her official duties or because of his or her official status.

§ 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his or her official status without the prior approval of the Executive Director or his or her designee.

§ 1631.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Board for the production of material or the disclosure of information described in § 1631.31, he or she shall immediately notify the Executive Director or his or her designee. If possible, the Executive Director or his or her designee shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Executive Director or his or her designee are received, an attorney designated for that purpose by the Board shall appear with the employee or former employee upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Executive Director or his or her designee. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Executive Director.

§ 1631.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1631.32(b) pending receipt of instructions from the Executive Director, or his or her designee, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Executive Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. [*United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)].

[FR Doc. 90-23586 Filed 10-5-90; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 89-066]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service of the United States Department of Agriculture at laboratories, border ports, ocean ports, and airports. We are amending the regulations by: (1) Requiring agents, brokers, or principals who have not previously requested Sunday, holiday, or overtime inspection services from the Animal and Plant Health Inspection Service to make payment before these services are provided, and to continue paying in this manner until further notice from the Animal and Plant Health Inspection Service; (2) requiring certain delinquent debtors to make payment before Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies. These changes will assist us in collecting debts, and will reduce the financial loss we are incurring because of unpaid debts.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Director, Resource Management Support Staff, PPQ, APHIS, USDA, Room 621, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7764; Louise Lothery, Director, Resource Management Staff, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7517; or Charles Gernert, Supervisory Accountant, Budget and Accounting, APHIS, USDA, Room 245, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.1 and 9 CFR 97.1 (referred to below as "the regulations") provide a system for obtaining inspection, laboratory testing, certification, and quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal byproducts, or other commodities during Sundays, holidays, or other times outside the established hours of service.

On February 17, 1989, we published in the Federal Register (54 FR 7195-7196, Docket No. 88-097), a document proposing to amend 7 CFR 354.1 and 9 CFR 97.1 by: (1) Requiring the name, address, and telephone number of principals when they request Sunday, holiday, or overtime inspection services through authorized agents or brokers; (2) requiring certain delinquent debtors to pay immediately when Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 18, 1989. We received three comments, two from Animal and Plant Health Inspection Service (APHIS) field personnel and one from a livestock shipping agency. All three commenters either opposed the proposed rule or expressed reservations concerning it. the comments are discussed below.

Comments

As proposed, paragraph (d) of §§ 354.1 and 97.1 would require agents or brokers to provide us with the name, address, and telephone number of their principals when requesting Sunday, holiday, or overtime services. One commenter stated that this requirement would greatly increase the information gathering burden on shipping companies; that it is inappropriate to place this burden on all agents or brokers because of the irresponsible behavior of a few; and that we should implement a credit approval system for brokers or agents instead of implementing the debt management program described in the proposed rule. Another commenter stated that determining the owner (principal) of a given animal within a shipment can sometimes be difficult and enormously time-consuming, since one shipment may contain 40 to 70 individually-owned animals. The commenter also stated that some shipments involve multipleownership situations, such as when an animal is owned by a partnership, consortium, or other business group. This commenter stated that clarifying ownership in such situations could create considerable delays, and that such a situation would be undesirable when live animals are involved.

Both of the above commenters also stated that the process of clarifying ownership or collecting payment is further complicated by the fact that many principals are residents of foreign countries.

We agree that the proposed requirement could place unrealistic information-gathering responsibilities on agents or brokers, and that collecting debts directly from principals may not be a practical, productive, or feasible approach to debt management. We are therefore eliminating from our final rule any information-gathering requirements on the part of the agent or broker, and are instead implementing a credit approval system as suggested by one of the commenters.

To this end, we will amend the regulations to require an agent, broker, or principal who has not previously requested Sunday, holiday, or overtime work from us—that is, an agent, broker, or principal with whom we have not previously worked and whose degree of financial stability or credit worthiness is unknown to us—to pay us before service is provided. The prepayment figure will be based on the inspector's estimate of the cost of providing service. Any difference between the inspector's estimate and the actual amount owed APHIS will be resolved later, with APHIS either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

We will continue to require prepayment from the agent, broker, or principal until we have determined that the agent, broker, or principal has established an acceptable credit history with us. We will reserve the right to continue requiring prepayment from an agent, broker, or principal indefinitely.

The third comment we received expressed reservations concerning proposed paragraph (e) of §§ 354.1 and 97.1, which would require agents or brokers who are in excess of 60 days delinquent in paying for services, to pay the APHIS inspector at the time Sunday, holiday, or overtime services are provided.

The commenter stated: "Trying to come up with a fair amount to collect from the exporter or his agent at the time of loading would be very difficult. The exporter and his agent depart at the time the initial loading and paperwork is completed. The overtime sheet is not completed until after the flight has left. The reason for this is that we cannot be certain of [the] time of [the flight's] departure, and the quitting time of the [APHIS inspector] involved . . ."

We agree. To deal with this situation, we are amending the regulations to require that inspectors estimate the amount of the overtime service fee to be charged, and collect that amount from the agent, broker, or principal before the loading operation begins. Any difference between the inspector's estimate and the actual amount owed APHIS will be resolved later, with APHIS either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

The commenter also expressed concern about the potential security risks involved if an APHIS inspector is required to accept large sums of cash from an agent or broker during late night hours, when many export shipments are handled.

We agree that this presents a potential security risk, and are changing the final rule to state that inspectors will accept cash only between the hours of 7 a.m. to 5 p.m. and only at a location designated by the APHIS inspector.

Miscellaneous

Since we published our proposed rule on February 17, 1989, we have made certain nonsubstantive changes in the regulations. In documents published in the **Federal Register** on April 4, 1989 (54 FR 13506, and 13515–13516) we amended parts 354 and 97 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing all references to "Plant Protection and Quarantine" and "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." This final rule reflects these amendments made since our February 17, 1989, proposal.

We have also made other nonsubstantive changes in the final rule for purposes of clarity.

Based on the rationale set forth in the proposal and in this document, we are adopting the proposed rule as a final rule, with the changes noted.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not 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.

This rule will have no economic impact on small entities, since it will not increase or decrease the amount of money they owe us. It will, however, require these entities to pay us promptly. We do not believe that making prompt payments will impose a financial burden on these small entities.

In addition, paying us for debts already accumulated for services rendered will impose no additional financial burden on those small entities requesting Sunday, holiday, or overtime inspection services from us. The entities currently in debt to us owe only small amounts—on the average, less than $1,000 each.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0055.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants, (Agriculture), Quarantine, Transportation.

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR part 354 and 9 CFR part 97 are amended as follows:

Title 7

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.1 is amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

* * * * *

(d)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity acting as an agent or broker by requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector on behalf of any other person, firm, partnership, corporation, or other legal entity (principal), and who has not previously requested such service from an Animal and Plant Health Inspection Service inspector, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the Animal and Plant Health Inspection Service determines that the agent, broker, or principal has established an acceptable credit history.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(e)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector, and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any principal, or any person, firm, partnership, corporation, or other legal entity who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Title 9

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 97.1 is amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

* * * * *

(d)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity acting as an agent or broker by requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector on behalf of any other person, firm, partnership, corporation, or other legal entity (principal), and who has not previously requested such service from an Animal and Plant Health Inspection Service inspector, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the Animal and Plant Health Inspection Service determines that the agent, broker, or principal has established an acceptable credit history.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(e)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector, and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any principal, or any person, firm, partnership, corporation, or other legal entity who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Done in Washington, DC, this 3rd day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-23766 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1137

[DA-90-030]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of certain provisions of the Eastern Colorado milk order. These pooling standards have been suspended during the past four years. This action again suspends for the months of September 1990–February 1991 the limit on the period of automatic pool plant status for supply plants that met the shipping standards during a prior shipping season. It also extends for the months of September 1990 through August 1991 the suspension of the "touch-base" requirement which provides that a member-producer's milk be received at least three times each month at a pool distributing plant to qualify the dairy farmer's milk for diversion and the percentage limits on the amount of milk that a cooperative may deliver directly to manufacturing plants and remain pooled and priced under the order. These actions were requested by a cooperative association representing producers supplying the market. The changes were not opposed and are needed to prevent uneconomic milk movements.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 23, 1990; published August 29, 1990 (55 FR 35321).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 29, 1990 (55 FR 35321) concerning a proposed suspension of certain provisions of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1990 through February 1991:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1990 through August 1991:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, June, July, and December, and 20 percent in other months of" and the word "distributing".

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested a continuation of the suspension of the aforementioned provisions to prevent the uneconomical movement of milk for the sole purpose of pooling the milk of cooperative association producers who have been historically associated with the Eastern Colorado market. For the months of September 1990 through February 1991, the suspension again removes the limit on the period of automatic pool plant status for supply plants which met the pool shipping standards during a previous September through February shipping season. For the months of September 1990 through August 1991, the suspension continues to remove the requirement that three deliveries of a member-producer's milk be received at a pool distributing plant each month to qualify the dairy farmer's milk for diversion and the percentage limits on the aggregate amount of milk that a cooperative may divert to nonpool plants for its account. These pooling provisions have been suspended during the past four years.

Statistical data for the Eastern and Western Colorado markets [1] show that a lower percentage of the producer milk supply is needed now to fulfill the fluid needs of handlers than when these provisions were suspended initially four years ago. For instance, in 1989, only about 53 percent of the markets' producer milk deliveries was used for fluid purposes compared with almost 62 percent in 1986. Since there is plenty of milk available now to supply distributing plants, the primary concern of Eastern Colorado supply organizations is the orderly disposition of the milk that exceeds the needs of fluid plants. This and the prior suspension actions were taken in recognition of that concern.

It is evident from the foregoing that there will be ample supplies of locally produced milk available to meet the fluid needs of Eastern Colorado distributing plants on a direct-ship basis, as Mid-Am states, without requiring supply plants to make qualifying shipments during the current September–February shipping season. Additionally, there is no need to require that a member-producer's milk be received at least three times each month at a pool distributing plant or that the percentage restrictions on diversions to nonpool plants by cooperatives apply during September 1990 through August 1991.

Suspension of these performance standards will continue to give cooperatives additional flexibility in handling the market's reserve milk and thereby will promote the orderly disposition of the milk that is not needed at Eastern Colorado distributing plants.

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[1] Data for the two markets are combined to avoid revealing confidential information (there are less than three handlers regulated under the Western Colorado order).

Interested parties were given an opportunity to comment on this proposed action. No opposing views were received. Comments supporting the proposed action were filed by Western Dairymen Cooperative, Inc., a cooperative association representing dairy farmers throughout the Intermountain region. Mid-Am also filed views in support of its request.

Without this action, to maintain pool status under the order for distant producers who have been associated with this market for several years, Mid-Am would have to ship milk from farms located in western Nebraska and western Kansas to Denver-area distributing plants. The distant milk would displace locally produced milk and would result in increased shipments from the Denver area to manufacturing plants many of which would be located in the areas where the distant milk was produced.

In view of the foregoing, it is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive hauling and handling substantial amounts of milk from producers who have regularly supplied this market would be excluded from the marketwide pool thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1990–February 1991 and the following provisions in § 1137.12(a)(1) of Eastern Colorado order are hereby suspended for the months of September 1990–August 1991.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Temporarily Suspended in Part]

2. In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August" are suspended.

§ 1137.12 [Temporarily Suspended in Part]

3. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and the word "distributing" are suspended.

Signed at Washington, DC, on: October 2, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–23779 Filed 10–5–90; 8:45 am]

BILLING CODE 3410-02-M

COMMODITY FUTURE TRADING COMMISSION

17 CFR Parts 3 and 171

Commission Review of National Futures Association Decisions In Disciplinary, Membership Denial, Registration and Membership Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rules establishing standards and procedures for Commission review of decisions of registered futures associations such as the National Futures Association ("NFA"). The Commission rules cover review of NFA decisions in four types of actions: Disciplinary actions, membership denial actions, registration actions and member responsibility actions. The rules establish a common procedure for seeking review and a stay of a final decision by NFA in disciplinary, membership denial and registration actions, and separate procedures for seeking review and a stay of NFA decisions in member responsibility actions. In adopting these rules, the Commission has promulgated standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules while providing a person aggrieved by the result of NFA's action an effective means to obtain relief from prejudicial errors. These rules shall apply in their entirety to all requests for Commission review of NFA actions, and matters relating thereto, filed on or after October 31, 1990.

EFFECTIVE DATES: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1990 the Commission published proposed rules establishing standards and procedures for its review of decisions of registered futures associations such as NFA in disciplinary actions, membership denial actions, registration actions and member responsibility actions. 55 FR 24254. In proposing these rules the Commission sought to promulgate standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules and to establish an appellate process that is comprehensive, balanced, efficient and consistent with principles of fundamental fairness.

In response to its request for public comment the Commission received letters from NFA and from members of the Futures Regulation Committee ("Committee") of the Section of Business Law of the American Bar Association. Both comment letters generally were supportive of the proposed rules. The Commission has carefully considered the comments in those letters and has determined that the rules should be adopted with certain modifications and clarifications. Among these are changes to clarify the Commission's review role, expansion of those matters excluded from Commission review, and the addition of a definition of "interested persons" who may intervene in a proceeding. A discussion of the comments and of the substantive revisions to the rules is included below.

Comments on and Revisions to the Standards for Review

NFA's comments reflect a general concern that in formulating these rules the Commission did not simply parallel the existing part 9 regulations governing its review of exchange disciplinary actions. While the Commission has noted that the standards and procedural protections available in NFA disciplinary, membership denial and registration actions should generally be similar to those provided by parts 8 and 9 of its regulations,[1] the Commission also recognizes that its standards of review for NFA actions derive from different statutory provisions and reflect difference between NFA and exchanges. Unlike exchanges whose contracts are approved by the Commission pursuant to its statutory authority under Section 5 of the Commodity Exchange Act ("Act"), NFA is not a voluntary membership organization. With a few narrow exceptions, persons who wish to conduct business in the futures industry must be members of a registered futures association like NFA. In recognition of the significant impact of the membership criteria and disciplinary determinations of a registered futures association with mandatory membership, Congress has established in section 17 of the Act specific requirements for its membership standards, disciplinary rules and procedural standards. In addition to the authority specifically granted by Congress to all futures associations registered under the Act, NFA has authority specifically delegated to it by the Commission to make registration determinations for most of the categories of registration contemplated by the Act.

Among other comments, the Committee letter noted with approval the Commission's recognition of the need for separation between those agency employees who are or have been engaged in an investigative or prosecuting function related to a proceeding and those employees who give advice to Commissioners and members of their staffs concerning the merits of a decision. In this context, the Committee urged that the Commission codify its procedures to insure separation of functions as part of these final rules. In the Commission's view, its internal procedures have proven adequate and need not be codified in these rules.

A. Appellate Standards For Final Decisions in Disciplinary, Membership Denial and Registration Actions

The standards set forth in rule 171.34 are applicable to appeals from final decisions by NFA in disciplinary, membership denial and registration actions. While the standards for disciplinary actions differ slightly from those for membership denial or registration actions, each set of standards shares the following characteristics: (1) NFA's procedural conduct in the proceeding is reviewed for consistency with both relevant NFA rules and applicable principles of fundamental fairness; (2) NFA's factual findings are evaluated for consistency with the "weight of the evidence" standard; and (3) NFA's conclusion is examined for consistency with the purposes of the Commodity Exchange Act.[2]

The differences in the standards correspond to distinctions in the description of the factors NFA is expected to apply in reaching its decision in each type of action. These distinctions are reflected in the Act, the Commission's regulations and in the rules promulgated by NFA. The specific formulation of each review standard should help parties to Commission appellate proceedings focus their arguments on the standards applied by NFA and the issues that are of primary concern to the Commission. For this reason, these standards should serve as a guide both to NFA in making its determinations and to the parties involved in an appeal from NFA's decision.

NFA's comment letter observes that rule 171.34 deviates from the standards established in 17 CFR 9.33 for review of exchange actions both in requiring a "weight of the evidence" standard and a determination that the sanction imposed be not excessive or oppressive. The Commission wishes to point out that the latter standard is set forth expressly in section 17 of the Act, and that the Act does not impose parallel requirements for Commission review of exchange actions. NFA also suggests that the language in Rule 171.34 requiring the Commission to "consider whether" NFA decisions were made in accordance with the stated requirements be modified, consistent with 17 CFR 3.87 (which is being repealed along with other portions of part 3) to require the Commission to affirm NFA's decision unless it finds that the decision is not in accordance with the requirements. The Commission has determined that such a modification is consistent with the purposes of these regulations, and has modified the rule accordingly.

The Committee noted that § 171.34 (as well as § 171.46, which sets forth standards of Commission review of NFA member responsibility actions) does not require that persons subject to disqualification under section 8a(2) of the Act be afforded an opportunity to present evidence of mitigation or rehabilitation. The Committee suggested that, consistent with the Commission's recent decisions in *In the Matter of Kangles*, CFTC Docket No. SD-88-4 (CFTC June 6, 1990), and *In the Matter of Chamberlain*, CFTC Docket No. SD-88-6 (CFTC June 6, 1990), action on this section should be deferred and considered in the context of the rulemaking announced in footnote 33 of the *Kangles* and *Chamberlain* decisions. Alternatively, the Committee proposes that NFA be directed to permit applicants an opportunity to present evidence of mitigation or rehabilitation. *Kangles* and *Chamberlain*, as well as *In re Horn*, *supra*, establish that an applicant may be afforded an opportunity to show mitigation or rehabilitation. These decisions, like all Commission decisions regarding the proper application of the Act's registration provisions are already binding on NFA. It is therefore the Commission's view that codification of this standard is unnecessary.

B. Standards Applicable to Requests for Relief Relating to the Effective Date of a Final Decision by NFA in a Disciplinary, Membership Denial and Registration Action

Under the rules NFA must promptly mail a notice to all parties after it issues a final decision in a disciplinary, membership denial or registration action (rule 171.21). NFA's decision (and any relief ordered therein) will be effective thirty days after NFA mails the required notice (rule 171.22). An aggrieved party similarly has a thirty day period to mail to the Commission a notice of appeal from NFA's decision (rule 171.23). Thus, as a general rule, there will be a thirty day delay between the mailing of the notice of NFA's decision and the date the decision goes into effect. During that period, an aggrieved individual may file a notice of appeal with the Commission. The filing of a notice of appeal will not stay the effective date of an NFA decision. Thus, as a general rule, NFA's decision will be effective while the Commission reviews the merits of the appeal and the parties will be bound by that decision until the Commission or a court rules otherwise.

Rule 171.22(b) provides an avenue for NFA to seek an earlier effective date for its decision and provides a similar avenue for an aggrieved party to seek to stay the effective date of NFA's decision

[1] *In re Application of the National Futures Association*, Order Granting Registration and Approving Rules (CFTC Sept. 22, 1981).

[2] The standards for membership and registration actions are to be read consistently with prior case law, *e.g.*, *In re Horn* and *Grabarnick*, *supra*. *See also In re Walter*, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,215 (CFTC Apr. 14, 1988).

beyond the thirtieth day. In either case, the petition for relief must be mailed within ten days of the date NFA mails the notice of its decision. Any party opposing the request for relief may respond within five days of the date the petition for relief was mailed. If the Commission believes that it is necessary to the meaningful consideration of the petition, it need not await that response to act. If the Commission does not affirmatively act on the request prior to the decision's effective date under the general rule, the request will be deemed denied.

The Commission will review either type of request for relief under the standards set out in rule 171.22(c). In general, these are the standards applied by the Commission in determining whether a stay pending judicial review is appropriate in a Commission enforcement case.[3] In interpreting these standards, the Commission employs the same mode of analysis used by courts in determining whether extraordinary injunctive relief is appropriate.[4] The burden is on the petitioning party to justify a departure from the general rule. The Commission has rarely granted such motions in the context of its other appellate programs, and while the specific outcome in any case will turn on the particular facts and circumstances, the Commission does not anticipate that such petitions will be successful with any great frequency in the context of decisions by NFA.

The Committee commented that the use of the conjunction "and" at the end of each standard for a stay in § 171.22(c) (and in the similar standards in § 171.43(d) applicable to member responsibility actions) suggests that a party would be required to meet each and every standard to obtain a stay. The Committee suggested that the Commission retain the flexibility to balance the relative weight to be accorded each of the standards by deleting the conjunction "and." The Commission does not believe the change is necessary. As noted above, the Commission uses the same method of analysis as courts in considering petitions for stay—that is, to weigh the standards to achieve a fair and equitable result. This approach has been followed by the Commission in considering requests for stays of exchange final decisions under the part 9 Rules, which similarly use the conjunction "and" following each standard. *Karkazis* v. *CME*, CFTC Docket No. 90–E–7 (CFTC September 14, 1990).

In its comment letter, NFA proposed that the separate provisions governing stays from NFA final decisions in disciplinary, membership and registration actions and member responsibility actions be incorporated into one section. The Commission has considered this proposal and has determined for purposes of clarity and ease of reference to the relevant provisions to retain the separate structure.

C. Review Standards Applicable to Final Decisions of NFA in Member Responsibility Actions

A member responsibility action is an extraordinary procedure that is commenced when NFA has reason to believe that summary and expeditious action against a member is necessary to protect the commodity futures markets, customers or other NFA members. In making its Report to Congress regarding NFA in 1986, the Commission noted that it generally regarded the member responsibility action as a "powerful and appropriate tool for self regulatory bodies such as NFA to obtain immediate compliance." A member responsibility action is a type of disciplinary action, and is thus subject to the standards set forth in section 17(b)(9), (i)(1) and (i)(2) of the Act and § 170.6 of the regulations. However, because of the distinct remedial focus of these actions, the Commission is proposing specific standards to guide its consideration of appeals from final decisions in member responsibility actions.

Under the adopted rules, final decisions of NFA in member responsibility actions will be reviewed under the standards of rule 171.46. These standards are similar in many respects to those the Commission will apply in the review of other disciplinary actions under rule 171.34(a). The primary difference between the review standard for final decisions in member responsibility actions and those for final decisions in other disciplinary actions is in the focus of the factual element of the review standard. In the typical disciplinary action, the primary purpose of the proceeding is to evaluate past conduct in terms of NFA's rules so that violations of those rules may be sanctioned. The goal of a membership responsibility action, however, is to prevent future harm to the commodity futures markets, customers or members of NFA, rather than to sanction past wrongdoing.[5] In view of this remedial focus and the strict limitation of these proceedings to situations where immediate intervention is imperative, the factual review should not be limited to appellant's alleged wrongful conduct but should include all factual matters relating to NFA's conclusion that resort to a summary procedure was necessary. The nature and extent of the threat to the commodity futures markets, customers and members of NFA, as well as the likelihood the threat will continue, diminish or grow, are all factual issues that may affect NFA's reason for commencing a member responsibility action even if the factual record is not completely developed on the precise nature of appellant's violative conduct. In recognition of this important distinction, the Commission has adopted the standard set forth in rule 171.46 for review of NFA's factual determinations in member responsibility actions.

D. Standards Applicable to Requests for a Stay of the Effective Date of a Member Responsibility Action

In 1986, the Commission asked Congress to amend the automatic stay provision of section 17(h) of the Act in order to remove it as an impediment to NFA's effective use of member responsibility actions. In response, Congress enacted the current section 17(h)(3)(A) of the Act. Congress also enacted a requirement that the Commission establish standards for expedited procedures to be used in the consideration of a request for a stay. *See* section 17(h)(3)(B). Accordingly, the Commission had adopted two rules that will permit NFA members that are the subject of a member responsibility action to seek an immediate stay from the Commission when they are notified that the suspension, restriction or remedial action ordered in a member responsibility action has become or will be effective. The standards to be applied under rules 171.41 and 171.43 are consistent with recent court precedent and are similar to the standards set forth in rule 171.22(c). Consistent with the approach generally reflected in these rules, the distinctions in the language of each rule reflect the particular context

[3] *See, e.g., In re Sanchez*, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,056 (CFTC March 23, 1984); *In re Gimbel*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,241 (CFTC May 17, 1988). The factors considered include the likelihood of success on the merits, the evidence that denial of the motion will result in irreparable harm, the effect on the party opposing the grant of relief and the effect on the public interest.

[4] *See, e.g., Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 842 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958).

[5] Pursuant to NFA Rule 3–13, a member responsibility action does not preclude a disciplinary action based on the same facts.

in which the general standard is likely to be called into play.

Rule 171.41(d) applies to a request that the effective date of a member responsibility action brought by NFA be stayed while NFA conducts further proceedings under its rules. This rule will apply only in those cases in which NFA determines that the suspension, restriction or remedial action ordered in the member reponsibility action will be effective prior to the time the member who is the subject of the action is accorded an opportunity for a hearing. In this situation, the likelihood of petitioner's success on the merits of his challenge to NFA's action generally turns on whether, under the cirumstances, NFA's action was inconsistent with fundamental fairness—deprived the member of the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner. That determination, in turn, requires a balancing of factors. *Woods* v. *Federal Home Loan Bank Board*, 826 F.2d 1400, 1411 (5th Cir. 1987).[6] Even if this balancing process does not fall in favor of NFA's decision to take summary action, however, the petitioner will not be entitled to a stay pursuant to rule 171.41(d) absent a showing that denial of the stay would result in irreparable harm.

Under rule 171.41, if a petition for stay is denied, NFA shall continue its action in accordance with the applicable rules of the association. If a stay is granted by the Commission, the action will be remanded to NFA for further proceedings as provided in the Commissioner's Opinion and Order. Unless specifically ordered by the Commission, NFA shall remain free to make the suspension, restriction or remedial action ordered in the member responsibility action effective at the time a final decision in the action is issued (rule 171.41(f)).

Rule 171.43(d) defines standards applicable to petitions for a stay of the effective date of NFA's final decision in a member responsibility action. A decision will be considered final for purposes of this rule when the member has not right to additional procedure from NFA relating to the member responsibility action.[7] The standards are substantively equivalent to the standards applicable to final decisions in other disciplinary actions under rule 171.22(c). Because NFA is authorized to make effective the suspension, restriction or remedial action ordered in the member responsibility action at the time it issues its decision, however, the Commission may not receive a petition for a stay under rule 171.43 until after NFA's action is effective. In these circumstances, the rule provides that the Commission will not delay its decision on the petition to await receipt of NFA's response.[8]

II. General Appellate Procedure

A. Scope

The Commission intends to accept appeals from almost all NFA final decisions in disciplinary,[9] membership denial, registration and member responsibility actions.[10] Excluded from the scope of these rules are decisions by NFA in disciplinary actions when the member seeking to appeal to the Commission has knowingly failed to pursue his right to appeal an adverse decision to the NFA Appeals Committee in accordance with NFA rules. In adopting such an exclusion, the Commission does not intend to discourage appeals from such disciplinary actions but rather to encourage NFA members to comply with reasonable procedural rules that allow NFA to consider in the first instance problems arising in decisions by its regional Business Conduct Committees. In order to assure that this exclusion does not result in any undue limitation on the right to appeal granted by section 17(h)(2) of the Act, rule 171.1(b) indicates that an appeal of a matter subject to the exclusion will not be dismissed if extraordinary circumstances otherwise warrant consideration of the appeal.

NFA in its comments proposed that the Commission also exclude from the scope of these rules NFA decisions which result in the suspension of a member based solely on that member's failure to pay NFA dues or arbitration awards. The Commission agrees that suspension for non-payment of dues should not generally be considered a disciplinary action subject to Commission review,[11] and accordingly has amended § 171.1(b) to exclude such NFA actions from the scope of these rules. The Commission is reluctant at this time, however, to exclude suspension of a member for failing to pay arbitration awards. When the Commission has excluded NFA arbitration decisions themselves from its review, one of the reasons it has done so is that these decisions can be reversed in the court system. In contrast, membership suspension raises somewhat different issues which generally go to the core of the Commission's role in reviewing NFA actions affecting membership status. Pending additional experience on the issue the Commission has determined not to exclude such NFA action from its appellate jurisdiction.

NFA also noted, citing new Commission rule 1.63, that it has adopted standards for service on NFA's Board of Directors, Business Conduct Committees and arbitration panels. NFA suggested that its actions disqualifying individuals for service based on certain disciplinary sanctions should be excluded from Commission review under § 171.1(b). The Commission concurs with this suggestion and has amended that section to exclude disqualification from service for these reasons from the scope of these rules. Finally, NFA suggested that removal of a director by a two-thirds vote of the Board of Directors if it is deemed in the best interest of NFA should not be deemed a disciplinary action within the scope of Commission review. The Commission also agrees that removal of a director generally would not be subject to its review. However, if the director is also a member or associate of a member of NFA, his or her removal may in unusual circumstances raise reviewable issues. For example, the Commission might wish to review removal if the member raised a

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[6] The factors include: the regulatory interest that justifies summary action, the nature of the private interests of those affected by the summary action, the risk of erroneous deprivation through the challenged procedures and the probable value of additional or substitute procedural safeguards. *Id.* at 1411, *citing Brock* v. *Roadway Express Inc.*, 107 S. Ct. 1740, 1747 (1967). 481 U.S. 252, 263. *See also*, *Morton* v. *Beyer*, 822 F.2d 364, 367–71 (3d Cir. 1987).

[7] A member has no general right to appeal the decision in a member responsibility action within NFA, but NFA rules do permit an Appeals Committee to take review of a decision on its own motion within 15 days of the date of the decision. If the Appeals Committee chooses to take review of a matter, the Commission would likely stay its own proceedings on any appeal to the Commission pending completion of the Appeals Committee determination. If the suspension, restriction or remedial action ordered in the decision are effective pending the Appeals Committee review, however, fundamental fairness requires that the Commission consider a petition for a stay of the effective date of the decision filed by an aggrieved party without regard to the possibility of *sua sponte* review by NFA's Appeals Committee.

[8] In light of the importance of expedited action in such a situation, rule 171.42 requires that NFA give the affected party and the Commission telephonic notice, in addition to written notice, when it makes its decision in a member responsibility action effective at the time of issuance.

[9] The definition of disciplinary action under rule 171.2(b) includes all proceedings brought by NFA to enforce its rules that may result in suspension, censure, bar from association with a member or a fine in excess of $100. The latter limitation reflects the amount of the appellate filing fee.

[10] The Commission notes that interim notices issued in NFA membership and registration actions do not constitute "final decisions" of NFA.

[11] *Cf. Davis and Partners, Ltd.* v. *NYFE*, CFTC Docket No. 90–E–4 (CFTC March 22, 1990).

colorable claim that removal was based on the fact that he or she had provided evidence of wrongdoing contrary to the interests of other NFA members.[12] Accordingly, the Commission does not believe removal actions should be excluded entirely from the scope of these rules.

Also excluded are decisions by NFA in arbitration actions. The Commission believes that NFA performs an important role as a self-regulatory organization through its arbitration program and should be responsible for the fairness and accuracy of the results reached in arbitration actions. The Commission also believes that creation of a formal system for Commission review of NFA arbitration actions would interfere with the simplicity and efficiency of that system of dispute resolution. Decisions in arbitration actions already are subject to court review in certain narrow circumstances. Moreover, in most cases, participants in NFA arbitration have had a prior opportunity to seek resolution of their dispute in a reparations proceeding where they would be entitled to seek review by the Commission. In choosing to forego a reparations proceeding by selecting an arbitration proceeding, parties may make a conscious evaluation of the procedural and substantive protections they prefer. In these circumstances, it is not inappropriate to limit the right to appeal in order to preserve the resources of the parties, NFA and the Commission.

B. General Procedural Requirements

Many of the general procedural requirements included in the Commission's rules are variants of provisions in the Commission's part 9, part 10 or part 12 Rules. These include rules: (i) Establishing the requirements for an acceptable method for filing and serving relevant appeal documents (rules 171.8, 171.9); (ii) designating the Commission's business address for filing purposes (rule 171.3); (iii) explaining the computation of time periods under the rules and how to request extensions of such periods (rules 171.4, 171.5); (iv) permitting the filing of motions and settlements (rules 171.10, 171.12); (v) establishing the criteria for practice before the Commission in proceedings under the rules (rule 171.13); and (vi) describing the Commission's authority to sanction those who fail to follow the rules and to waive the rules in the interest of justice (rules 171.11, 171.14). Definitions of many of the terms used in the rules are provided in rule 171.2.

Parties should note that, in general, documents are considered filed and served on the date they are mailed rather than the date they are received. Because delays in the mail are common, the Commission's rule increases a party's time to respond by five days when the document the party is responding to is served by mail. *See* rule 171.9(b).

C. Commencement of an Appeal Procedure: NFA's Notice

Section 17(h)(1) of the Act authorizes the Commission to prescribe the type of notice NFA must provide to parties in disciplinary and membership denial actions.[13] The Commission has exercised this authority by enacting rules 171.21 and 171.42. The latter rule applies solely to final decisions in member responsibility actions while the former applies to final decisions in all other disciplinary actions as well as final decisions in membership denial and registration actions. Under rule 171.21, there are requirements that are common to the three types of actions covered by the rule, and those that differ according to the particular type of NFA action at issue. All notices under either Rule include a statement acknowledging a party's right (1) to appeal NFA's decision to the Commission and (2) to seek a stay of the decision's effective date. All notices also include information central to the timely exercise of a party's statutory right to seek review or a stay—the date of service of the notice (the beginning of the thirty day appeal period) and the effective date of NFA's decision.

The portion of the notice that varies with the type of action relates to both the standards applicable in that particular type of action under NFA's rules and NFA's substantive explanation for the particular result reached in the case. These standards are intended to allow NFA to fulfill the notice requirements of rules 171.21 and 171.42 by providing the parties with a copy of its written decision. By addressing the minimal standards set forth in these rules in its written decisions, NFA will both provide parties with the type of meaningful notice contemplated by section 17(h)(1) of the Act and supply the Commission with the type of explanation of its reasoning necessary to the effective implementation of the Commission's deferential approach to review.

Fulfillment of the notice requirement is a condition for the effectiveness of NFA's decision in a disciplinary, membership denial or registration action. Under proposed rule 171.21(7), any party to the NFA action may request that NFA's notice be stricken if it is defective in any material respect. The Commission also may take such action on its own motion. When a notice is struck, NFA's decision will not be effective until a proper notice is served. In light of the unique importance of the effective date to the successful implementation of a member responsibility action, however, the Commission does not believe it is appropriate to like the effective date of such decisions to the notice requirement of rule 171.42.

D. Procedure for Obtaining Review

The time for filing a notice of appeal commences when an effective notice has been served by NFA. Under rules 171.44 (for member responsibility actions) and 171.23 (all other actions), a notice of appeal need only include the basic information necessary to identify the party filing the appeal and the NFA decision that is the subject of the appeal. A filing fee of $100 must be included. Within 30 days of the mailing of a notice of appeal, NFA will file two copies of the record of the decision with the Commission's Proceedings Clerk (rule 171.24). At that time, NFA will serve the appealing party with a copy of the index of the record it submitted to the Commission as well as a copy of any document included in that record that was not previously served on that party. If the appealing party has any objections to the content of the record, he may raise his objections at the time he files his appeal brief.[14]

Under rule 171.25, the appealing party must submit an appeal brief within 30 days of the date NFA mailed the record of its decision. If no brief is submitted within the thirty day period, the Commission may dismiss the appeal as unperfected. NFA may file an answering brief within 30 days of the date the appealing party files his brief (rule 171.26). Either party may request the Commission to hear oral argument by filing a request at the time its brief is submitted (rule 171.32).

[12] Cf. *Wallace Conrad* v. *Chicago Board of Trade*, CFTC Docket No. 88-E-5 (CFTC) March 22, 1990). personnel decision may not in all cases be actions solely involving an exchange's internal affairs which properly are excluded from Commission review.

[13] The Commission has similar authority under section 17(o)(1) relating to NFA determinations in registration actions.

[14] Once a notice of appeal has been filed pursuant to rule 171.44, the procedures applied in an appeal from a decision in a member responsibility action are the same as those that apply to appeals in other types of actions (rule 171.45).

As a general rule, once a case is fully briefed, it will be decided by the Commission. In those cases in which the Commission believes that the result reached in NFA's decision is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may issue an order of summary affirmance as described in rule 171.33(b). In appropriate cases, however, the Commission may affirm NFA's decision by Opinion and Order. The Commission may also set aside or modify NFA's decision, or remand for further proceedings (rule 171.32).

III. Participation by Individuals That Are Not Parties to the Proceeding

A. Participation by Interested Persons Outside the Commission

In rare instances, decisions made by NFA in disciplinary, membership denial, registration and member responsibility actions will involve broad legal and policy issues that have significance for the futures industry in general. If these issues are raised on appeal to the Commission, they may take on an added significance. In such a situation, individuals or organizations outside the Commission may have an interest in presenting to the Commission their views concerning the proper resolution of the issues raised in the appeal. The Commission has adopted rule 171.27 to govern participation in proceedings subject to these rules by interested persons outside the Commission. Under this rule, such persons may file a motion that establishes their direct and substantial interest in the outcome of the proceeding. In order to avoid delay in the resolution of the proceeding, the motion must be filed promptly. In response to NFA's comments, the Commission has determined to include in § 171.27 the definition of the term "interested person" provided in its rule of practice, 17 CFR 10.10(a)(3).

B. Participation by Interested Persons on the Commission Staff

As a general matter, members of the Commission staff are free to advise the Commission on legal and policy matters that may affect their regulatory responsibilities. The Commission is also generally free to consult with any member of the Commission staff who has experience or expertise in a matter being considered by the Commission. In the context of its adjudicatory programs, however, applicable statutory provisions and principles of fundamental fairness sometimes require that the Commission limit the scope of its contact with certain members of its staff.[15] As discussed *infra*, the Commission is adopting rule 171.6 to assure that its decisionmaking process not only operates in a fair, balanced and impartial manner, but also avoids any undue appearance of bias or improper influence. Rules 171.28 and 171.31 are designed to provide an additional method consistent with principles of fundamental fairness for members of the Commission staff to communicate with the Commission concerning the merits of an appeal subject to these rules.

Rule 171.28 grants members of the Commission staff a right to make a written submission of their views concerning the appropriate result in an appeal from a decision of NFA subject to these rules. Members of the Commission staff may indicate their intention to participate in an appellate procedure under these rules by filing a notice of appearance on or before the twentieth day following the date of service of NFA's responsive brief. The Commission will generally issue an order after such a notice of appearance is received granting the staff a reasonable period of time to submit a brief and the party with the position opposed to the staff a reasonable period to reply to the staff's arguments. In those rare circumstances when the record establishes that the public interest will not be served by staff participation, the Commission will issue an order prohibiting it. The Commission will not consider, however, submissions from parties to the proceeding that staff participation be denied.

Because members of the Commission staff are not parties to proceedings brought by NFA, they are not in a position to appeal directly a determination by NFA that they believe contravenes fundamental fairness, the purposes of the Act or NFA's own rules. Because of the parallel nature of some of the responsibilities of NFA's staff and the Commission staff, a decision by NFA applying the Act or Commission regulations, or even one interpreting requirements of NFA Rules that correspond to Commission regulations, may raise significant concerns about the effect of that decision on Commission programs administered by the staff. In these circumstances, operating Divisions should have an opportunity to make these concerns known to the Commission by requesting the Commission to consider the issue despite the absence of an appeal.

Rule 171.31(a) permits members of the Commission Divisions to request that the Commission institute review of a decision by NFA in a disciplinary, membership denial or registration action by filing and serving a memorandum regarding its requests prior to the effective date of NFA's decision. The filing of such a memorandum shall automatically stay the effective date of NFA's decision for twenty days. Within fifteen days of the service of the staff's memorandum, NFA may file a response to the staff's request that review be instituted. Pursuant to rule 171.31(c), the Commission may extend the stay of the effective date of NFA's decision for an additional thirty days while it considers the submission of the staff and NFA. If the Commission decides to grant the request that review be instituted, it will issue an order to establish a procedure for submission of the record and argument by the parties. The effective date of NFA's decision would remain stayed pending the issuance of a decision on the merits by the Commission.[16]

IV. Rules Limiting Contacts With Decisional Officials and Prohibiting Non-Public Participation of Members of the Commission Staff When Such Participation Creates an Appearance of Improper Influence

Principles of fundamental fairness applicable to administrative adjudications require that the appearance of fairness and the absence of a probability of outside influences on the adjudicator be maintained. Under the Administrative Procedure Act ("APA"), such concerns about the appearance of fairness and the absence of outside influences generally are addressed by rules prohibiting *ex parte* contacts between Commission decisionmaking officials [17] and persons outside the agency interested in the results of the decision and by maintaining a separation between those agency employees who are or have been engaged in an investigative or prosecuting function related to the

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[15] *Amos Treat & Co. v. Securities and Exchange Commission*, 306 F.2d 260 (D.C. Cir. 1962). More recently, the Court of Appeals for the Sixth Circuit described the requirements of fundamental fairness in an administrative adjudicatory setting as follows: This concept requires the appearance of fairness and the absence of any probability of outside influences in the adjudicator; it does not require proof of actual partiality. *Utica Packing Co. v. Block*, 781 F.2d 71, 77 (6th Cir. 1986).

[16] Pursuant to rule 171.31(d), the Commission has also retained authority to initiate review of a decision by NFA on its own motion.

[17] As a general matter, the decisionmaking officials for Commission adjudicatory appeals include Commissioners, members of the Commissioners' personal staffs and attorneys in the Office of General Counsel who work on particular opinions matters.

proceeding and those agency employees who give advice to Commissioners and the members of their staff concerning the merits of a decision.

Rule 171.6 restricts the contacts Commission decisionmaking officials may have with (1) NFA, (2) NFA members that are opposing NFA in its action and (3) any other person outside the Commission who has an interest in NFA's action. If a Commission decisional official is aware that a notice of appeal has been filed in accordance with § 171.23 or § 171.44 of these rules, or that a petition for stay or for an emergency effective date has been filed in accordance with § 171.22, § 171.41 or § 171.43 of these rules, he may not communicate with any of the individuals included in the three categories listed above about the merits of NFA's action unless the communication is preceded by reasonable notice to all parties to the action and is made on the public record.

In its comments NFA expressed its concern that limiting its communication with CFTC staff at all stages of an NFA action may unduly restrict the transmission of new regulatory information which may be relevant to the merits of the proceeding, frustrating both the Commission's and NFA's regulatory mandates. NFA urged that rule 171.6 be adopted as proposed to prohibit *ex parte* communications upon the filing of an appeal with the Commission rather than from the time an NFA action is commenced. After careful consideration, the Commission has determined to adopt § 171.6 is the prevention of *ex parte* communication. Information relevant to the merits of the proceeding may be communicated on the record upon written notice to the parties.

A decisionmaking official who violates this prohibition may be subject to sanction under rule 171.6(c)(2). A party who knowingly makes an *ex parte* contact with a Commission decisionmaking official also may be subject to sanction under the rule.

V. Delegation of Authority

In the Commission's experience delegation of authority is a practical necessity in light of the rapid growth in the Commission's appellate jurisdiction. Personal involvement by members of the Commission in the many decisions that must be made in the various cases pending on its appellate docket is possible, but only at a significant cost in both time and resources. The Commission's experience with the exercise of the delegations of authority made in the part 10 and part 12 rules [18] have convinced it that significant authority may be safely delegated as long as parties are free to challenge the staff's decisions in a timely manner. For this reason, the Commission has adopted rule 171.50, delegating authority to the Deputy General Counsel for Opinions to rule on certain limited matters. Decisions made pursuant to delegation are subject to reconsideration by the Commission if a motion is filed within seven days of the service of the ruling. The delegee may refer any matter to the Commission for its determination in the first instance and the Commission also may instruct the delegee to submit a matter for its consideration.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring of any collection of information as defined by that Act. In compliance with those requirements, the Commission previously submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget on June 13, 1990. The Office of Management and Budget approved the collection of information associated with this rule on September 10, 1990 and assigned OMB control number 3038–0043 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response: 1.6
Number of respondents: 105
Frequency of response: 1–150

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7430.

Public reporting burden for this collection of information is estimated to average 1.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project 3038, Washington, DC 20503.

[18] There is a similar delegation of authority included in the recently amended part 9 rules. Because of the limited number of cases filed under these rules, the Commission's experience with this delegation has been limited.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies that propose rules to consider the impact those rules will have on small businesses. With respect to persons seeking Commission review of NFA adjudicatory decisions, the final regulation would impose no additional regulatory burden. Commission review of NFA disciplinary and membership denial actions are presently carried out by the Commission pursuant to generally comparable procedures adopted on a case-by-case basis. Commission review of NFA registration actions is presently governed by comparable procedures under the provisions of subpart F of part 3. The final revisions would, in fact, ease the regulatory burden to some extent by providing greater certainty and predictability concerning the standards and procedures governing such review.

Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chariman of the Commission hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

C. Effective Date

These rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990.

List of Subjects in 17 CFR Part 171

Administrative practice and procedure, Commodity exchanges, Commodity futures.

PART 3—[AMENDED]

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 8a, 17(h), 17(i) and 17(o) thereof, 7 U.S.C. 4a, 12a, 21(h), 21(i) and 21(o), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

§§ 3.75, 3.80–3.91 [Removed]

1. 17 CFR part 3 Subpart E (§ 3.75) and Subpart F (§§ 3.80 to 3.91 inclusive) are removed.

2. 17 CFR part 171, is added to read as follows:

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

Authority: 7 U.S.C. 4a, 12a and 21.

Subpart A—General Provisions

§ 171.1 Scope of rules.

(a) *Matters included.* Unless specifically excluded by subsection (b), this part governs review by the Commission, pursuant to sections 17(h), (i) and (o) of the Commodity Exchange Act ("Act"), as amended, of any disciplinary action, membership denial action, registration action or member responsibility action taken by the National Futures Association or any registered futures association. Unless specifically indicated, references in this part to the National Futures Association shall also include any other registered futures association.

(b) *Matters excluded.* The Commission will not review under these rules the following decisions by the National Futures Association:

(1) A decision in a disciplinary action if the party aggrieved by the decision knowingly failed to pursue the right to appeal an adverse decision to the Appeals Committee of the National Futures Association and there are no extraordinary circumstances that otherwise warrant Commission consideration of the aggrieved party's appeal;

(2) A decision in an arbitration action brought pursuant to section 17(b)(10) of the Act or any rule of the National Futures Association;

(3) Suspension of a member based solely on that member's failure to pay National Futures Association dues;

(4) A decision to disqualify any member for service on the National Futures Association Board of Directors, Business Conduct Committees or arbitration panels pursuant to the standards for service adopted by the National Futures Association to implement Commission rule 1.63.

(c) *Appeals from excluded decisions.* If the Deputy General Counsel for Opinions or his delegee determines that a notice of appeal submitted to the Commission is from a decision that is excluded from review under this part, he may strike it and order it returned to the aggrieved party who submitted it.

(d) *Applicability of these part 171 rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990. Any part 171 proceeding commenced prior to October 31, 1990 continues to be governed by the procedures established in former subpart F of part 3 of the Commission's regulations, if applicable, or by the procedures established for that proceeding by Commission order. Parties to any proceeding pending on October 31, 1990 may, within 30 days after October 31, 1990 by written stipulation executed by all parties, and filed with the Proceedings Clerk before the Commission's final decision is rendered, elect to have the matter governed by the provisions of these part 171 rules.

§ 171.2 Definitions.

For purposes of this part:

(a) *Commission decisional employee* includes any member of the Commission staff who participates in, or may be reasonably expected to participate in, the decisionmaking process in any proceeding under this part. It does not include Commissioners or members of their personal staff.

(b) *Disciplinary action* includes any proceeding brought by the National Futures Association to enforce its rules that may result in expulsion, suspension, censure, bar from association with a member, fine in excess of $100 or any comparable sanction being imposed on a member or a person associated with a member.

(c) *Ex parte communication* shall include any communication, whether written or oral, which is both (1) not preceded by reasonable notice to all parties to a proceeding, and (2) not made on the public record. It shall not include requests made to the Commission's Opinions Section or Office of Proceedings for status reports or for an interpretation of these rules.

(d) *Final Decision* means the decision that terminates the proceeding before the National Futures Association on the action that is the subject of the notice of appeal filed with the Commission.

(e) To *mail* means to place in the United States mail (or to deliver to an overnight delivery service of established reliability) a properly addressed and post-paid document. Unless otherwise provided, documents filed and served by mail must be sent by no less expeditious means than first class United States mail.

(f) *Member* includes any person admitted to membership by the National Futures Association.

(g) *Member Responsibility Action* includes any action in which, based on a finding by the National Futures Association that there is reason to believe that summary action is necessary to protect the commodity futures markets, customers or other members of the association, a member or person associated with a member may be summarily suspended from membership or association with a member, required to restrict operations or otherwise directed to take remedial action.

(h) *Membership denial action* includes any proceeding brought by the National Futures Association to (1) determine whether an applicant should be admitted to membership or be permitted to be associated with a member, (2) determine whether an applicant should be admitted to membership or be permitted to be associated with a member on a conditional basis, or (3) determine whether to revoke or restrict the membership or association status of any person who is a member or is associated with a member.

(i) *Party* includes any person who has been the subject of a disciplinary action, membership denial action, or registration action by the National Futures Association; the National Futures Association itself; any person granted permission to participate as a party pursuant to § 171.27 of these rules; and any Division of the Commission that files a Notice of Appearance pursuant to § 171.28 of these rules.

(j) *Person associated with a member* includes any person permitted to register as an associate of a member by the National Futures Association.

(k) *Record of the proceeding* shall include the order appealed from, the findings or report on which the order is based, the pleadings, evidence and proceedings before the National Futures Association decisonmaker and a copy of any rule of the National Futures Association that is material to the order.

(l) *Registration action* includes any proceeding brought by the National Futures Association, pursuant to authority delegated by the Commission, to grant, condition, deny, suspend, restrict, or revoke the registration of any person.

(m) *Rule of the National Futures Association* includes any article of incorporation, bylaw, rule, regulation, resolution or written interpretation of stated policy of the National Futures Association.

§ 171.3 Business address; hours.

The principal office of the Commission is located at 2033 K Street NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

§ 171.4 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday. In the latter circumstances, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the date of service of an order, the date of service shall be the date the order is mailed or hand delivered by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

§ 171.5 Extension of time.

(a) *In general.* Except as otherwise provided by these rules, for good cause shown, on its own motion or the motion of a party, the Commission may at any time extend or shorten the time prescribed by the rules for filing any document. In any instance in which a specific time period is not prescribed in this part for an action to be taken concerning any matter, the Commission may establish a time for that action.

(b) *Filing of motion.* Absent extraordinary circumstances, when the time period that has been prescribed for an action to be taken concerning any matter exceeds seven days, requests for extension of that time period shall be filed at least five days prior to the expiration of the time period provided and shall include an explanation of the facts and circumstances that justify the extension.

§ 171.6 Ex parte communications.

(a) *Prohibition of ex parte communications.* (1) No party to a proceeding before the Commission under these rules and no person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of the proceeding subject to these rules to a Commissioner, member of the personal staff of a Commissioner or Commission decisional employee.

(2) No Commissioner, member of the personal staff of a Commissioner or Commission decisional employee shall make or knowingly cause to be made to a party to a proceeding subject to these rules or to any person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding, an *ex parte* communication relevant to the merits of the proceeding subject to these rules.

(b) *Procedure for handling.* Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who receives, or who makes or knowingly causes to be made, an *ex parte* communication prohibited by paragraph (a) of this section shall:

(1) Place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(2) Promptly give written notice of such communications and responses thereto to all parties to the proceedings to which the communication or responses relate.

(c) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission may, to the extent consistent with the interests of justice and the policies of the Act, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an *ex parte* communication which violates the prohibitions contained in paragraph (a)(2) of this section may be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735–3(b)(3).

(d) *Applicability of prohibitions and sanctions against ex parte communications.* (1)(i) The prohibitions of this section shall begin to apply at the time that a copy of a notice of appeal has been filed with the Proceedings Clerk in accordance with § 171.23 or § 171.44 of this part; or a petition for stay or for an emergency effective date has been filed in accordance with § 171.22, § 171.41 or § 171.43 of this part. The prohibitions of this section shall remain in effect until a final order has been entered in the proceeding which is no longer subject to review by the Commission or to review by any court.

(ii) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date prior, or shall continue until a date subsequent, to the times specified in paragraph (d)(1)(i) of this section.

(2) The sanctions in paragraph (c)(1) of this section shall not apply to a person making a prohibited communication (or causing it to be made) absent evidence that the person acted with actual or constructive knowledge that the person receiving the communication was a Commissioner, member of the personal staff of a Commissioner or a Commission decisional employee.

§ 171.7 [Reserved]

§ 171.8 Filing with the Proceedings Clerk.

(a) *How to file.* Any document that is required by this part to be filed with the Proceedings Clerk shall be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2000 L Street NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing.

(b) *Proof of filing.* Proof of filing shall be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified for practice before the Commission. The proof of filing shall certify that the attached document was delivered by hand to the Proceedings Clerk or deposited in the United States mail, with first-class postage prepaid (or delivered to an overnight delivery service of established reliability), addressed to the Proceedings Clerk, Office of Proceedings, 2000 L Street NW., Washington, DC 20581, on the date specified in the affidavit.

(c) *Formalities of filing*—(1) *Number of copies.* Unless otherwise provided, any person filing a document with the Proceedings Clerk shall provide two conformed copies in addition to the original.

(2) *Title page.* All documents filed with the Proceedings Clerk shall include, at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk shall be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature*—(i) *By whom.* All documents filed with the Proceedings Clerk shall be signed personally in ink:

(A) By the person or persons on whose behalf they are tendered for filing;

(B) By a general partner, officer or director of a partnership, corporation, association, or other legal entity; or

(C) By an attorney-at-law having authority with respect thereto. The Proceedings Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(ii) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(A) He has read the document subscribed and knows the contents thereof;

(B) If executed in any representative capacity, it was done with full power and authority to do so;

(C) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(D) The document is not being interposed for delay.

§ 171.9 Service.

(a) *General requirements.* Unless otherwise provided, all documents filed with the Proceedings Clerk must be served upon all parties on the same day.

(b) *Manner of service.* Service may be made by personal delivery (effective upon receipt) or by mail (effective upon deposit). When service is effected by mail, the time within which the person served may respond thereto shall be increased by five days.

(c) *Proof of service.* Proof of service shall be made by filing with the Proceedings Clerk, at the same time as the relevant document is filed, an affidavit of service executed by a person 18 years of age or older or a certificate of service executed by an attorney qualified to practice before the Commission. The proof of service shall state that service has been made and identify the person served, the date of service and the manner of service.

(d) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party must state on the first page the name, postal address and telephone number of the person authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on a different authorized person or on the party himself is authorized by the Commission, or unless pursuant to § 171.8 the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(e) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission shall be served on each of the parties by the Proceedings Clerk. Service will be deemed complete upon deposit in the mail.

§ 171.10 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part shall be made by a written motion, filed with the Proceedings Clerk. The motion shall state the relief sought, basis for the relief and the authority relied upon.

(b) *Answers to motions.* Unless otherwise provided, a party may file a written response to a motion within five days after service of the motion.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter shall not be permitted.

§ 171.11 Sanctions.

In the event a party fails to fulfill his obligations under these Rules, the Commission may impose appropriate sanctions including dismissal of the appeal or summary reversal of the decision under appeal. Sanctions may be imposed on the motion of a party or on the Commission's own motion.

§ 171.12 Settlement.

At any time before the Commission has reached a final determination in a proceeding, the parties may request dismissal of the appeal based on a settlement agreement. If, in its view, the settlement is consistent with the public interest, the Commission will dismiss the proceeding.

§ 171.13 Practice before the Commission.

(a) *Practice.*—(1) *By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in a proceeding subject to these rules. The Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal from representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be subject to conditions including submission of an affidavit averring that the party represented has actual knowledge of the withdrawal and providing the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se.* If the party proceeds *pro se,* the statement shall include the address where the party can thereafter be served.

§ 171.14 Waiver of rules.

To prevent undue hardship on any party or for other good cause shown, the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction. Such an order shall be based upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.20 [Reserved]

§ 171.21 Notice of final decision.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceedings Clerk and the Secretary of the Commission, with a written notice of any final decision in a disciplinary action, membership denial action or registration action subject to these rules. The notice may be contained in the written decision issued by the National Futures Association.

(b) *Content of the notice.* At a minimum, the notice shall provide the following information:

(1) The names of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.28 as well as their right to seek a stay of the effective date of the decision pursuant to § 171.27.

(4) For a disciplinary action:

(i) A statement setting forth the relevant acts of practices engaged in or omitted by the parties to the proceeding;

(ii) A statement setting forth the specific rule or rules of the association violated by the relevant acts or practices or omissions to act of the parties to the proceeding;

(iii) A statement setting forth the penalty imposed and the basis for its imposition.

(5) For a membership action:

(i) The specific grounds for the denial, bar, expulsion, or restriction;

(ii) The findings made concerning those grounds;

(iii) An explanation of the result reached in light of the grounds for ineligibility found and the findings made.

(6) For a registration action:

(i) The statutory disqualification at issue;

(ii) The findings made concerning the statutory disqualification;

(iii) An explanation of the result reached in light of the statutory disqualification shown and the findings made.

(c) *Effect of inadequate notice.* (1) If the National Futures Association issues a notice of a final decision subject to these rules that is not substantially consistent with the requirements of this section, and the record does not establish that the errors therein are harmless, the notice may be stricken. The Commission may act on its own motion or on the motion of a party.

(2) When a notice is struck, the final decision of the National Futures Association shall not be effective until a proper notice is served.

§ 171.22 Effective date of final decisions in disciplinary, membership denial and registration actions.

(a) *General rule.* A final decision of the National Futures Association in a disciplinary action, membership denial action or registration action shall be effective thirty days after service of the notice described in § 171.21.

(b) *Petitions for stay pending review or for an emergency effective date.*—(1) *Stay pending review.* Within ten days of service of the notice described in § 171.21, any aggrieved party may seek from the Commission a stay pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay. If the Commission does not grant the petition prior to the effective date of the decision under review, it shall be deemed denied. All petitions for stay must be accompanied by a notice of appeal.

(2) *Emergency effective date.* Within ten days of service of the notice described in § 171.21, the National Futures Association may seek from the Commission an order establishing an emergency effective date for the decision by filing and serving an appropriate petition. The mere filing of such a petition shall not alter the effective date of the decision. The burden of persuasion rests with the National Futures Association. If the Commission does not grant the petition by the date specified as the emergency effective date, it shall be deemed denied.

(3) *Contents of petition for stay and petition for an emergency effective date.* A petition for stay or for an emergency effective date shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(4) *Response.* Within five days of the service of the petition, a party may file in opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Standards for determining petitions for a stay or an emergency effective date petition.* In reviewing petitions filed under this seciton, the Comission shall consider:

(1) The likelihood that a challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the opposing party; and

(4) The effect a grant or denial of the petition would have on the public interest.

(d) *Expedited consideration.* If, in its view, it is necessary to protect the petitioner's right to a meaningful determination of the issues raised in the petition, the Commission may act upon a petition for a stay or for an emergency effective date prior to its receipt of an opposing party's response. Any party aggrieved by such expedited consideration may seek reconsideration within seven days of service of the decision.

§ 171.23 Notice of appeal.

(a) *Time to file.* Any party aggrieved by the final decision of the National Futures Association in a disciplinary, membership denial or registration action may, within thirty days of the National Futures Association's service of the notice described in § 171.21, file a notice of appeal with the Proceedings Clerk. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall consist of a brief statement indicating that the party is requesting Commission review of an action of the National Futures Association. It should identify:

(1) The name and address of the person appealing and, if represented, the name and address of his representative;

(2) The case name and docket number of the National Futures Association proceeding; and

(3) The date of the decision.

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of $100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.24 Submission of the record.

Within thirty days after service of a notice of appeal, the National Futures Association shall file with the Proceedings Clerk two copies of the record of the proceeding (as defined by § 171.2(k)). The record shall be bound as a unit, chronologically indexed and tabbed, and certified as correct by a duly authorized official, agent or employee of the National Futures Asssociation. The National Futures Association shall serve on the party appealing, in lieu of the record, a copy of the index of the record and a copy of any document in the record not previously served on the party appealing. If the party appealing objects to the materials included or excluded in preparing the record, he shall file his objections with his brief on appeal. The Commission may, at any time, direct that an omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

§ 171.25 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 171.23, shall perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record by the National Futures Association. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section shall include, in the order indicated:

(1) A statement of the issues presented for review;

(2) A statement of the case. The statement shall indicate briefly the nature of the case and include a full description of the action being challenged. There shall follow a clear and concise statement of all facts relevant to the consideration of the appeal with appropriate citations to the record;

(3) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons supporting those contentions. It shall cite specifically to the relevant authorities and to those parts of the record that support appellant's contentions; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the appeal brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, rules, regulations or similar materials.

§ 171.26 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the apeal brief, the National Futures Association shall file with the Proceedings Clerk an answering brief.

(b) *Contents of answering brief.* The contents of the answering brief generally shall be consistent with those set forth in § 171.25(b) but may omit a statement of the issues and a statement of the case if the National Futures Association does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of the answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 171.27 Limited participation by interested persons.

(a) Upon motion of any interested person or, on its own motion, the Commission may permit, or solicit, limited participation in the proceeding by such interested person. A motion for leave to participate in the proceeding shall be filed promptly, shall identify the interest of that person and shall show why participation in the proceeding by that person would serve the public interest. If the Commission determines that participation would serve the public interest, it shall by order establish a supplementary briefing schedule for the interested person and the parties to the proceeding.

(b) For purposes of this subsection, *interested person* shall include parties and any other persons who might be adversely affected or aggrieved by the outcome of a proceeding; their officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives; and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding.

§ 171.28 Participation by Commission staff.

The Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may participate in any proceeding by filing a notice of appearance. Such a notice shall be filed and served on or before the twentieth day following the date of service of its brief by the National Futures Association. The Commission shall by order establish a supplementary briefing schedule for the Commission staff and other parties to the proceeding. If it concludes that participation of the Commission staff will not serve the public interest, the Commission shall prohibit further participation.

Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.30 Scope of review.

On review, the Commission may, in its discretion and after appropriate consideration of the notice given to the parties, consider *sua sponte* any issues arising from the record before it and may base its determination thereon. The Commission may also limit its consideration to those issues specifically raised in the parties' briefs, treating all other issues as waived.

§ 171.31 Commission review in the absence of an appeal.

(a) *Request by Commission staff.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may file and serve a memorandum requesting the Commission to institute review of the National Futures Association proceeding. The filing of such a memorandum shall stay the effective date of the decision at issue for twenty days.

(b) *Response by the National Futures Association.* The National Futures Association may file a response to the memorandum of the Commission staff within fifteen days of the service of the memorandum.

(c) *Commission determination of staff request.* To preserve the status quo while it determines whether review is apropriate, the Commission may extend the stay of the effective date of the decision at issue for an additional 30 days. If the Commission decides to take review, the effective date of the decision at issue shall be stayed pending the decision of the Commission, unless otherwise ordered. The Commission shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties to the proceeding.

(d) *Commission review on its own motion.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Commission may take review of a decision by issuing an appropriate order. If the Commission determines that it is appropriate to take review on its own motion, it shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties.

§ 171.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument in a proceeding.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103(b) of this chapter.

§ 171.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the National Futures Association. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the registered futures association proceeding, briefs submitted to the Commission by the parties and any oral argument made in accordance with § 171.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the decision of the National Futures Association shall be affirmed without a Commission opinion.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the National Futures Association is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision without opinion. The decision of the National Futures Association shall constitute the Commission's final decision, effective upon service. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the rationale of the National Futures Association, and neither the order of summary affirmance nor the underlying order shall serve as Commission precedent in other proceedings.

§ 171.34 Standards of review.

(a) *Disciplinary actions.* In reviewing a final decision of the National Futures Association in a disciplinary action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings of the National Futures Association concerning the relevant acts or practices engaged in or omitted;

(4) The determination that the acts or practices engaged in or omitted violated rules of the National Futures Association does not rest on a reasonable interpretation of the rules at issue;

(5) The National Futures Association's application of its rules is not consistent with the purposes of the Act;

(6) The National Futures Association's choice of sanction is excessive or oppressive in light of the violations found having due regard for the public interest.

(b) *Membership denial actions.* In reviewing a final decision of the National Futures Association in a membership denial action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

(c) *Registration actions.* In reviewing a decision of the National Futures Association in a registration action, the Commission shall affirm the order of the National Futures Association unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

Subpart D—Commission Review of Decisions by the National Futures Association in Member Responsibility Actions

§ 171.40 Notice of the commencement of a member responsibility action.

The notice of a Member Responsibility Action provided by the National Futures Association pursuant to its rules shall advise the affected parties of their right to petition the Commission pursuant to § 171.41 to stay the effective date of the action pending a hearing before the National Futures Association on the factual issues relevant to the suspension, restriction or remedial action ordered.

§ 171.41 Petition for a Stay of effective date of a member responsibility action pending a hearing by the National Futures Association.

(a) *Time to file.* Within ten days after the National Futures Association serves the notice required by § 171.40, any party aggrieved by the National Futures Association's determination that the member responsibility action should be effective prior to the opportunity for a hearing on the factual issues relevant to the suspension, restriction or remedial action imposed may petition the Commission to stay its effectiveness pending completion of further proceedings by the National Futures Association. The burden of persuasion shall rest with the party seeking the stay.

(b) *Content.* A petition for stay shall meet the content requirements set forth in § 171.22(b)(3).

(c) *Response.* A response may be filed by the National Futures Association in accordance with § 171.22(b)(4).

(d) *Standards for granting petition for stay.* In reviewing petitions to stay the effectiveness of the member responsibility action pending completion of further proceedings, the Commission shall consider:

(1) Whether, in the circumstances presented, the notice and opportunity for a hearing provided by the National Futures Association are consistent with principles of fundamental fairness; and

(2) The likelihood that the denial of the petition would result in irreparable harm to petitioner; and

(3) The effect a grant of the petition would have on the interests of the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) If the suspension, restriction or remedial action imposed by the National Futures Assocation in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the action is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

(f) *Proceedings following Commission disposition.* If the petition for a stay is denied, the National Futures Association shall continue its action in accordance with the applicable rules of the association. If the petition for a stay is granted, the action shall be remanded to the National Futures Association for further proceedings as provided in the Commission's decision. Unless otherwise ordered by the Commission, a stay issued pursuant to this section shall not deprive the National Futures Association of the authority, after conducting a hearing under the appropriate rules of the association, to make the suspension, restriction or remedial action ordered in the member responsibility action immediately effective at the time a final decision is issued.

§ 171.42 Notice of a final decision of the National Futures Association in a member responsibility action.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceeding Clerk and Secretary of the Commission, with a written notice of any final decision in a member responsibility action. The notice may be contained in the written decision issued by the National Futures Association. If the National Futures Association determines that the decision shall be effective upon issuance, in addition to serving a written notice, it shall also contact the parties and the Proceedings Clerk by telephone to inform them of its determination.

(b) *Contents of the written notice.* At a minimum, the notice shall provide the following information:

(1) The name of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.44 as well as their right to seek a stay of the decision pending Commission consideration of their appeal pursuant to § 171.43;

(4) A description of the action taken and the reasons for the action;

(5) Findings of fact and conclusions of law on all issues relevant to its decision;

(6) A determination of the appropriate relief based on the findings and conclusions.

§ 171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.

(a) *Filing the petition.* Within ten days of the service of the notice described in § 171.42, any aggrived party may seek from the Commission a stay of the effective date of the decision of the National Futures Association pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay.

(b) *Contents.* A petition for a stay shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Response.* Within five days of the service of the petition, the National Futures Association may file an opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(d) *Standards for determining petitions for a stay.* In reviewing petitions filed under this section, the Commission shall consider:

(1) The likelihood that petitioner's challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) *Expedited consideration.* If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the decision is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

§ 171.44 Notice of appeal.

(a) *Time to file.* Any party aggrieved by a final decision of the National Futures Association in a member responsibility action may, within thirty days of the service of the notice described in § 171.42, file with the Proceedings Clerk and serve on the National Futures Association a notice of appeal. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall meet the content requirements of § 171.23(b).

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of $100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.45 General procedures.

The following procedural rules applicable to review of decisions of the National Futures Association in disciplinary, membership denial and registration actions shall also apply to the review of decisions of the National Futures Association in member responsibility actions:

(a) Section 171.24 Submission of the Record.

(b) Section 171.25 Appeal Brief.

(c) Section 171.26 Answering Brief.

(d) Section 171.27 Limited Participation By Interested Persons.

(e) Section 171.28 Participation By Commission Staff.

(f) Section 171.30 Scope of Review.

(g) Section 171.31 Commission Review In the Absence of An Appeal.

(h) Section 171.32 Oral Argument.

(i) Section 171.33 Final Decision By the Commission.

§ 171.46 Standards of review.

In reviewing the decision of the National Futures Association in a member responsibility action, the Commission shall consider whether:

(a) The proceedings were conducted in a manner consistent with fundamental fairness;

(b) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;

(c) The weight of the evidence supports the findings of the National Futures Association concerning the reasons for the action;

(d) The determination that summary action is necessary to protect the commodity futures markets, customers, or members of the National Futures Association rests on a reasonable interpretation of the NFA rules at issue;

(e) The National Futures Association's application of its rules is consistent with the purposes of the Act;

(f) In light of the findings of the National Futures Association concerning the reasons for the action and the public interest, the suspension, restriction or remedial action imposed by the National Futures Association is not excessive, oppressive or an abuse of discretion.

Subpart E—Delegation of Functions

§ 171.50 Delegation to the Deputy General Counsel for opinions.

(a) The Commission hereby delegates, until it orders otherwise, to the Deputy General Counsel for Opinions, or the Deputy General Counsel's designee, the authority:

(1) To waive or modify any of the requirements of §§ 171.25, 171.26, 171.27 and to waive or modify any requirement of the Part 171 Rules insofar as it pertains to changes in the time permitted for filing, or the form, execution, service and filing of documents;

(2) To enter orders under §§ 171.10, 171.12, 171.21 and 171.31(c);

(3) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 171.1(b) and to so notify the appellant and the registered futures association;

(4) To stay the effective date of a decision of the National Futures Association in a disciplinary, membership denial or registration action, or a decision relating to such actions issued by the Commission pursuant to these rules, for a reasonable period of time, not to exceed 10 days, when such a stay is necessary to allow the Commission to consider a petition to stay the effective date of such a decision or a motion for similar relief;

(5) To decline to accept any document which has not been filed or perfected as specified in these rules;

(6) To determine motions seeking permission to participate in a proceeding under § 171.27 and to establish the related briefing schedule;

(7) To establish briefing schedules under § 171.28; and

(8) To enter any order which, in his judgment, will facilitate or expedite Commission review of a decision by the National Futures Association in a disciplinary, membership denial or registration action.

(b) Within seven days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(c) The Deputy General Counsel for Opinions may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Deputy General Counsel for Opinions under this section.

Issued in Washington, DC, on Monday, October 1, 1990.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 90-23750 Filed 10-5-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 90-86]

Special Local Regulations: City of Miami

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the 1990 Columbus Day Cruising Regatta. The event will be held on October 6-7, 1990, from 9 a.m. EDT until 6 p.m. EDT on the sixth and from 10 a.m. EDT until 6 p.m. EDT on the seventh. October 13 and 14, 1990, from 9 a.m. EDT until 6 p.m. EDT on the