Brunswick, GA—Glynco Jetport, RNAV Rwy 25, Amdt. 2
Waycross, GA—Waycross-Ware County, RNAV Rwy 18, Amdt. 2
Valparaiso, IN—Porter County Muni, RNAV Rwy 9, Amdt. 1
Charleston, SC—Charleston Executive, RNAV Rwy 9, Amdt. 2
Moab, UT—Canyonlands Field, RNAV Rwy 15, Orig., Cancelled

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on October 14, 1983.

Kenneth S. Hunt,

Director of Flight Operations.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting final regulations to govern the submission of contract market rules pursuant to section 5a(12) of the Commodity Exchange Act ("Act"). These regulations modify interim procedures currently in effect and further implement the rule review procedures mandated by the Futures Trading Act of 1982. Specifically, the Commission is revising its regulations to define "terms and conditions" and thereby specify which rules of a contract market must be submitted to the Commission for its approval. Through this definition, the Commission also is expanding in a limited manner the number and types of rules which will be exempt from the prior approval requirement of section 5a(12) of the Act. Additionally, in order to further expedite the process of reviewing rules for approval, the Commission is adopting a regulation which delegates to certain staff the authority to approve certain types of rules that relate to terms and conditions. The Commission is also adopting special procedures to govern the review of changes in the composition of certain stock index contracts. Finally, the Commission is adopting certain conforming amendments so that its regulations will better correspond to the language of section 5a(12) as amended and is clarifying the nature of the information which must be provided by contract markets when submitting proposed rules for Commission review under section 5a(12).

EFFECTIVE DATE: November 23, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, or Karen Matteson, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

Prior to the enactment of the Futures Trading Act of 1982 ("1982 amendments"),[1] section 5a(12) of the Commodity Exchange Act (7 U.S.C. 7a(12)) specified that each contract market had to submit to the Commission for its approval all bylaws, rules, regulations, or resolutions, made or issued by the contract market, its governing board or any of its committees, if those rules related to "terms and conditions" or if they related to "other trading requirements" (other than the setting of actual levels of futures margin). Thus, Commission regulation 1.41, which implemented the rule review and approval processes specified in section 5a(12), then provided that only those "rules" of a contract market [2] which related to terms and conditions or to other trading requirements were "reviewable rules" subject to the prior approval requirements of section 5a(12) and § 1.41(b). Of these "reviewable rules," § 141(c) defined a further subgroup of rules which were deemed to be "operational or administrative in nature" (*e.g.*, contract market rules governing such matters as membership fees and hours of trading) and were allowed to go into effect ten days after their submission to the Commission unless the Commission notified the contract market within that ten-day period that the rule in question appeared to necessitate Commission review. 17 CFR 1.41(c), (d) (1982).[3]

The 1982 amendments significantly modified the contract market rule review procedures under section 5a(12) of the Act.[4] Specifically, the 1982 amendments revised section 5a(12) to provide that only those rules which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of a contract market must be submitted to the Commission for its prior approval. While *all* other rules of a contract market (other than those relating to the setting of levels of futures margin and those specifically exempted by Commission regulation 1.41(d)) must also be submitted to the Commission,[5] these latter rules may be made effective ten days after their receipt by the Commission unless the contract market requests Commission review or, within the ten-day period, the Commission notifies the contract market that it intends to review those rules for approval.

The Commission therefore adopted interim rules to govern the submission of contract market rules immediately following the enactment of amendments to section 5a(12) of the Act.[6] Those rules were adopted on an emergency basis in order to assure that the Commission's rule review procedures immediately would be consistent with both the public interest and the revisions to section 5a(12), and to assure that there would be no confusion, prior to the adoption of the final rules, which could delay the processing of proposed contract market

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[1] Pub. L. No. 97-444, 96 Stat. 2294 (January 11, 1983).

[2] Commission regulation 1.41(a)(1) defines the term "rule" of a contract market to mean: any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

[3] Rules which did not constitute either "terms and conditions" or "other trading requirements"—and thus, were not "reviewable rules"—nonetheless remained subject to the requirements of section 5a(1) of the Act (7 U.S.C. 7a(1)).

[4] Pub. L. No. 97-444, § 216(2), 96 Stat. 2306-07 (codified at 7 U.S.C. 7a(12) (1982)).

[5] This includes those rules which previously were reviewable under section 5a(12) as trading requirements as well as those rules which previously were *not* reviewable, but subject only to section 5a(1) notice requirements.

[6] 48 FR 4256 (January 28, 1983).

rule changes. Inasmuch as the interim rules were intended to be superseded by final regulations, the Commission requested public comment in order to assist it in developing appropriate rule review procedures. Four contract markets submitted comments in response to that request. The rules and rule amendments which the Commission is now adopting (and, in appropriate cases, readopting) reflect the Commission's careful consideration of those comments as well as its experience in the administration of the interim rule review procedures and the amended requirements of section 5a(12) of the Act.

II. Final Amendments

A. Definition of "terms and conditions"—§ 1.41(a)(2)

As noted above, the 1982 amendments to section 5a(12) specify that only those rules which relate to "terms and conditions" in contracts of sale must be submitted to the Commission for its prior approval. Since this phrase had not previously been defined, the Commission adopted an interim definition which it believed was not only reasonably descriptive of that phrase and implemented the legislative intent of the 1982 amendments, but also ensured that the Commission would be able effectively to carry out its oversight role in the area of contract market rule review.[7] The commenters, however, criticized that definition as being overly broad and suggested that many of the items contained in the Commission's interim rule (§1.41(a)(2) (i)–(viii)) could be deleted. In essence, the commenters asserted that the Commission's definition of "terms and conditions" included matters which could more accurately be characterized as "trading requirements," which do not necessarily require the Commission's prior approval, and were more properly subject to the more limited requirements of § 1.41(c); that the phrase "terms of trade" in § 1.41(a)(2) was unclear; and that the inclusion of exchange rules relating to the "payment or collection of commodity option premiums or margins" was inconsistent with the exclusion for rules relating to the setting of levels of margins contained in section 5a(12) of the Act.

The Commission has considered each of these comments, but continues to believe that the definition in §1.41(a)(2) reflects criteria which are reasonably descriptive of "terms and conditions" as that term is used in the Act. At the same time, the Commission believes that this definition effectively implements the legislative intent of the 1982 Act by reducing both the number and types of rules which will require prior Commission approval.[8] Contrary to the suggestion made by the commenters, rules that prior to the 1982 amendments would have been characterized as "trading requirements" (and thus, would have required the Commission's approval prior to their implementation) have not been classified by the Commission as "terms and conditions." In fact, the preponderance of these section 5a(12) submissions are now deemed by the Act to be "other rules" subject to the more limited ten-day review period under § 1.41(c), thereby eliminating one of the principal sources of delay that was formerly inherent in the rule approval process.

Nevertheless, the Commission believes that the appropriate scope of the definition of "terms and conditions" is not restricted to the items expressly included by the exchanges in their particular contracts when those contracts are first submitted to the Commission. Rather, the Commission believes that it must exercise its authority to define "terms and conditions" by the use of criteria which will allow the Commission to exercise its statutory responsibilities. The position advanced by the commenters, however, would essentially limit the prior approval provisions of section 5a(12) and § 1.41(b) to those matters which were expressly subsumed within an exchange's initial submission and would exclude subsequent rule changes, no matter how closely related to the initial terms and conditions of a contract. "Terms and conditions" includes, however, any matters which relate to the contract and which could have been considered as part of the initial designation. The Commission is, therefore, retaining the definition of "terms and conditions" currently set forth in §1.41(a)(2) with two exceptions. This determination reflects the Commission's conclusion that each of the matters enumerated in § 1.41(a)(2) are of such importance to the integrity of designated contracts traded on the contract markets and the protection of market participants that they will require review and approval prior to their implementation. The Commission agrees, however, with those commenters who suggested that the phrase "terms of trade" contained in §1.41(a)(2) may not delineate with sufficient clarity the matters the Commission would expect to review and approve under section 5a(12) and § 1.41(b); that phrase has therefore been deleted from the final rule. In addition, the Commission has clarified the scope of §1.41(a)(2)(ii) by explicitly including trading months, hours and the listing of contracts, rather than trading months "and other requirements relating to" the listing of contracts.

Finally, the Commission notes that it is retaining the phrase "payment or collection of commodity option premiums or margins" within the definition of "terms and conditions." As the Commission has previously had occasion to explain, section 5a(12) of the Act restricts only the Commission's authority to review and approve contract market rules relating to the setting of levels of margin for *futures* transactions,[9] while section 4c(c) of the Act (7 U.S.C. 6c(c)) grants the Commission plenary authority to review rules relating to the payment or collection of commodity option premiums or margins.[10] Thus, the Commission intends to continue to review rules which relate to such matters as the bases on which original margin for option grantors will be determined or the times within which margin payments must be made.

B. Delegation of Authority To Approve Certain Contract Market Rules—§ 1.41b

As previously noted, the Commission believes that § 1.41(a)(2) fairly defines the types of contract market rules that should be affirmatively reviewed for approval by the Commission during designation proceedings and thereafter. Nevertheless, that definition also unavoidably results in the inclusion of two classes of rules within the affirmative rule approval procedure of section 5a(12) of the Act and § 1.41(b) which do not relate to the integrity of the marketplace or require economic analysis:

(1) Non-material amendments to rules that relate to terms and conditions ("non-material amendments")—*i.e.*, rules that do not materially change the quantity, quality, or locational criteria previously approved by the Commission during designation proceedings (*e.g.*, minor changes in the deadline for Exchanges to notify buyers that sellers intend to deliver); and

(2) Routine material amendments to rules that relate to "terms and conditions" where such amendments are required or can be anticipated under the specific terms of a rule previously approved by the Commission ("anticipated, routine material

[7] *Id.* at 4257

[8] *See* S. Rep. No. 97-384, 97th Cong., 2d Sess. 31 (1982).

[9] 47 FR 56996, 57003 (December 22, 1982).

[10] *Id.*

amendments") such as the specification of delivery grades, growths or differentials, or the routine listing of trading months or the modification of trading hours.

These rules, by their nature, tend to be straightforward and are unlikely to raise significant legal or policy issues. The Commission therefore does not believe that the above-referenced classes of rules necessitate an inflexible adhesion to the procedures currently established for the affirmative rule review process. The Commission is, accordingly, modifying its regulations to facilitate implementation of these types of rules by the contract markets. Specifically, the Commission is delegating to the Directors of the Divisions of Trading and Markets and Economics and Education, to be exercised by either Director (or their designees), with the concurrence of the General Counsel, the authority to affirmatively approve certain non-material or anticipated, routine material amendments to "terms and conditions."

The Commission believes this approach is preferable to an approach which would limit the definition of "terms and conditions" since it preserves a consistent definition of that term while nonetheless facilitating the timely implementation of those contract market rules which would not significantly modify a contract's terms and conditions. Moreover, this approach permits the Commission's implementing rule to be drafted in general terms which can be further refined with experience and avoids the need to draft a specific, exclusive list of contract market rules which could qualify for this expedited treatment.[11]

C. Submission of Rules Requiring Prior Commission Approval (§ 1.41(b)) and All Other Rules Not Exempt From Review (§ 1.41(c))

All proposed contract market rules which relate to terms and conditions, as defined in regulation 1.41(a)(2), must be submitted for prior Commission approval pursuant to Commission regulation 1.41(b). In addition, a contract market may request Commission approval of other rules, which do not relate to terms and conditions, by submitting them pursuant to Commission regulation 1.41(b). All other rules which are not exempt from review under Commission regulations 1.41 (d) or (f) (exempt rules and temporary emergency rules, respectively) must be submitted pursuant to Commission regulation 1.41(c).

1. Form and Content Requirements

Regulations 1.41 (b) and (c) currently set forth certain requirements relating to the form and content of submissions made under section 5a(12) of the Act. For the reasons set forth below, the Commission has harmonized the procedures applicable to these two types of rule submissions and furthermore, has amended certain portions of the regulation in order to clarify what information must be submitted under the Commission's revised rule review procedures.

One commenter objected to retention of the requirement in § 1.41(b)(3) that each rule submission explain how the proposed rule "furthers the purposes of the Act." Specifically, this commenter asserted that the Commission's rule imposed a standard which is more stringent than that established by section 5a(12) of the Act, which states that the Commission shall approve rules of a contract market if those rules are not in violation of the Act or Commission regulations. Similarly, this commenter objected to the requirement that the contract market provide "any other information which may be beneficial to the Commission in analyzing the proposed rule" on the grounds that the Commission's staff, pursuant to its delegated authority under regulation 1.41a, could remit any submission which failed to provide the necessary information.

The Commission has carefully considered this comment in light of its experience with the section 5a(12) rule review process and its need to obtain information from the contract markets which will allow the Commission to review and approve—and where appropriate, disapprove—the contract markets' submissions as expeditiously as possible. The Commission has, therefore, modified § 1.41(b) to provide that a submission made by a contract market must explain the operation, purpose, and effect of the proposed rule. In each such submission, the contract market must, *as applicable*, describe the anticipated benefits (or potential anticompetitive effects) to market participants and others, how the rule fits into the contract market's scheme of self-regulation, and provide information which demonstrates that the rule is not inconsistent with the policies and purposes of the Act as well as any other information which may assist the Commission in its analysis of the proposed rule. The Commission wishes to emphasize that the contract markets are not required—nor are they expected—to provide rote recitations of each of the factors identified in the rule. Rather, the Commission expects that the contract markets will exercise their judgment as to which of those matters require some further explanation at the time of the rule submission. Of course, in those cases where the exchange submission does not sufficiently describe the proposed rule, the Commission (or its staff, acting pursuant to delegated authority) may remit the rule to the contract market and request a fuller explanation.

Interim regulation 1.41(c) required that the contract markets state the purpose of their proposed rules and describe any action taken or anticipated to be taken as a result of or pursuant to any such proposed rule. Two commenters objected that these requirements were too onerous and that the Commission was inappropriately establishing form and content requirements for the submission of "operational and administrative rules."[12] The Commission disagrees. Rules which are required to be submitted pursuant to regulation 1.41(c) include not only those rules of a contract market which are "operational and administrative" in nature, but all rules which are not "terms and conditions" of contracts (other than exempt or emergency rules). These "other" rules are, in many cases, of major importance to the contract market's scheme of self-regulation, the protection of customers and other market participants, and the delineation of members' rights and obligations. Indeed, disciplinary rules, trading requirements, and arbitration rules may all properly be submitted pursuant to § 1.41(c)

By specifying that a § 1.41(c) rule submission must explain the purpose of

[11] An exclusive list of non-material revisions to rules would be difficult to construct and would be likely to include only those rules which have been previously reviewed by the Commission's staff. Such a list might require frequent revision in that it would not include certain types of rule changes that should be granted expedited review but which could not have been anticipated by the Commission at this time.

[12] Prior to amendment of section 5a(12) by the Futures Trading Act of 1982, section 5a(12) required submission by contract markets of all rules: which relate to terms and conditions in contracts of sale * * * or relate to other trading requirements except those relating to the setting of levels of margin * * * The Commission may adopt a regulation exempting certain types of contract market operational and administrative rules from the requirement that they be submitted to the Commission for its approval.

Former regulation 1.41(c) enumerated the types of reviewable rules which the Commission considered "operational and administrative." New section 5a(12), however, distinguishes between rules which relate to terms and conditions and all other rules rather than distinguishing between rules relating to terms and conditions or other trading requirements and operational and administrative rules.

the rule and include other relevant information, the Commission hopes to ensure that its staff will be able to determine as expeditiously as possible whether it is necessary to recommend Commission review of the rule and to avoid taking review merely because of a lack of an adequate understanding of the proposed rule.[13] Indeed, without this information, the Commission has already found it necessary to review rules which might otherwise not have required review. Absent an explanation of their purpose, rules which otherwise could have become effective within ten days have been, and would otherwise continue to be, delayed pending analysis or receipt of explanatory material in response to the Commission's staff's questions. Moreover, the Commission notes that the form and content requirements now being adopted do not require elaborate explanation of minor rule amendments submitted under either rule 1.41 (b) or (c).[14]

One commenter objected to the requirement that rules submitted under interim regulation 1.41(c) which are subsequently determined by the Commission to require its approval must then be resubmitted in accordance with the form and content requirements of § 1.41(b). The Commission has determined to delete this provision from the final rule. Indeed, because § 1.41(c) submissions will now conform to the form and content requirements already established under § 1.41(b), contract markets will not have to resubmit rules which the Commission has determined to review pursuant to § 1.41(b). This change should save time and expense for both the contract markets and the Commission and reduce any unnecessary duplication of effort.

2. Delegation of Certain Rule Review Functions to the Director of the Division of Trading and Markets—§ 1.41a

Commission rule 1.41a currently provides for the delegation to the Director of the Division of Trading and Markets and to other authorized employees of the Commission of certain administrative functions related to the rule review process. That regulation is now being amended to provide that the Director of the Division of Economics and Education, as well as the Director of the Division of Trading and Markets, is authorized to exercise the administrative functions set forth in that regulation.

The Commission is making several other minor amendments to § 1.41a. Specifically, former § 1.41a (a) and (b), which permit the remittal of a rule submission to a contract market for failure to comply with the form and content requirements of § 1.41 (b) or (c), have been consolidated into one provision (§ 1.41a(a)(1)) because the form and content requirements for submissions made pursuant to § 1.41 (b) and (c) are now identical. Although some commenters suggested that remittal of submissions for failure to conform to the form and content requirements set forth in § 1.41(b) could result in unwarranted delay, other commenters noted that such remittals are entirely appropriate. The Commission continues to believe that the delegation of authority in § 1.41a(a)(1) is essential and further notes that the staff has exercised considerable restraint in exercising its authority under this provision. Rule submissions are only remitted pursuant to the delegation in circumstances where an exchange's submission is clearly deficient.

Interim rule 1.41a(c) authorized the Commission's staff to remit a rule submitted under § 1.41(c) for resubmission under § 1.41(b) if the staff determined that the rule submission in fact related to "terms and conditions" as defined in § 1.41(a)(2). Some of the commenters suggested that this delegation was inconsistent with the provisions of amended section 5a(12) of the Act which specify that the Commission may not delegate to its staff the authority to decide whether to review those rules—other than terms and conditions—which are submitted under the ten-day review provisions of section 5a(12) and § 1.41(c). The Commission believes, however, that this limited exercise of delegated authority not only does not violate, but is completely consistent with, that statutory limitation insofar as the exercise of such authority merely constitutes a determination of the proper characterization of a rule by reference to the definite of "terms and conditions" contained in § 1.41(a)(2). While such a determination will result in the Commission's review of a rule, the rule in question will be one which relates to "terms and conditions" and not to other matters for which the decision to undertake review is committed to the Commission alone. The Commission recognizes, however, that any potential ambiguity in the Commission's definition of "terms and conditions" would make more difficult the objective exercise of delegated authority. Although the Commission is readopting that rule in modified form as § 1.41a(a)(2), it is, as discussed earlier, also amending the definition of "terms and conditions" to eliminate certain potentially ambiguous terms that might not provide the objective criteria necessary to properly characterize certain rule submissions.

Because the form and content requirements for submissions made pursuant to §§ 1.41(b) and 1.41(c) have now been made identical, rules improperly submitted under § 1.41(c) will no longer need to be remitted to the exchange for resubmission pursuant to § 1.41(b). Thus, while the Commission's staff will continue to have delegated authority under § 1.41a(a)(2) to determine that a rule submitted under § 1.41(c) in fact relates to terms and conditions, the staff will now be able to simply notify the exchange of this determination and will not have to remit the submission. This procedure should allow more expeditious approval of rules submitted erroneously under § 1.41(c) than the Commission's former procedure.

The Commission also is readopting § 1.41a(a)(3) (interim rule 1.41a(d)), which authorizes the staff to determine that rules submitted under § 1.41(c) do not require prior Commission approval under section 5a(12) and § 1.41(b) and that such rules may therefore become effective prior to the expiration of the ten-day period following their receipt by the Commission. This provision has been used frequently by the Commission's staff since its adoption to expedite implementation by the exchanges of routine rule changes. None of the commenters objected to the retention of this provision, while one commenter expressly agreed with the Commission that this rule is consistent with the Congressional intention to streamline the rule review process.

D. Exempt Rules—§ 1.41(d)

The Commission is amending § 1.41(d) to expand the types of contract market rules that will be exempt from required submission under section 5a(12) of the Act. All of the commenters favored such

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[13] If the Commission lacks adequate information on which to base a decision to permit a rule to go into effect without prior approval, its only alternative if it is thus uncertain as to whether the rule may violate the Act or the Commission's regulations is to take review until any such uncertainties can be resolved.

[14] The Commission further notes that some contract markets have submitted minor rule changes which do not relate to terms and conditions under § 1.41(b) rather than under § 1.41(c). Unless a contract market desires Commission approval of such minor amendments, it may submit them pursuant to § 1.41(c) if it wants to ensure that they may be implemented as soon as possible. The Commission believes that the contract markets' unnecessary submission of such rule amendments pursuant to § 1.41(b) significantly undermines any arguments they may have made that the form and content requirements of § 1.41(c) are too onerous.

an expansion. Three of the commenters further suggested that the Commission incorporate all of the items that were formerly enumerated in the operational and administrative exemption, formerly contained in section 5a(12)[15] and § 1.41(c).[16]

These comments, however, misconceive the intended scope of the § 1.41(d) exemption. Congress did not intend that the exemption provided in amended section 5a(12) of the Act would now merely incorporate the prior "operational and administrative" exemption. On the contrary, Congress expected that most rules which previously would have been classified as "operational and administrative" would be covered by the ten-day review period of amended section 5a(12).[17]

The Commission further notes that the exemption provided in current section 5a(12) of the Act, as amended, is different in its operation and effect than the previous "operational and administrative" exemption. Although the "operational and administrative" exemption authorized the Commission to exempt certain rules from the requirement that they be submitted to the Commission for its *approval*, it did not eliminate the requirement that such rules be submitted to the Commission for *review* (and the possibility of subsequent approval or disapproval) under section 5a(12) of the Act. In contrast, section 5a(12) of the Act currently authorizes the Commission to exempt certain rules from *submission* under that section. In this regard, Congress intended that the only rules for which such an exemption would be provided, if at all, would be rules purely of a housekeeping nature that have no economic or market significance and do not affect the public at large.[18] Finally, the Commission emphasizes that notwithstanding the provisions of amended §1.41(d), all contract market rules remain subject to the informational filing requirements of section 5a(1) of the Act.

E. Stock Index Futures—§ 1.41(h)

The Commission has recognized that certain contract market rule proposals relating to the composition or valuation of stock indices underlying futures contracts (and options on such futures) may appropriately merit treatment which is different from that which is normally afforded contract market rule changes. In particular, the Commission has previously determined that proposed contact market rules which modify the composition, computation, or method of stock selection of the stock index underlying a futures or option contract may be approved upon receipt by the Commission of notice of those changes. 48 FR 12518 (March 25, 1983). Notwithstanding this general approach, the Commission delegated to its staff the authority to determine whether any particular change proposed by a contract market appeared to require review by the Commission. *See* former Commission regulation 1.41b.

These procedures have now been further refined in order to provide both the Commission and the contract markets with substantially greater flexibility in the implementation of these rules changes which, with only the possibility of infrequent exceptions, the Commission anticipates will not require review. In particular, the Commission recognizes that its existing rule may result in unnecessary uncertainty concerning the status of even the most routine changes in the composition of a stock index.[19] The Commission has therefore revised those procedures to specify that modifications of the composition, computation, or method of stock selection of a stock index contract will be deemed to be approved by the Commission, at the time each such change is made, if that modification is consistent with a definition containing standards for substituting stocks which do not modify the character or disrupt the trading of the underlying index approved by the Commission at the time the contract is designated.[20]

New regulation 1.41(h) will continue to require that the contract markets provide notice of these changes to the Commission in a timely manner. However, unlike the existing procedure where such changes are deemed approved immediately following receipt, these rule changes will be deemed to be approved at the time they are made. The Commission will, within ten days, notify the exchange making the submission if it appears that the change is not consistent with the definition of the underlying index which has previously been approved by the Commission. Where, however, such a change would alter significantly the fundamental character of the underlying index, the contract market would be required to submit the proposed change in accordance with the procedures otherwise established by § 1.41(b) for the review and approval of terms and conditions. Furthermore, where a particular index is not compiled by a third party for commercial purposes other than for use as the basis of a futures (or option) contract or if that third party does not exercise its decision-making authority with respect to the composition or valuation of the index independent of the exchange trading futures on the index, Commission review of all changes in the index is warranted and the provisions of this rule would not, therefore, be applicable. The exchange will be required in such a case to obtain the Commission's approval of each change in its index before the change is implemented (as would be required in the absence of these special procedures for stock index contracts) or alternatively, to obtain the Commission's advance approval of individual potential substitute stocks.[21] The definition provided by a contract market which is applying for designation to trade a stock index futures contract must, therefore, be as detailed and comprehensive as possible and establish clear standards for subsequent changes in the composition or calculation of the index. The Commission is, however, requesting comment as to whether, and under what circumstances, indices which are compiled by an exchange should receive treatment similar to that accorded to indices which are compiled by third parties.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. Analysis of the final rule amendments to §§ 1.41, 1.41a, and 1.41b is not required, however, since the Commission has previously determined that contract markets are not "small entities" for

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[15] 7 U.S.C. 7a(12) (1976 & Supp. V 1981).

[16] 17 CFR 1.41(c)((1982).

[17] S. Rep. No. 97-384, 97th Cong., 2d Sess. 31 (1982).

[18] H.R. Rep. No. 97-565 (Part 1), 97th Cong., 2d Sess. 91-92 (1982).

[19] Changes in the composition or valuation of a stock index can result from such matters as the merger, bankruptcy, or delisting of any of the stocks which comprise the index.

[20] In those instances where a stock index contract is already designated, the Commission's staff will request that each exchange submit such a definitional rule for the Commission's approval by December 31, 1983. Pending approval of the exchange's rule, the Commission will deem each change to the index to be approved upon receipt unless either the Director of the Division of Trading and Markets or the Director of the Division of Economics and Education notifies the contract market that the change appears to require further review by the Commission under section 5a(12) of the Act.

[21] *See, e.g.*, Chicago Board of Trade ("CBT") regulation XX36.01 and the memorandum from the Division of Economics and Education to the Commission regarding designation of the CBT as a contract market in Industry Composite Portfolio futures, dated June 29, 1983 at 13-14 and 19-20, concerning the stock substitution procedures adopted in that rule.

purposes of the RFA.[22] Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, certifies that these rules will not have a significant economic impact on a substantial number of small entities.[23]

B. Paperwork Reduction Act

Commission regulations 1.41 and 1.41a have previously been issued control numbers, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) The amendments to those rules being adopted herein effect no substantive or material modification in the existing paperwork requirements established by those rules. Commission regulation 1.41b establishes no new paperwork requirements. The Office of Management and Budget has been so notified and a copy of this **Federal Register** notice has been provided to that agency.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract market rules, Rule review procedures, Delegated authority, Brokers, Commodity brokers, Consumer protection.

To the extent that the regulations previously adopted by the Commission on an interim basis are not herein amended, the Commission is now readopting those regulations (48 FR 4256, 4259–60 (January 28, 1983)) without change. In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5a and 8a thereof, 7 U.S.C. 7a and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by revising §§ 1.41, 1.41a, and 1.41b as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.41 is amended by revising the section heading and paragraphs (a)(2), (b), (c), and (d) and by adding paragraph (h) to read as follows:

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

(a) * * *

(2) The words "terms and conditions" mean any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions shall be deemed to include provisions relating to the following:

(i) Quality or quantity standards for a commodity and any applicable exemptions or discounts;

(ii) Trading hours, trading months and the listing of contracts;

(iii) Minimum and maximum price limits and the establishment of settlement prices;

(iv) Position limits and position reporting requirements;

(v) Delivery points and locational price differentials;

(vi) Delivery standards and procedures, including alternatives to delivery and applicable penalties or sanctions for failure to perform;

(vii) Settlement of the contract; and

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

* * * * *

(b) *Submission of rules for prior Commission approval.* Except as provided herein and in paragraph (f) of this section, all proposed contract market rules that relate to terms and conditions and any other rules that the Commission has determined pursuant to paragraph (c) of this section require prior approval must, and any other rule may, be submitted to the Commission for approval pursuant to section 5a(12) of the Act prior to their proposed effective dates. Three copies of each such rule shall be furnished to the Commission at its Washington, D.C. headquarters, and one copy shall be furnished to the regional office of the Commission having local jurisdiction over the contract market. Each such submission shall, in the following order:

(1) Label the submission as being submitted pursuant to Commission regulation 1.41(b);

(2) Set forth the text of the proposed rule (in the case of any change in, addition to, or deletion from any current rule of the contract market, the current rule shall be fully set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added);

(3) Describe the proposed effective date of the proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, or by the governing board thereof or any committee thereof, and cite the rules of the contract market which authorize the adoption of the proposed rule:

(4) Explain the operation, purpose, and the effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the contract market's scheme of self-regulation, information which demonstrates that the proposed rule is not inconsistent with the policies and purposes of the Act, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the contract market, set forth the pertinent text of any such rule and describe the anticipated effect; and

(5) Note and briefly describe any substantive opposing views expressed by the members of the contract market or others with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission.

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)–(5) of this paragraph.

(c) *Rules that do not relate to terms and conditions.* (1) Except as provided in paragraphs (d) and (f) of this section (exempt or temporary emergency rules), three copies of any rule which does not relate to terms and conditions or which a contract market proposes to place into effect without submission to the Commission for approval under section 5a(12) of the Act and paragraph (b) of this section shall be furnished to the Commission at its Washington, D.C. headquarters at least ten days prior to its proposed effective date. One copy shall also be transmitted by the contract market to the regional office of the Commission having local jurisdiction over the contract market. Each such submission shall be labeled as being submitted pursuant to Commission regulation 1.41(c) and include the information required by paragraphs (b)(2)–(b)(5) of this section.

(2) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept pursuant to this paragraph (c) any submission that does not comply with the form and content requirements of this paragraph. Rules submitted pursuant to this paragraph (c) otherwise may become effective ten days after receipt (or at such earlier time as may be determined by the Commission)

[22] 47 FR 18618 (April 30, 1982).

[23] While analysis under the RFA is not required, the Commission observes that the amendments were intended to streamline rule review procedures and, in several instances, to reduce the paperwork required of a contract market.

unless the Commission notifies the contract market in writing of its determination to review such rules for prior approval under section 5a(12) of the Act and paragraph (b) of this section.

(d) *Rules that are exempt from the requirements of section 5a(12) of the Act.* (1) Except as otherwise provided in this paragrph (d), contract market rules that do not relate to terms and conditions are exempt from the requirements of section 5a(12) of the Act and this section where such rules address:

(i) Standards of decorum or attire or similar provisions relating to admission to the floor, badges, visitors, but not the establishment of penalties for violations of such rules;

(ii) Requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds;

(iii) Correction of typographical errors, renumbering, or other such non-substantive revisions of rules;

(iv) Procedures and forms for the purchase, sale or transfer of membership, but not including qualifications for membership, any right or obligation of membership, or dues or assessments;

(v) The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements and procedures or requirements or procedures relating to conflicts of interest;

(vi) The declaration of holidays;

(vii) Facilities housing the contract market or physical changes in the trading floor or trading area; or

(viii) The routine, daily administration, direction and control of contract market employees.

(2) Rules that are exempt from the requirements of section 5a(12) of the Act in accordance with the provisions of this paragraph (d) shall nonetheless be submitted to the Commission pursuant to the provisions of section 5a(1) of the Act. Each such submission shall be labeled as being submitted pursuant to section 5a(1) of the Act and Commission regulation 1.41(d). One copy of each such submission shall be furnished to the Commission at its Washington, D.C. headquarters and one copy shall also be transmitted by the contract market to the regional office of the Commission having local jurisdiction over the contract market.

(3) Notwithstanding the provisions of this paragraph (d), a contract market may submit any such rule to the Commission for its approval pursuant to the provisions of section 5a(12) of the Act and paragraph (b) of this section.

(4) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept pursuant to this paragraph any rule which the Commission determines to be a rule that is not exempt from the provisions of section 5a(12) of the Act and paragraphs (b) or (c) of this section.

* * * * *

(h) *Stock index contracts.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in the composition, computation, or method of stock selection of a stock index in which a contract market is designated to trade futures contracts, or options on such futures contracts, shall be deemed approved by the Commission at the time such changes are adopted by a contract market if:

(i) The index is compiled for commercial purposes by an independent third party;

(ii) The change is consistent with a rule of the contract market which has been approved by the Commission for this purpose which specifically defines, or establishes standards governing, the composition of the stock index upon which the designated futures are authorized to trade; and

(iii) The contract market promptly provides the Commission with written notice of the change.

(2) The Commission will, within ten days after receipt by the Commission of notice of a change in the composition, computaton, or method of stock selection of a stock index, notify the contract market making that submission if it appears that the change is not consistent with the definition of the composition of, or standards governing, the stock index which has been approved by the Commission.

2. Section 1.41a is revised to read as follows:

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

(a) The Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Division of Trading and Markets and to the Director of the Division of Economics and Education, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors:

(1) Pursuant to § 1.41(b) or § 1.41(c), to determine whether to remit to a contract market and not accept for review any rule submitted pursuant to section 5a(12) of the Act and § 1.41(b) or § 1.41(c), where the Director determines that such rule submission does not comply with the form and content requirements set forth in § 1.41(b);

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

(3) Pursuant to § 1.41(c), to determine that rules submitted under § 1.41(c) do not require prior Commission approval under section 5a(12) of the Act and § 1.41(b) and that such rules may become effective prior to the expiration of the ten day period following the receipt of such rules by the Commission; and

(4) Pursuant to § 1.41(d), to determine whether to remit to a contract market any rule submitted pursuant to section 5a(1) of the Act and § 1.41(d), where the Director determines that such rule submission is not exempt from the provisions of section 5a(12) of the Act and § 1.41(b) or § 1.41(c).

(b) The Director of the Division of Trading and Markets or the Director of the Division of Economics and Education may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(c) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economics and Education under this section.

3. Section 1.41b is revised to read as follows:

§ 1.41b Delegation of authority to the Directors of the Division of Trading and Markets and the Division of Economics and Education to process certain contract market rules.

(a) The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Trading and Market and to the Director of the Division of Economics and Education, with the concurrence of the General Counsel or his or her delegee, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors, the authority to approve, pursuant to section 5a(12) of the Act and § 1.41(b), contract market rules that relate to terms and conditions and that:

(1) Do not materially change the quantity, quality or other delivery specifications, procedures or obligations under a contract designated for trading by the Commission (such as, but not

limited to, rules affecting procedures for inspecting, grading or weighing a commodity, the costs of such procedures, notice deadlines, payment procedures, the content of delivery forms and other similar procedures); or

(2) Reflect routine modifications that are expressly required or anticipated by the specific terms of a contract market rule (such as the specification of delivery grades, growths or differentials, the listing of trading months or the modification of trading hours).

(b) The Director of the Division of Trading and Markets or the Director of the Division of Economics and Education may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(c) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economics and Education under this section.

Issued in Washington, D.C. on October 19, 1983, by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 83-28853 Filed 10-21-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 6 and 375

[Docket No. RM83-77-000; Order No. 344]

Substitution of Certified Mail for Registered Mail

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Final rule.

SUMMARY: The Féderal Energy Regulatory Commission (Commission) is amending its regulations to substitute certified mail for registered mail to serve water power project audit reports and notices of probable license termination. The use of certified mail will save money without affecting the timing or quality of delivery service to licensees.

EFFECTIVE DATE: October 24, 1983.

FOR FURTHER INFORMATION CONTACT: Ellen K. Schall, Office of Legal and Administration Affairs, Office of the General Counsel, 825 North Capitol Street, NE., Room 4308, Washington, D.C. 20426, (202) 357-5737.

SUPPLEMENTARY INFORMATION:

Issued: October 20, 1983.

I. Background and Summary

By this rule, the Federal Energy Regulatory Commission (Commission) is substituting a certified mail requirement for the registered mail requirement in five Commission regulations: 18 CFR 4.4, 4.12, 4.22, 6.3 and 375.308(vv)(1).

Sections 375.308(vv)(1) and 6.3 provide for service of notices of probable license termination upon licensees by registered mail. Sections 4.4, 4.12 and 4.22 provide for service by registered mail of Commission staff water power project audit reports upon licensees. The Commission is substituting certified for registered mail in these regulations because the use of certified mail will save money without diminishing service to the public.

Certified mail provides delivery and a record of delivery receipt. According to the Postal Service *Domestic Mail Manual*, registered mail should only be used for shipments of valuable, insurable merchandise and certified mail should be used where a record of delivery receipt is desired. *Domestic Mail Manual* §§ 911.11 and 912.1, incorporated by reference at 39 CFR 111.1. Replacing registered with certified mail for the delivery of items, such as notices and audit reports, which have little or no intrinsic monetary value, will not affect the timing or quality of delivery service to licensees.

II. Effective Date

The revisions prescribed in this rulemaking are minor and do not raise substantive issues concerning the Commission's regulations or notification of licensees. Accordingly, the Commission finds that notice and public procedure under 5 U.S.C. 553 are unnecessary.

The Commission also finds good cause to make this rule effective upon publication, as provided by 5 U.S.C. 553(d), because the public has no need to prepare for these changes, and because immediate implementation will allow the Commission to effect cost savings sooner.

List of Subjects

18 CFR Parts 4 and 6

Electric power.

18 CFR Part 375

Authority delegations (Government agencies).

(Administrative Procedure Act, 5 U.S.C. 551-557 (1976); Federal Power Act, as amended, 16 U.S.C. 291-828 (1976 & Supp. V 1981), Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); Exec. Order No. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission hereby amends Parts 4, 6 and 375, Chapter 1, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PARTS 4, 6, AND 375—[AMENDED]

1. 18 CFR 4.4, 4.12, 4.22, 6.3 and 375.308(vv)(1) are amended by removing the words "registered mail" and inserting, in their place, the words "certified mail."

(Administrative Procedure Act, 5 U.S.C. 551-557 (1976); Federal Power Act, as amended, 16 U.S.C. 291-828 (1976 & Supp. V 1981), Department of Energy Organization Act 42 U.S.C. 7101-7352 (Supp. V 1981); Exec. Order No. 12009, 3 CFR 142 (1978))

[FR Doc. 83-28869 Filed 10-21-83; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM81-31-000]

Clarification of Regulations Regarding New, Onshore Production Wells

Issued: October 20, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: On May 28, 1981, the Federal Energy Regulatory Commission issued Order No. 149, amending § 271.303 on its regulations. The amendment clarified the definition of "new, onshore production well" as that term is used in the natural Gas Policy Act of 1978. Timely applications for rehearing of Order No. 149 were filed by J-3 Oil Company, Inc. and R. H. Engelke. The Commission hereby denies these petitions for rehearing of Order No. 149.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: A. G. Sousa, Acting Chairman; J. David Hughes and Oliver G. Richard III.

On May 28, 1981, the Federal Energy Regulatory Commission (Commission) issued Order No. 149, amending § 271.303 of its regulations. 46 FR 29,697 (June 3, 1981. The amendment clarified the definition of "new, onshore production well," as that term is used in section 103 of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981) (NGPA).

Timely applications for rehearing of Order No. 149 were filed by J–3 Oil Company, Inc. (J–3) and R. H. Engelke (Engelke). In addition, the Railroad Commission of Texas (Texas) filed comments on Order No. 149 as it applied to wells drilled in Texas. On July 29, 1981, on July 13, 1981, the Commission granted the applications for rehearing of Order No. 149 solely for purposes of further consideration. By this Order, the Commission denies the petitions for rehearing of Order No. 149.

In Order No. 149 the Commission amended § 271.303 to state clearly its intention that a determination that a well qualifies under section 103 of the NGPA as a "new, onshore production well" applies only to gas produced from the proration unit (or units) designated in the well category application. Prior to issuance of the clarification, some producers had interpreted the statute and the regulations as authorizing collection of the section 103 price for sales from all proration units in a wellbore where only one of the proration units received a section 103 determination. Because the amendment effected no substantive change in the regulations, but was necessary for proper implementation, the amendment clarifying the issue was made effective as of December 1, 1978, the date the interim regulations became effective.

As the Commission noted in Order No. 149, it would be inequitable to require refunds for deliveries which occurred prior to 60 days from issuance of the clarification in cases where the producer relied on a misinterpretation of the definition of "new, onshore production well," and where the gas from the subsequent proration unit is or was eventually determined to qualify for the section 103 price. To avoid refund obligations in such cases, an application for a section 103 determination for gas from the additional proration unit had to be filed with a jurisdictional agency no later than 60 days after issuance of the clarification. The Commission presumed that a producer relied on a misinterpretation until the producer (1) filed a section 103 application for more than one proration unit in the same wellbore; (2) filed a section 103 application for gas produced from a proration unit different from the proration unit that had previously received a section 103 determination; or (3) made refunds that indicated an awareness of the filing requirement. Once the producer filed the applications or made the refunds noted above, the Commission no longer presumed that a producer was relying on a misinterpretation of the definition. In cases where a producer was aware of the filing requirement and simply made a late filing, refunds will be required and retroactive collections will not be permitted.

In their applications for rehearing, J–3 and Engelke requested that the Commission modify Order No. 149 to apply the clarification prospectively only and simply require any remedial filings to be made within 60 days of the date of issuance of the Order. The petitioners argued that the presumption of misinterpretation would require burdensome inquiries, on a case-by-case basis, of each applicant's understanding of the regulations. Engelke further argued that the Commission failed to take into account the confusion and hardship affecting operators during the initial implementation of the regulations issued pursuant to the NGPA. Engelke argues that during that period many operators made bulk filings on a variety of wells and completion locations without fully understanding the necessity to do so. Engelke further argues that, at most, a producer should be barred from collecting the section 103 price only if the producer applied for a section 103 determination for a completion location in a specific proration unit and has reapplied for a section 103 determination for a recompletion in a different proration unit. It was Engelke's contention that "[such] a clarification would preclude the inequitable result of imposing significant financial losses on an operator who, although unaware of the necessity for subsequent determinations after recompletion of a well, made initial filings which covered more than a single producing interval."

The Commission denies these requests. In the vast majority of cases, case-by-case inquiries will be avoided since, under the Commission's rebuttable presumption, a producer will be presumed to have acted on a misinterpretation unless there is clear evidence to the contrary. Where there is such evidence, the Commission does not believe it can ignore, as a general policy, failure to follow the Act's and the Commission's requirements. However, in those few cases where a producer, who cannot meet the presumption, can demonstrate that there was reliance on a misinterpretation of the regulations, and believes the refund requirements imposed as a result of Order No. 149 will cause a special hardship, inequity, or an unfair distribution of burdens, the producer may file an application for relief under section 502(c) of the NGPA and § 385.1101 of the Commission's regulations.

The comments filed by Texas urged the Commission to reconsider the requirement that an operator must seek a new section 103 determination for each recompletion of a previously qualified well when a new proration unit is perforated that was not the basis of the original determination.[1] Texas argued that this filing requirement imposes an additional and unnecessary administrative burden on jurisdictional agencies and should be modified to require a new determination only when the recompletion is not the first well in the new proration unit. Texas suggested that the burden be placed on the operator to decide whether a particular recompletion in a new proration unit requires a new filing.

In Order No. 336, the Commission adopted regulations similar to that requested by the Texas Railroad Commission. Under these new regulations, a jurisdictional agency determination that a well is a "new, onshore production well" covers all gas produced from any completion location in a proration unit that receives a well completion permit from the appropriate regulatory agency, provided that the well is the first completion location in the proration unit and it is not a reentry of a well previously spudded before February 19, 1977. *See* Reduction in Filing Requirements for Well Category Applications under Sections 102, 103, 107, and 108 of the NGPA, 48 FR 44508 (Sept. 29, 1983) (Order No. 336).

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[1] The J–3 Oil Company filed a petition for rulemaking requesting that the Commission clarify its rules to reflect an interpretation similar to that requested by the Texas Railroad Commission. Petition of the J–3 Oil Company, Inc. for Clarification and/or Amendment of the Commission's Rules and Regulations, Docket No. RM81–24, filed March 19, 1981. J–3 requested that the Commission not require additional well category filings for additional completion locations in a previously determined and qualified new, onshore production well. Order No. 149 specifically addressed this issue but, contrary to the position taken by J–3 in its petition, required a section 103 determination for each completion location in a new, onshore production well. Since Order No. 149 was issued, the Commission has revised its filing requirements so that a well category determination will cover not only the completion location named in an application, but also certain additional completion locations. Reduction in Filing Requirements for Well Category Applications under Sections 102, 103, 107, and 108 of the NGPA, 48 FR 44508 (Sept. 29, 1983) (Order No. 336). Order No. 336 essentially adopts the substantive position requested by J–3 in its petition for rulemaking. Accordingly, the Commission will, by separate order, deny J–3's petition for rulemaking as unnecessary in light of Order No. 336.

In Order No. 149, the Commission took the position that a section 103 determination was necessary for each proration unit in a well in order to ensure that the well spacing and proration unit restrictions of section 103 were met. This position is not compromised in Order No. 336. Order No. 336 is consistent with Order No. 149 in that both orders ensure that these restrictions are met, albeit using different procedures. Order No. 149 ensured that these requirements were met by requiring that a producer get a well category determination for each completion location in a new, onshore production well. In Order No. 336, on the other hand, the Commission stated that these statutory restrictions can be met by relying on the well permitting process and the requirement that the well be the first well in the proration unit. Hence, Order No. 336 is not a reversal of the position announced in Order No. 149, but only establishes a new and more efficient procedure for implementing its interpretation of the section 103 statutory requirements. As stated in Order No. 336, the amendments in Order No. 336 will be applied prospectively and will not affect the Commission's interpretation of its regulations at the time it issued Order No. 149. Prior to the date that Order No. 336 becomes effective, producers must adhere to the policy in Order No. 149 regarding section 103 applications.

For the reasons discussed above and in the preamble to Order No. 149, the Commission denies rehearing of Order No. 149.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-28867 Filed 10-21-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 79P-0349]

Cheese and Cheese Products; Amendment to Permit Use of Antimycotics on Surface of Bulk Cheeses and To Provide for Declaration of Animal, Plant, and Microbial Enzymes as "Enzymes"

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standards of identity for several cheeses to permit, during curing and storage, the use of safe and suitable antimycotics on the surface of bulk forms of the cheeses. FDA is also amending the standards to establish label declaration of ingredient requirements and to permit the label declaration of animal, plant, and microbial enzymes by the general term "enzymes," rather than by their specific common or usual name. This action is based on a petition filed by the National Cheese Institute. FDA concludes that the amendments to the standards will promote honesty and fair dealing in the interest of consumers.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date; voluntary compliance may begin December 23, 1983, objections by November 23, 1983.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1983 (48 FR 2779), FDA published a proposal, based on a petition from the National Cheese Institute, to amend the standards of identity for several cheeses to permit the use of safe and suitable antimycotics on the surface of bulk cheeses during curing and storage. FDA also proposed to establish uniform provisions for the declaration of ingredients, and to permit enzymes of animal, plant, or microbial origin to be declared by the word "enzymes," rather than by the specific common or usual name of the enzyme. The cheese standards included in the proposal were for asiago fresh and asiago soft cheese (21 CFR 133.102), caciocavallo siciliano cheese (21 CFR 133.111), hard grating cheese (21 CFR 133.148), hard cheeses (21 CFR 133.150), mozzarella cheese and scamorza cheese (21 CFR 133.155), low-moisture mozzarella and scamorza cheese (21 CFR 133.156), parmesan and reggiano cheese (21 CFR 133.165), provolone and pasta filata cheese (21 CFR 133.181), and romano cheese (21 CFR 133.183). Cross-referenced standards of identity that are also affected by the proposal include those for asiago medium cheese (21 CFR 133.103), asiago old cheese (21 CFR 133.104), part-skim mozzarella and scamorza cheese (21 CFR 133.157), and low-moisture part-skim mozzarella cheese and scamorza cheese (21 CFR 133.158). The proposal allowed for the filing of comments by March 22, 1983. Three comments were received in response to the proposal, two of which favored the proposed amendments.

The third comment asked whether cheese manufacturers are required to declare antimycotics on the label when antimycotics are used on the surface of cuts and slices of cheese in consumer-size packages.

FDA advises that the standards of identity for cheeses that permit the use of antimycotics on the surface of cuts and slices of the cheeses require that, when an antimycotic is used, it must be declared on the label by its common or usual name.

The third comment also expressed concern that consumers with allergies to certain ingredients used in foods would not be adequately informed about the ingredient content of the cheeses covered by the proposal if general terms, e.g., "enzymes," rather than specific names are permitted for use in the label statement of ingredients.

The declaration of the general term "enzymes" on the label will alert consumers that a specific enzyme to which they are allergic may be present. Admittedly, the use of the general term is not an ideal solution for those consumers with a particular interest in knowing exactly which enzymes are used in a specific product whose manufacturer elects to employ the general term. Nevertheless, the general term will provide consumers with notice sufficient to allow them to avoid consuming foods that might contain an objectionable enzyme. Moreover, the use of the general term is optional. Nothing in the standard prevents manufacturers from making an exact declaration of the enzymes used in their products should they choose to do so in response to their own marketing strategies or to consumer demand. FDA believes that the general term option provides a useful mechanism for balancing the interest of most consumers in lower food prices against the interest of other consumers in knowing precisely what enzymes are present in a given cheese.

The final rule that amended the standards of identity for nine natural cheeses completely revised the standard of identity for provolone cheese (21 CFR 133.181). The effective date of that final rule was confirmed in the **Federal Register** of May 27, 1983 (48 FR 23812). For consistency, FDA is including in current § 133.181(b)(3)(iv) the proposed amendment to § 133.181(d). The proposed amendment to § 133.181(f) was included in § 133.181(d) in the nine natural cheese final rule. Therefore, no further amendment is necessary.

In the **Federal Register** of January 25, 1983 (48 FR 3363), FDA revised the standards of identity for mozzarella and scamorza cheese (21 CFR 133.155(f)) and low-moisture mozzarella and scamorza cheese (21 CFR 133.156(f)). The effective date of that final rule was confirmed in the **Federal Register** of May 27, 1983 (48 FR 23811). Again, for consistency, FDA is including those amendments in §§ 133.155(f) and 133.156(f).

After considering the comments received, FDA concludes that it will promote honesty and fair dealing in the interest of consumers to amend the standards of identity for the nine cheeses and the appropriate cross-referenced standards of identity as set forth below.

In the preamble to the proposal (48 FR 2780), the impact of the proposed amendments on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601). No comments were received on the review presented. FDA determined that the proposed action would not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 133 is amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. In § 133.102 by revising paragraphs (d) and (e) to read as follows:

§ 133.102 Asiago fresh and asiago soft cheese.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(e) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

2. In § 133.111 by revising paragraphs (d) and (f) to read as follows:

§ 133.111 Caciocavallo siciliano cheese.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the cheese during the kneading and stretching process and/or applied to the surface of the cheese.

* * * * *

(f) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

3. In § 133.148 by revising paragraph (d), redesignating paragraph (f)(1) as new (e)(3), and revising paragraphs (e)(3) and (f) to read as follows:

§ 133.148 Hard grating cheeses.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(e) * * *

(3) When milk other than cow's milk is used, in whole or in part, the statement "made from ———", the blank being filled in with the name or names of the milk used, in order of predominance by weight.

(f) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) When milk other than cow's milk is used, in whole or in part, the common or usual name of each such milk ingredient shall be declared in order of predominance by weight; and

(2) Enzymes of the animal, plant, or microbial origin may be declared as "enzymes".

4. In § 133.150 by revising paragraph (d), redesignating paragraph (f)(1) as new (e)(3), and revising paragraphs (e)(3) and (f) to read as follows:

§ 133.150 Hard cheeses.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(e) * * *

(3) When milk other than cow's milk is used, in whole or in part, the statement "made from ———", the blank being filled in with the name or names of the milk used, in order of predominance by weight.

(f) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) When milk other than cow's milk is used, in whole or in part, the common or usual name of each such milk ingredient shall be declared in order of predominance by weight; and

(2) Enzymes of animal, plant, or microbial origin may be declared as "enzymes".

5. In § 133.155 by revising paragraphs (d) and (f) to read as follows:

§ 133.155 Mozzarella cheese and scamorza cheese.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the cheese during the kneading and stretching process and/or applied to the surface of the cheese.

* * * * *

(f) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes". Pursuant to section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)), artificial color need not be declared, except as required by § 101.22(c) of this chapter. Voluntary declaration of such color in cheese is recommended.

6. In § 133.156 by revising paragraphs (d) and (f) to read as follows:

§ 133.156 Low-moisture mozzarella and scamorza cheese.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the cheese during the kneading and stretching process and/or applied to the surface of the cheese.

* * * * *

(f) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes". Pursuant to section 403(k) of the Federal Food, Drugs, and Cosmetic Act (21 U.S.C. 343(k)), artificial color need not be declared, except as required by § 101.22(c) of this chapter. Voluntary declaration of such color in cheese is recommended.

7. In § 133.165 by revising paragraphs (d) and (e) to read as follows:

§ 133.165 Parmesan and reggiano cheese.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practcve, may be added to the surface of the cheese.

(e) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

8. In § 133.181 by revising paragraph (b)(3)(iv) to read as follows:

§ 133.181 Provolone cheese.

* * * * *

(b) * * *

(3) * * *

(iv) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the cheese during the kneading and stretching process and/or applied to the surface of the cheese.

* * * * *

9. In § 133.183 by revising paragraphs (d) and (f), to read as follows:

§ 133.183 Romano cheese.

* * * * *

(d) Safe and suitable antimycotic agent(s), the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the the surface of the cheese.

* * * * *

(f) Label declaration: The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) When milk other than cow's milk is used, in whole or in part, the common or usual name of each such milk ingredient shall be declared in order of predominance by weight; and

(2) Enzymes of animal, plant, or microbial origin may be declared as "enzymes".

Any person who will be adversely affected by the foregoing regulation may at any time on or before November 23, 1983, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions taht may be stayed by the filing of proper objections, compliance with these final regulations, including any required labeling changes, may begin December 23, 1983, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

(Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: October 18, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

Extension of Treasury's Reclamation Authority

AGENCY: Bureau of Government Financial Operations, Treasury.

ACTION: Final rule.

SUMMARY: Under 31 CFR 240.4 and 240.5, Treasury has the right to refunds from banks and other indorsers receiving payment on Treasury checks bearing forged or unauthorized indorsements or any other material defects or alterations. The United States has the common law right to offset amounts owed to it against amounts it would otherwise owe to its debtors. *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 239 (1947). Further, Treasury is authorized under the Federal Claims Collection Act of 1966, *as amended* by Pub. L. 97-365, section 10, 31 U.S.C. 3716, to issue regulations that authorize it to collect debts subject to the Act by administrative offset. Pursuant to this authority, Treasury is amending its regulations in 31 CFR Part 240 to provide for recovery of amounts of delinquent reclamations and accrued interest thereon by offsetting those amounts against amounts in the possession of the United States that are owed to presenting banks. The purpose of the final rule is more effective debt collection.

EFFECTIVE DATE: November 23, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Bland T. Brockenborough, Assistant Commissioner, Disbursement and Claims, Room 212, Treasury Annex, Pennsylvania Avenue and Madison Place NW, Washington, D.C. 20226 (202-566-2392).

SUPPLEMENTARY INFORMATION: The purpose of the final rule is more effective debt collection. Under the Federal Claims Collection Act of 1966, *as amended*, the Secretary of the Treasury has the duty to attempt to collect all claims of the United States for money or property arising out of the activities of, or referred to Treasury. *See*, 31 U.S.C. 3711 and 4 CFR 102.3. Treasury's claims against indorsers of, and banks that present for payment, Treasury checks bearing forged or unauthorized indorsements are within the scope of this duty. Historically, many presenting banks have declined to pay these legimate claims (referred to as "reclamations"), forcing Treasury either to litigate its claims, a procedure which is rarely cost-effective, or to absorb the loss.

Treasury first advised the public that it was considering collecting the amounts owed it by banks that presented for payment Treasury checks bearing forged or unauthorized indorsements in an Advance Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** on April 25, 1979 (44 FR 24306). Treasury solicited comments on a proposal to