule, Rule 5.2, or in the Commission's discretion, for thirty-six months following review of the economic purpose and the terms and conditions of the contract. As noted above, resumption of trading under Rule 5.2, requires that a dormant contract will likely serve an economic purpose.[16]

III. Section 15 Considerations

Finally, one commentator objected that Commission Rules 5.2 and 5.3 had an anticompetitive effect and thereby violated Section 15 of the Act because they did not provide for a reduced reporting requirement on the smaller exchanges. This commentator opined that other, smaller exchanges would be unable to foster the development of new contracts or to resume trading in dormant contracts as readily as would larger exchanges.

The Commission recognizes that smaller exchanges may have available to them fewer resources for development of new contracts. Although exchanges may have differing levels of available resources, all must meet certain self-regulatory responsibilities. The Act requires that all contract markets must serve an economic purpose and that their terms remain in conformity with the cash markets. Thus, in adopting these rules, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the

[16] Under the exemption provision of Commission Rule 5.3(c) newly designated contract markets as well as dormant contracts which have been approved for trading and contracts granted an exemption following Commission review of the contract are not required to file low volume trading reports for a period of thirty-six months. The Commission thereby intends to provide a period during which new contracts have an opportunity to build trading volume free from the low volume reporting requirement. Accordingly, under the exemption, contract markets which are "low volume" at the expiration of the exemption period must file a low volume report for only that low volume trading period which immediately preceded the expiration of the reporting exemption. Similarly, the obligation of a contract market under Commission Rule 5.2 to obtain Commission approval before listing additional trading months begins at the expiration of the exemption period; if, at that time, the contract market is "dormant" as defined in the rule.

objectives of the Act. *See,* Section 15 of the Act, 7 U.S.C. 19 (1976).[17]

List of Subjects in 17 CFR Part 5

Contract markets, Dormant contract markets, Low volume contract markets, Low volume periods, Reporting requirement, Trading month.

Accordingly, pursuant to the authority in Sections 5, 5a, 6 and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7, 7a, 8 and 12a(5) (1976 and Supp. IV 1980), the Commission is adopting new §§ 5.2 and 5.3 and is adding Part 5 to its regulations as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

Sec.
5.2 Dormant contract.
5.3 Low volume contract.

Authority: Secs. 5, 5a, 6 and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7, 7a, 8 and 12a(5) (1976 and Supp. IV 1980).

§ 5.2 Dormant Contracts.

(a) *Defintions.* For the purpose of this section the term "dormant contract" means any commodity futures contract; (1) in which no trading has occurred in any future listed for trading for a period of six complete calendar months; or (2) which has been certified by a contract market to the Commission to be a dormant contract.

(b) *Listing of Additional Trading Months.* Once a futures contract becomes a "dormant contract," no contract market may list or permit trading to recommence in such a dormant contract for additional trading months until such time as the Commission approves, pursuant to Section 5a(12) of the Act and § 1.41(b) of these regulations, the bylaw, rule, regulation or resolution of the contract market submitted to the Commission pursuant to paragraph (c) of this section.

(c) *Bylaw, rule, regulation or resolution to list additional trading months:* (1) Any bylaw, rule, regulation or resolution of a contract market to list additional trading months in a dormant contract or to otherwise recommence trading in such a contract shall be submitted to the Commission under Section 5a(12) of the Act and § 1.41(b) of these regulations. The Commission shall approve such bylaw, rule, regulation or resolution, within thirty days of receipt, unless the Commission: (i) advises the contract market that specified information is required to complete its review; or (ii) notifies the contract market that the Commission's review may take longer than thirty days; or (iii) determines that the bylaw, rule, regulation or resolution is one of major economic significance pursuant to Section 5a(12) of the Act and publishes it for comment in the Federal Register.

(2) Each submission shall include the information required to be submitted pursuant to § 1.41(b) of these regulations, and also shall:

(i) Clearly designate the submission as filed pursuant to Commission Rule 5.2.

(ii) Contain an economic justification for the listing of additional months in the dormant contract, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions which are now being proposed by the contract market would make it reasonable to expect that the contract will be used on more than an occasional basis for hedging or price basing.

(d) *Exemptions.* No contract shall be considered dormant until the end of thirty-six (36) complete calendar months: (1) following designation; or (2) following notice to the contract market that the Commission has reviewed the economic purpose and the terms and conditions of the contract and has determined in its discretion to permit this exemption; or (3) following Commision approval of the contract market bylaw, rule, regulation, or resolution submitted pursuant to paragraph (c) of this section.

§ 5.3 Low volume contracts.

(a) *Definitions.* For purposes of this section:

(1) The term "low volume contract" means any commodity futures contract in which the trading volume in all futures listed for trading falls below 1,000 contracts per calendar month during at least four of any six consecutive calendar months.

(2) The term "low volume trading period" means any period of six consecutive calendar months during which time the monthly contract volume in all futures listed for trading falls below 1,000 contracts during at least four of such calendar months. Unless otherwise provided by the Commission, by notice to the contract market, the "low volume trading period" shall not include any of the calendar months within a prior low volume trading period. The initial low volume period for existing contracts will begin to be calculated on [90 days after publication].

(b) *Submission of report on low volume contract to the Commission.* For every low volume contract, a contract market shall file with the Commission within the time specified in subsection (d) of this regulation, a report which includes the following:

(1) For the last three consecutive months during the low volume trading period, the proportion of trading during the low-volume trading period which represents the trading of floor brokers and traders as follows:

(i) Trading for their own account or accounts which they control.

(ii) Trading for their clearing members' house accounts.

(iii) Trading for any other type of account.

(2) For each of the last three month-end business days during the low volume period or any other three days during the last four months of the low volume period which are at intervals of approximately one month: (i) the identification of commercial participants holding open positions, a description of the commodity commitment or other price risk, if any, those participants are hedging, and a listing of each such participant's positions in individual futures on those dates; or (ii) other relevant statistical evidence which demonstrates that the contract is being used by commercial participants for hedging.

(3) A brief statement explaining additional surveillance procedures, if any, which the contract market has instituted to monitor trade practices in the low volume contract. One copy of this report shall be furnished to the Commission at its Washington, D.C. headquarters.

(c) *Exemptions from reporting requirement.* (1) Reports under paragraph (b) of this section shall not be required until the end of thirty-six (36) complete calendar months: (i) following designation; (ii) following notice to the contract market that the Commission

[17] The Commission further finds that because Rules 5.2 and 5.3 were proposed prior to the effective date of the Regulatory Flexibility Act, Pub. L. 96-354, 948 Stat. 1164 *et seq.*, the provisions of that Act are not applicable to this rulemaking proceeding. Nevertheless, it is clear that even if the Regulatory Flexibility Act were applicable, these rules would not have an impact on "small entities" under the Commission's definition of that term. *See,* 47 FR 18618 (April 30, 1982).

has reviewed the economic purpose and the terms and conditions of the contract and has determined in its discretion to permit this exemption; or (iii) following Commission approval of a contract market bylaw, rule, regulation or resolution submitted pursuant to paragraph (c) of § 5.2 of these regulations.

(2) Reports under paragraph (b) of this section shall not be required in whole or in part, for a period and/or level to be determined by the Commission in its discretion, upon a showing that past reports demonstrate that commercial participation is sufficient to establish that the contract market continues to serve an economic purpose, that commercial participation is expected to remain at the levels indicated in the prior reports, and that surveillance methods are in place to adequately monitor the market. Petitions to the Commission for such an exemption must be filed as part of a report required under paragraph (b) of this section.

(3) A report required under paragraph (b) of this section shall not be required if during a low volume period a contract is dormant as defined in § 5.2(a) of these regulations.

(d) *Time for Filing.* Contract markets are required to file reports required under paragraph (b) within 30 days of the end of the relevant low volume trading period. Unless provided otherwise by notice to the contract market, subsequent low volume trading periods will begin immediately following the end of a previous low volume trading period.

Issued in Washington, D.C., on June 30, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-18357 Filed 7-6-82; 8:45 am]

BILLING CODE 6351-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5314/T91; PH-FRL 2148-1]

Tolerances for Pesticides in Food; Metalaxyl

Correction

In FR Doc. 82-16206, appearing at page 25950 in the issue of Wednesday, June 16, 1982, in column one on page 25951, the fifth line from the top should read, "humans is 0.00625 mg/kg/day.

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-82-993]

Minimum Property Standards; Provisions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises 24 CFR Part 200 to delete the Appendix to Part 200, Subpart S, because the references to the Material Standards, Accepted Engineering Practice Standards, Use of Materials Bulletins, and Special Tests and Miscellaneous Standards contained in the Appendix are frequently revised and are difficult to keep up-to-date in regulatory form as part of the CFR.

EFFECTIVE DATE: August 11, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Atwell, Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 6170, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6590. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Documents on construction materials, products, and methods such as those presently referenced in the Appendix to Part 200, Subpart S are frequently revised and updated. It is difficult to maintain in rule form a current listing of these documents under Part 200, Subpart S. Therefore, HUD is deleting the Appendix. However, the references listed in the Appendix are incorporated by reference as indicated in the section entitled "Material Approved for Incorporation by Reference", which appears at the end of the CFR volume containing 24 CFR, Chapter II. This rule also amends 24 CFR 200.929(a) to delete any reference to the Appendix which is being deleted.

Pursuant to 1 CFR 51.13(c), each agency is required to submit annually to the **Federal Register**, 30 days before the revision date of its CFR title, a list of material to be incorporated by reference in the CFR and the date of its last revision. A list of Material Standards, Accepted Engineering Practice Standards, Use of Materials Bulletins, and Special Tests and Miscellaneous Standards was published in the **Federal Register** on March 31, 1982 and will continue to be published on an annual basis in general notice form. In addition, the list of Material Standards, Accepted Engineering Practice Standards, and Use of Materials Bulletins is available for public inspection, and copies of the list may be obtained from the Construction Standards Division at the above address in person or by mail.

The subject matter of this rulemaking action relates to loans and grants and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions dealing with such subject matter to public comment, either before or after effectiveness of the action, notwithstanding the statutory exemption.

The Secretary has determined that notice and prior public procedure are unnecessary and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible because the list of documents contained in the Appendix being deleted by the rule will be published annually in the **Federal Register** and the public will have easy access to the list during the remainder of the year.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item C) 1. (H-11-81) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards.

Accordingly, Title 24 Part 200 is amended by (1) removing the Appendix to Subpart S and (2) amending paragraph (a) of 24 CFR 200.929 to read as follows:

§ 200.929 Description and identification of minimum property standards.

(a) *Description.* The Minimum Property Standards describe physical standards for housing. They are intended to provide a sound basis for determining the acceptability of housing built under the HUD mortgage insurance and low-rent public housing programs. The Minimum Property Standards refer to material standards developed by industry and accepted by HUD. In addition, under Section 521 of the National Housing Act, HUD adopts its own technical suitability standards for materials and products for which there are no industry standards acceptable to HUD. These standards are contained in Use of Materials Bulletins that apply to products and methods and Materials Releases that apply to specific materials. Use of Materials Bulletins and Materials Releases are addenda to the Minimum Property Standards. Unless otherwise stated, the current edition, issue, or version of each of these documents, as available from its source, is applicable to this Subpart S. A list of the Use of Materials Bulletins, Materials Releases, and MPS Appendix listing the applicable referenced Standards may be obtained from the Construction Standards Division, Office of Manufactured Housing and Construction Standards, Room 6170 Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: June 29, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-18288 Filed 7-6-82; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 203, 204, 213, 220, 221, 234 and 235

[Docket No. R-82-795]

Mortgage Insurance; Elimination of Single Family Application Fee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This action finalizes the interim rule which eliminated the application fees being charged by the Department on single family applications for mortgage insurance. The elimination of commitment extension fees is also being finalized. In lieu of the Department collecting such application fees, these regulations permit the mortgagee to collect an appraisal fee and inspection fee, if required. The lender pays the fee personnel directly. Such changes enable the Deparatment to eliminate numerous application fee billing with a resultant substantial decrease in costs.

EFFECTIVE DATE: August 12, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-6720 (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 8, 1980, an interim rule was published at 45 FR 30602 which eliminated the collection of application and commitment extension fees and the payment of fee appraisers and inspectors. Previously, the Department charged the mortgagee an application fee to cover the cost of processing. When an application was received and a fee appraiser made the appraisal or a fee inspector made an inspection, if required, the Department paid these individuals directly for their services. By eliminating HUD's collection of an application fee and HUD's payments to the appraisers and inspectors and adopting a procedure whereby mortgagees make direct payment to the fee appraisers and inspectors on individual cases, HUD substantially reduced the number of application fee billings and payments to these fee personnel. Such a reduction in administrative requirements resulted in substantial cost savings to the Department.

To accommodate this procedure, the Department published an interim rule which:

1. Eliminated the payment of application and commitment extension fees by mortgagees for single family properties.

2. Permitted the mortgagee to collect appraisal and inspection fees, if required, from mortgagors.

3. Limited mortgagee collection of appraisal and inspection fees, credit report fees, etc., to the amount actually paid.

At the time the Department published the interim rule, it solicited public comment on the changes. None were received. However, it is necessary to make one editorial change to the Interim Rule as it appeared on May 8, 1980. On May 21, 1980, shortly after publication of the interim rule, the Department adopted a final rule which, among other things, deleted §§ 203.51 through 203.102. Therefore, the changes to § 203.100 effected by the May 8, 1980 Interim Rule no longer apply and reference to § 203.100 has been omitted from the present rule.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and

Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was listed as item B) 24. H-41-79 under the Office of Housing in the Department's Semiannual Agenda of Regulations, published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, affected by the regulation changes.

Section 203(b)=14.117 Mortgage Insurance—Homes (F); 14.118 Mortgage Insurance—Homes for Certified Veterans (F)
Section 213=14.126 Mortgage Insurance—Management Type Cooperative Projects (F)
Section 220=14.122 Mortgage Insurance—Homes in Urban Renewal Areas (F)
Section 221(d)(2)=14.120 Mortgage Insurance—Homes for Low and Moderate Income Families (F)
Section 222=14.166 Mortgage Insurance—Servicemen (F)
Section 234(c)=14.133 Mortgage Insurance—Purchase of Units in Condominiums (F)
Section 235=14.105 Interest Reduction—Homes for Lower Income Families (C,F)
Section 240=14.130 Mortgage Insurance—Purchase by Homeowners of the Fee Simple Title by Lessors (F)
Section 244=14.161 Single Family Mortgage Coinsurance (F)
Section 245(a) and 245(b)=14.159 Section 245 Graduated Payment Mortgage Program (F)
Section 809=14.167 Mortgage Insurance—Armed Services Housing—Impacted Areas (F)

List of Subjects

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the interim amendment to 24 CFR Parts 203, 204, 213, 220, 221, 234 and 235 published May 8, 1980 (45 FR 30602), is hereby adopted as final, as amended by removal of § 203.100 on May 21, 1980 (45 FR 33964 at 33967).

(Sec. 211 of the National Housing Act (12 U.S.C. 1709, 1715))

Dated: June 29, 1982.

Philip Abrams,

General Deputy Assistant Secretary—Deputy Federal Housing Commissioner.

[FR Doc. 82-18366 Filed 7-6-82; 8:45 am]

BILLING CODE 4210-27-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Simplified Proceedings

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Amendment of rules for simplified proceedings.

SUMMARY: On October 23, 1981, the Occupational Safety and Health Review Commission ("Review Commission") requested public comments on its rules for simplified proceedings. 46 FR 51933-51935 (Oct. 23, 1981). These rules are codified at 29 CFR 2200.200-2200.211. Based upon its experience with the rules for simplified proceedings and comments submitted by interested parties, the Review Commission now amends these rules to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may save time and expense while preserving fundamental procedural fairness.

DATE: The amendments to the rules for simplified proceedings shall become effective on August 6, 1982.

FOR FURTHER INFORMATION CONTACT: E. Ross Buckley, General Counsel, 1825 K Street, NW., Washington, D.C. 20006; telephone (202) 634-4015.

SUPPLEMENTARY INFORMATION: The Review Commission requested comments from interested parties on the overall effectiveness of the simplified proceedings rules in terms of time saved, costs avoided and ease in trying cases. Comments were also requested on certain provisions of the rules. Written comments were received from a number of interested persons and organizations including corporations, attorneys in private practice, and the Solicitor of the Department of Labor. Based upon its experience in applying the rules and a largely favorable response from the comments received, the Commission adopted its interim simplified proceedings rules as final rules in order to insure that permanent rules on simplified proceedings were in place before the interim rules expired on December 31, 1981. (46 FR 63041-63042 Dec. 30, 1981). However, the Commission noted at that time that it was considering some amendment to the rules in light of the public comments. The Commission now adopts such amendments. The comments received and the amendments adopted are discussed in the following summary:

Section 2201.201—Application (Amended)

Section 2200.201 is amended by the addition of a new clause, labeled (d). This clause is added to conform with a new provision at § 2200.204, entitled, "Discontinuance of simplified proceedings." Under § 2201.201(d), once simplified proceedings have been instituted, the rules governing such proceedings will be applied when "simplified proceedings are not discontinued pursuant to § 2200.204."

Section 2200.202—Eligibility for Simplified Proceedings

Section 2200.202 is not amended. Section 2200.202 provides that a case is eligible for simplified proceedings unless it concerns an alleged violation of section 5(a)(1) of the Occupational Safety and Health Act of 1970 or an alleged failure to comply with one of the standards listed in table A of § 2200.202. The Review Commission requested comments on whether § 2200.202 should be amended so that cases involving violation of section 5(a)(1) or the standards listed in table A would be eligible for simplified proceedings. The Review Commission also solicited comments on whether table A should be expanded to include standards other than those presently listed.

The comments addressing this issue generally opposed making cases involving § 5(a)(1) or the standards listed in table A eligible for simplified proceedings because of the difficulty inherent in litigating complex cases under the rules for simplified proceedings. One comment stated that