

July, 1980. The MCAI required a one-time inspection for leaks and replacement if leaks were found. There was no MCAI action to determine whether leaks developed in the future. The FAA believes that mandatory replacement of the fittings will eliminate current leaking fittings as well as preventing the problem from developing in the future.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI Airworthiness Authority of New Zealand AD DCA/R2000/12, dated June 29, 2006; and Avions Pierre Robin Service Bulletin 86, dated July, 1980, for related information.

Issued in Kansas City, Missouri, on August 6, 2007.

**Kim Smith,**

Manager, Small Airplane Directorate, Aircraft Certification Service.

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 36 and 40

RIN 3038-AC39

### Amendments Pertinent to Registered Entities and Exempt Commercial Markets

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The proposed regulations expand the set of persons delegated by the Commission with the authority to issue exempt commercial market (ECM) special calls to include the Director of the Division of Enforcement and that Director's designees. The proposed regulations clarify the process for listing, clearing, or implementing registered entity products or rules, including dormant products and rules, and amend the definition of emergency to clarify that persons other than members of the governing board of a registered entity may declare an emergency on behalf of the governing board. The proposed regulations also clarify the duration of the rule approval period for designated contract market (DCM) rules that may change a material term or condition of a contract based on the agricultural commodities enumerated in section 1a(4) of the Commodity Exchange Act (CEA or Act). Finally, the proposed regulations clarify how far in advance of implementation registered entities must submit self-certified contracts and rules to the Commission, and identify three additional categories of rules that a registered entity may implement without filing certified submissions or receiving prior Commission approval.

**DATES:** Comments must be received by September 12, 2007.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to 202.418.5521, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to the "Amendments Pertinent to Registered Entities and Exempt Commercial Markets." Comments may also be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Bruce Fekrat, Special Counsel, Office of the Director (telephone 202.418.5578, e-mail [bfekrat@cftc.gov](mailto:bfekrat@cftc.gov)), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Commodity Futures Trading Commission (Commission) published comprehensive final regulations for trading facilities on August 10, 2001.<sup>1</sup> The final regulations codified the procedural provisions common to

exempt boards of trade and ECMs operating pursuant to sections 5d or 2(h)(3) through (5) of the Act, respectively, in part 36 of the Commission's regulations. The final regulations also codified the procedural provisions common to DCMs, derivatives transaction execution facilities (DTEF), and derivatives clearing organizations (DCO) in part 40 of the Commission's regulations, and further established the regulatory framework necessary to implement and interpret the provisions of the CEA, as amended by the Commodity Futures Modernization Act of 2000 (CFMA),<sup>2</sup> pertinent to trading facilities. Based upon its subsequent experience in administering the Act, the Commission herein proposes several amendments to parts 36 and 40 of the Commission's regulations to better implement the Act and provide clearer direction as to the Commission's regulatory requirements thereunder.

##### II. Exempt Commercial Markets

The CFMA created a qualified exemption from the Commission's jurisdiction for transactions executed or traded on ECMs. Section 2(h)(3) of the Act, which was added by the CFMA, applies the exemption to transactions in exempt commodities executed or traded on an electronic trading facility that are entered into on a principal-to-principal basis solely between persons that are eligible commercial entities.<sup>3</sup> The CEA specifically reserves the applicability of the Commission's antifraud and antimanipulation authority to transactions executed or traded on ECMs in section 2(h)(4) of the Act<sup>4</sup> and gives the Commission the authority to issue ECM special calls for information to, among other things, enforce that authority.<sup>5</sup>

In July 2004, the Commission amended regulation 36.3(b), which governs the Commission's access to ECM transaction data, to improve the quality of accessible information relevant to its antifraud and antimanipulation authority.<sup>6</sup> In that rulemaking, the Commission stated that aberrant price behavior on ECMs may require further Commission investigation and the eventual use of the Commission's special call authority to identify wrongful conduct.<sup>7</sup> The authority to issue special calls to ECMs currently is delegated to the Directors of

<sup>2</sup> Pub. L. 106-554, 114 Stat. 2763 (December 21, 2000).

<sup>3</sup> 7 U.S.C. 2(h)(3).

<sup>4</sup> 7 U.S.C. 2(h)(4).

<sup>5</sup> 7 U.S.C. 2(h)(5).

<sup>6</sup> 69 FR 43285 (July 20, 2004).

<sup>7</sup> *Id.* at 43289.

<sup>1</sup> 66 FR 42256 (August 10, 2001).

the Division of Market Oversight (DMO) and the Division of Clearing and Intermediary Oversight and their designees. Given the importance of the authority to issue special calls to the Commission's ability to enforce its reserved antifraud and antimanipulation authority with respect to ECM transactions, the Commission herein proposes to amend regulation 36.3 to expand the set of persons with delegated authority to issue special calls pursuant to section 2(h)(5)(B)(iii) of the Act to include the Director of the Division of Enforcement and that Director's designees.

### III. Proposed Amendments to Part 40 of the Commission's Regulations

#### A. Self-Certification, Approval, and Dormancy

Part 40 of the Commission's regulations currently does not clearly indicate that the procedural requirements for listing, clearing or implementing dormant contracts and rules<sup>8</sup> are identical to the requirements established for initial submissions of contracts and rules that have never been approved by, or certified with, the Commission.<sup>9</sup> The current product and rule filing provisions of part 40 also do not clearly indicate that a DCM or DCO, in general, must choose either to comply with the rule approval process established in part 40 or, in the alternative, the certification process established in part 40 prior to listing, clearing, or implementing any product or rule, including any product or rule that has become dormant.<sup>10</sup> The Commission therefore proposes to amend the language in regulations 40.2(a), 40.3(a), 40.4(a), 40.5(a) and 40.6(a) to clarify that a DCM or DCO in

<sup>8</sup> The Commission defines a dormant contract as a contract or product without open interest that, after the expiration of a thirty-six month development period following initial certification or approval, has not traded in the preceding twelve consecutive calendar months. 17 CFR 40.1(b). The Commission defines a dormant rule as a rule that has remained unimplemented for twelve consecutive calendar months following the rule's initial certification with, or approval by, the Commission. 17 CFR 40.1(f).

<sup>9</sup> This alignment of procedural requirements is based, in part, on the premise that certain contracts and rules, which have remained inactive or unimplemented for a significant period of time, may no longer contain terms that are consistent with the Commission's regulations and prevailing market conditions. 67 FR 62783, 62784 (October 9, 2002).

<sup>10</sup> The Commission's regulations do not require a DTEF to either certify or submit for Commission approval a product or rule prior to listing or implementation. However, a DTEF, which is generally subject to notice filing requirements, may choose to self-certify products or rules or submit them for Commission approval pursuant to the procedures established in part 40 of the Commission's regulations. See 17 CFR 37.7.

general must choose either to list, clear, or implement a product or rule, including any dormant product or rule, pursuant to the self-certification provisions of part 40 or, in the alternative, pursuant to the process established in part 40 for receiving the Commission's prior approval.<sup>11</sup>

#### B. Dormant Registered Entities, Contracts, and Rules

The Commission has applied the concept of dormancy to registered entities by defining a dormant market or clearing organization as a registered entity that has been designated by, or registered with, the Commission for a period of thirty-six months or more but has not served as a facility for the trading or clearing of transactions for a period of twelve consecutive calendar months.<sup>12</sup> The Commission recognizes that a significant period of inactivity can potentially have a negative impact on a registered entity's ability to implement rules and list and clear contracts in a manner that remains consistent with current market conditions, the Commission's regulations, and self-regulatory best practices.<sup>13</sup> Accordingly, the Commission has deemed that upon a registered entity becoming dormant, its rules and contracts shall also become dormant.<sup>14</sup>

In contrast to this view, the current language of the Commission's regulations implies that the earliest possible time that a rule can become dormant, regardless of whether a registered entity has entered into dormancy, is at the end of a twelve month implementation period.<sup>15</sup> Similarly, the current language of the Commission's regulations implies that the earliest possible time that a contract can become dormant, regardless of whether a registered entity has entered into dormancy and absent affirmative action on the part of the registered entity, is at the end of a thirty-six month contract development period. To remedy any uncertainty, the Commission proposes to amend regulation 40.1(b), the definition of dormant product or contract, and

<sup>11</sup> DCM rules that will materially change a term or condition of a contract with open interest that is based on an agricultural commodity enumerated in section 1a(4) of the Act must be approved by the Commission prior to implementation. 7 U.S.C. 7a-2(c)(2)(B).

<sup>12</sup> See 17 CFR 40.1.

<sup>13</sup> See 47 FR 29515 (July 7, 1982).

<sup>14</sup> See 71 FR 1953, 1960 (January 12, 2006).

<sup>15</sup> The term "rule" is defined to include any registered entity (DCM, DTEF, or DCO) " \* \* \* rule, regulation, resolution, interpretation, stated policy, term and condition \* \* \* in whatever form adopted, and any amendment or addition thereto or repeal thereof \* \* \* " 17 CFR 40.1(h).

regulation 40.1(f), the definition of a dormant rule, to clearly establish that the dormancy of a registered entity will automatically and separately trigger the dormancy of that entity's contracts and rules. In addition, the Commission is proposing a technical amendment to the definition of a dormant DCM, DTEF, and DCO in regulation 40.1 to conform the language used to define those terms to the proposed amendments of regulations 40.1(b) and 40.1(f).

#### C. Definition of Emergency

The Commission's regulations give registered entities the ability to implement rules in response to an emergency without certifying, or receiving the Commission's approval of, such rules prior to implementation.<sup>16</sup> The current definition of emergency implies that the full governing board of a registered entity must itself make the determination as to whether a circumstance is an emergency before operating under emergency procedures.<sup>17</sup> This notice of rulemaking proposes to amend Commission regulation 40.1(g), the definition of emergency, to clarify that persons other than members of the governing board may determine that a particular occurrence or circumstance constitutes an emergency. In a letter commenting on a previous notice of proposed rulemaking, the New York Mercantile Exchange (NYMEX) suggested that the full governing board of an exchange, under emergency conditions, may not be able to issue an opinion in a timely manner to address an emergency.<sup>18</sup> In such a situation, it may be optimal for a duly authorized subcommittee or exchange official to have the ability to respond to fast developing emergency conditions.

The Commission is in agreement with NYMEX. Accordingly, the Commission proposes to amend the definition of emergency in part 40 to clarify that duly authorized persons may determine whether a particular occurrence or circumstance is an emergency that "requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions."<sup>19</sup> The amendment would require that the rules of the registered entity specify in detail (1) the persons

<sup>16</sup> See 17 CFR 40.6(a)(2).

<sup>17</sup> See 17 CFR 40.1(g).

<sup>18</sup> See letter from James A. Newsome, President, NYMEX, to Jean A. Webb, Secretary of the Commission (September 26, 2005) (on file with the Commission), available at [http://www.cftc.gov/foia/comment05/foi05-004\\_1page2.htm](http://www.cftc.gov/foia/comment05/foi05-004_1page2.htm).

<sup>19</sup> 17 CFR 40.1(g).

authorized to issue an emergency opinion on behalf of the governing board; and (2) the procedures for the exercise of such authority.<sup>20</sup>

#### *D. Commission Review and Approval of Registered Entity Rules*

In contrast to other registered entity rules that may be implemented pursuant to the self-certification process established in part 40, DCM rules that, as determined by the Commission, materially change a term or condition of a contract with open interest that is based on an agricultural commodity enumerated in section 1a(4) of the Act must be approved by the Commission prior to implementation.<sup>21</sup> Since a finding of materiality is by statute at the reasonable discretion of the Commission, part 40 affords DCMs the opportunity to request a materiality opinion from the Commission for rules that a submitting DCM characterizes as non-material. Upon request the Commission will determine whether a DCM rule submitted under regulation 40.4(b)(9) at least ten business days prior to implementation is material within the meaning of section 5c(c) of the Act.<sup>22</sup>

DCMs often simultaneously request that agricultural rule changes be reviewed for materiality, and if found to be material, approved by the Commission. Currently, Commission regulation 40.5 does not clearly specify when the approval period commences with respect to rules submitted for materiality review under the process framed by regulation 40.4(b)(9).<sup>23</sup> To establish certainty, the amendments to regulation 40.5 propose to commence the rule approval period at the conclusion of the 10-day materiality review period under regulation 40.4(b)(9). The Commission believes that commencing the approval period at this point is appropriate because the determination as to whether a registered entity rule should be approved (that is whether a rule is consistent with the Act and the Commission's regulations thereunder) requires an analysis that is qualitatively different from the analysis required to determine whether the same rule is material within the meaning of section 5c(c) of the Act.

<sup>20</sup> The Commission also proposes to amend the definition of emergency to clarify the definition's applicability to all registered entities, including DCOs.

<sup>21</sup> 7 U.S.C. 7a-2(c).

<sup>22</sup> *Id.*

<sup>23</sup> See 17 CFR 40.4(b) and 40.5(b).

#### *E. Listing of Products and the Implementation of Registered Entity Rules*

##### 1. The Timing of Submissions

The Commission understands that there may be some confusion as to how far in advance of implementation registered entities must submit self-certified products and rules to the Commission. Commission regulations 40.2(a) and 40.6(a) provide that such submissions must be filed electronically with the Commission at or before the close of business on the business day preceding implementation. Questions have arisen as to whether these provisions refer to the Commission's business day or the business day of the submitting registered entity.

The proposed regulations clarify that the specified date is the Commission's business day. For clarity and in order to ensure proper notice of certified products and rules, the Commission proposes to define business day in part 40 and add language to Commission regulations 40.2(a) and 40.6(a) to expressly require the filing of certified submissions with the Commission at least one full Commission business day prior to implementation.<sup>24</sup> In addition, to ensure that the appropriate operating divisions of the Commission have the ability to access electronic copies of submissions at the time of filing, the proposed regulations add the e-mail addresses *submissions@cftc.gov* and *DMOsubmissions@cftc.gov* to, and specify each regional branch chief in, Commission regulations 40.2(a)(1) and 40.6(a)(2) as additional mandatory recipients of electronically filed submissions.

##### 2. Implementing Registered Entity Rules Without Certification

a. *Additional Rule Categories.* As discussed above, the Commission's regulations generally permit a registered entity to implement a new or dormant rule without seeking prior Commission approval by certifying to the Commission that the rule complies with the Act and the regulations thereunder on the business day preceding implementation.<sup>25</sup> Registered entities, however, are not required to file certified submissions prior to implementing several categories of registered entity rules that are

<sup>24</sup> These proposed amendments are consistent with other Commission regulations that exclude the day on which a notice is given or an event occurs in computing time periods that begin upon the occurrence of that notice or event. See 17 CFR 1.3(b) and 10.5.

<sup>25</sup> See 17 CFR 40.6(a).

enumerated in regulation 40.6(c)(2).<sup>26</sup> Registered entity rules that come within these categories typically are limited in scope and are implemented under enabling rules that have already been approved by, or certified with, the Commission. In order to lessen the burden placed on registered entities as well as better utilize Commission resources, the Commission proposes to codify several additional registered entity rule categories that may be implemented without prior certification or Commission approval if subsequently included in a weekly notification of rule changes under regulation 40.6(c)(2). The Commission proposes to add (1) changes in trading months with no open interest that are consistent with previously approved or certified standards; (2) changes in lists of producers' brands or markings that are made pursuant to previously approved or certified standards or criteria relating to quality specifications, and for existing delivery locations, (3) changes in lists of approved delivery facilities and delivery service providers that are made pursuant to previously approved or certified standards or criteria<sup>27</sup> to the categories of rules enumerated in regulation 40.6(c)(2).

A registered entity's ability to notice file changes that relate to trading months under proposed regulation 40.6(c)(2) only extends to trading months within currently established cycles of trading months. By way of example, assume that the currently established cycle of trading months for a particular contract is December, March, May, July and September. Under the proposed regulations, the listing of a new trading month, such as November, would not qualify for notice filing under regulation 40.6(c) while an earlier than anticipated listing of a July contract could properly be notice filed. With respect to producers, facilities and service providers, the Commission reviews the relevant enabling standards and criteria to ensure their consistency with cash market practices and to ensure that their terms do not unreasonably restrain trade by inappropriately prohibiting the open participation of certain producers,

<sup>26</sup> 17 CFR 40.6(c)(2).

<sup>27</sup> Commission regulation 40.4(b)(2) identifies rules that are changes in lists of approved delivery facilities as immaterial. In conformance with the proposed amendments to regulation 40.6(c)(2), the Commission proposes to amend regulation 40.4(b)(2) to also identify rules that are changes to lists of approved delivery service providers as immaterial.

facilities or service providers.<sup>28</sup> The identification of producers' brands and enumerated delivery facilities and service providers at a delivery location does not alter certified or Commission approved qualifying delivery standards or criteria, nor does it change exchange procedures that verify compliance with those standards or criteria. The Commission therefore proposes to be kept apprised of changes in lists of approved producers' brands or markings, changes in lists of delivery location delivery facilities and service providers, and changes in trading months with no open interest that are consistent with previously certified or approved standards through weekly notices of rule changes filed under regulation 40.6(c)(2) as opposed to requiring that such changes be certified with or approved by the Commission prior to implementation.<sup>29</sup>

*b. Implementing Rules without Notification.* Rule changes that may appear in a weekly notification pursuant to regulation 40.6(c)(2)(iv) also include "[c]hanges to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis."<sup>30</sup> The Commission currently receives substantially the same information under part 16 of the Commission's regulations, which specifies the daily reporting requirements that apply to DCMs.<sup>31</sup> In particular, regulation 16.01(b) stipulates that each reporting market must submit to the Commission on a daily basis various trade data, including trade volume, open interest and price information for all listed option strike prices, including discretionary prices.<sup>32</sup>

In January 2006, DMO staff granted no-action relief to permit DCMs to satisfy the regulation 40.6(c)(2)(iv) notification requirement by complying with the daily reporting requirements of regulation 16.01 of the Commission's regulations.<sup>33</sup> In order to codify the no-action relief granted by DMO and avoid duplicative regulatory requirements, the Commission proposes to amend regulation 40.6(c)(2)(iv) and add paragraph (G) to regulation 40.6(c)(3)(ii) to allow registered entities that are in

compliance with regulation 16.01(b) to implement the specified changes relating to option contract strike prices without either prior approval, certification or inclusion in a weekly notification to the Commission.<sup>34</sup>

The Commission is making a similar proposal with respect to registered entity rules denoting changes to contract trading months within currently established cycles of trading months to the categories of rules that may be implemented pursuant to a regulation 40.6(c)(2) notification filing.<sup>35</sup> As with rules that are changes to option contract strike prices, the Commission currently receives adequate notification of the same information under regulation 16.01(a). In order to avoid duplicative regulatory requirements, the Commission proposes to add paragraph (H) to regulation 40.6(c)(3)(ii) to provide that registered entities that are in compliance with regulation 16.01(a) may implement changes to the listing of contract trading months with no open interest, other than the delisting of contract trading months or the relisting of temporarily delisted contract trading months, without prior approval, certification or inclusion in a weekly notification to the Commission.<sup>36</sup>

#### IV. Related Matters

##### A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of the proposed regulations outweigh their costs. Rather, section 15(a) requires the Commission to

<sup>34</sup> In July of 2006, the Commission adopted final rules to permit the trading of futures contracts based on corporate debt securities. 71 FR 39541 (July 13, 2006) (Debt Futures Release). The Commission herein proposes a technical amendment that conforms regulation 40.6(c)(2)(iii) to the adoption of the Debt Futures Release by replacing that regulation's reference to stock indexes with a reference to securities indexes, a general term that includes both equity and debt securities. Proposed regulation 40.6(c)(2)(iii) includes a reference to regulation 40.6(c)(3)(ii)(F) to alert registered entities that certain rule changes relating to securities indexes may be implemented pursuant to notification or without such notice if implemented under regulation 40.6(c)(3).

<sup>35</sup> As discussed in the previous subsection, the Commission is proposing to add such rules to the categories of rules that may be implemented without certification or prior Commission approval if subsequently included in a regulation 40.6(c)(2) weekly notification of rule changes.

<sup>36</sup> In addition, the Commission proposes a technical amendment to the heading of regulation 40.6, and that rule's references to DCMs and DCOs, to clarify the potential applicability of that regulation to all registered entities, including DTEFs.

consider the cost and benefits of the subject regulations. Section 15(a) further specifies that the costs and benefits of the proposed regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed regulations expand the set of persons delegated by the Commission with the authority to issue ECM special calls to include the Director of the Division of Enforcement and that Director's designees. The proposed rules do not expand the basis for issuing ECM special calls; rather, they simply expand the set of persons authorized to issue such special calls. There are no regulatory costs imposed by this extension of delegated special call authority.

The proposed regulations clarify that a DCM or DCO must generally choose either to comply with the rule approval process established in part 40 of the Commission's regulations or, in the alternative, the certification process established in part 40, prior to listing or clearing any product, or implementing any rule, including any product or rule that has become dormant. The proposed regulations also clearly establish that the dormancy of a registered entity will automatically and separately trigger the dormancy of that entity's contracts and rules. These clarifications are consistent with current Commission practice, do not impose any regulatory cost, and serve the public interest by facilitating regulatory certainty for persons subject to the Act and the Commission's regulations thereunder.

The proposed regulations clarify that the definition of emergency allows persons other than members of the governing board of a registered entity to declare an emergency on behalf of the governing board. The proposed regulations expressly recognize that the governing board of an exchange under emergency conditions may not be able to issue an opinion in a timely manner to address an emergency. Accordingly, the Commission's proposed definition of emergency in part 40 clearly permits

<sup>28</sup> See 17 CFR part 40, Appendix A (Application for Designation of Physical Delivery Futures Contracts).

<sup>29</sup> Registered entities must be able to cite registered entity rules that establish standards and criteria that are both substantive and clearly identifiable in any such submission made under regulation 40.6(c)(2).

<sup>30</sup> 17 CFR 40.6(c)(iv).

<sup>31</sup> See 17 CFR part 16.

<sup>32</sup> 17 CFR 16.01(b).

<sup>33</sup> See CFTC Staff Letter 06-01 (January 9, 2006).

duly authorized persons to determine whether a particular occurrence or circumstance is an emergency. The proposed regulations facilitate the ability of registered entities to undertake timely action in response to emergency events and thereby better protect market participants and the financial integrity of transactions executed and cleared on registered entities. The proposed regulations also limit the potential costs that may arise from any misuse of authority by requiring registered entities to adopt detailed procedural rules to effectuate the exercise of this delegated authority.

The proposed regulations clearly set forth the duration of the rule approval period for DCM rules that may change a material term or condition of a contract based on the agricultural commodities enumerated in section 1a(4) of the Act by proposing to commence the rule approval period at the conclusion of the 10-day materiality review period under regulation 40.4(b)(9). Commencing the approval period at this point gives the Commission additional time to effectively discharge its separate regulatory responsibilities to review registered entity rule changes for their impact on contracts with open interest and to determine whether such changes are consistent with the Act and the Commission's regulations thereunder. The proposed review period is consistent with current Commission regulatory practice and should not place any additional cost or burden on submitting DCMs.

The proposed regulations address how far in advance of implementation registered entities must submit self-certified contracts and rules to the Commission pursuant to regulations 40.2(a) and 40.6(a) by clarifying that the date specified in those regulations refers to the Commission's business day. The proposed regulations ensure that there is at least one full Commission business day between the submission of a certified product or rule and such product or rule's listing or implementation. The proposed regulations provide regulatory clarity and impose no additional cost or burden.

The proposed regulations lessen the burden placed on registered entities as well as better utilize Commission resources by codifying several additional rule categories that may be implemented without prior certification or Commission approval if noticed to the Commission through other required filings or disclosure requirements or subsequently included in a weekly notification of rule changes to the

Commission under regulation 40.6(c)(2). The proposed regulations add lists of approved producers' brands or markings, changes in lists of approved delivery facilities and delivery service providers, certain changes in contract trading months, and certain specified changes to option contract strike prices to the categories of rules may be implemented without prior certification or Commission approval, or as applicable, notification. Registered entity rules that come within these categories typically are limited in scope and are implemented under enabling rules that have already been approved by, or certified with, the Commission. Permitting their implementation without certification or approval, or as applicable, notification, avoids unnecessary or duplicative regulatory requirements and better utilizes the Commission's resources.

#### B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their regulations on small businesses. The requirements related to the proposed amendments fall mainly on registered entities. The Commission has previously determined that registered entities are not "small entities" for the purposes of the RFA.<sup>37</sup> In addition, these proposed regulations, collectively, tend to relieve regulatory burdens. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

#### C. Paperwork Reduction Act

When publicizing proposed regulations, the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The information collection requirements associated with the proposed regulations are administered under Office of Management and Budget control numbers 3038-0022 and 3038-0054. These proposed amendments to parts 36 and 40 of the Commission's regulations would not impose any new or additional recordkeeping or information collection requirement that would require the approval of the Office of Management and Budget under 44

U.S.C. 3501, *et seq.* Accordingly, the PRA is inapplicable. We solicit comment on the accuracy of our estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the amendments proposed herein.

#### List of Subjects

##### 17 CFR Part 36

Commodity futures.

##### 17 CFR Part 40

Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 2, 4, 5, 5a, 5b, 5c, 5d and 8a of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 36—EXEMPT MARKETS

1. The authority citation for part 36 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

2. In § 36.3, revise paragraphs (b)(3)(ii) to read as follows:

##### § 36.3 Exempt commercial markets.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls as set forth in section 2(h)(5)(B)(iii) of the Act to the Directors of the Divisions of Market Oversight, the Division of Clearing and Intermediary Oversight, and the Division of Enforcement to be exercised by each such Director or by such other employee or employees as the Director may designate. The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

\* \* \* \* \*

#### PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

3. The authority citation for part 40 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 7a-1, 7a-2, 8 and 12a, as amended by

<sup>37</sup> See 47 FR 18618 (April 30, 1982).

appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

4. In § 40.1, revise paragraph (a) through (g) to read as follows:

§ 40.1 Definitions.

\* \* \* \* \*

(a) Business day means the same-day period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m.; business hour means any hour between 8:15 a.m. and 4:45 p.m., Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays and federal holidays in Washington, DC.

(b) Dormant contract or dormant product means:

(1) Any agreement, contract, transaction, or instrument, or any commodity futures or option contract with respect to all future or option expiries that has no open interest and in which no trading has occurred for a period of twelve complete calendar months following a certification with, or approval by, the Commission; provided, however, that no contract or instrument under this paragraph (b)(1) initially and originally certified with, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be dormant; or

(2) Any commodity futures or option contract or other agreement, contract, transaction or instrument of a dormant registered entity; or

(3) Any commodity futures or option contract or other agreement, contract, transaction or instrument not otherwise dormant that a registered entity self-declares through certification to be dormant.

(c) Dormant designated contract market means any designated contract market on which no trading has occurred for a period of twelve complete calendar months; provided, however, no designated contract market shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 complete calendar months.

(d) Dormant derivatives clearing organization means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; provided, however, no derivatives clearing organization shall be considered to be dormant if its initial and original Commission order of registration was

issued within the preceding 36 complete calendar months.

(e) Dormant derivatives transaction execution facility means any derivatives transaction execution facility on which no trading has occurred for a period of twelve complete calendar months; provided, however, no derivatives transaction execution facility shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 complete calendar months.

(f) Dormant rule means:

(1) Any registered entity rule which remains unimplemented for twelve complete calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant registered entity.

(g) Emergency means any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions, including:

(1) Any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(2) Any circumstances which may materially affect the performance of agreements, contracts or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant; or

(3) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading; and any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity.

\* \* \* \* \*

5. In § 40.2, revise the heading and paragraphs (a) introductory text, (a)(1) and (a)(2) to read as follows:

§ 40.2 Listing and accepting products for trading or clearing by certification.

(a) Unless permitted otherwise by § 37.7 of this chapter, a designated contract market or a registered derivatives transaction execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3 of

this chapter or that remains dormant subsequent to being submitted under this section or approved under § 40.3 of this chapter. A registered clearing organization must comply with the submission requirements of this section prior to accepting a product for clearing that is not traded on a registered entity and has not been approved for clearing under § 40.5 of this chapter or that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this chapter. A submission shall comply with the following conditions:

(1) The registered entity has filed its submission electronically with the Secretary of the Commission at submissions@cftc.gov, the Division of Market Oversight at DMOSubmissions@cftc.gov, and the relevant branch chief at the regional office having local jurisdiction over the registered entity, in a format specified by the Secretary of the Commission;

(2) The Commission has received the submission at its headquarters by the open of business on the business day preceding the product's listing or acceptance for clearing; and

\* \* \* \* \*

6. In § 40.3, revise paragraph (a) introductory text to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) Request for approval. Pursuant to Section 5c(c) of the Act and §§ 37.7 and 38.4 of this chapter, a designated contract market or registered derivatives transaction execution facility may request that the Commission approve a new or dormant product prior to listing the product for trading, or if initially submitted under § 40.2 of this chapter, subsequent to listing the product for trading. A submission requesting approval shall:

\* \* \* \* \*

7. In § 40.4, revise paragraph (a) and (b)(2) to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Notwithstanding the provisions of this part, a designated contract market must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or dormant rule that, for a delivery month having open interest, would materially change a term or condition, as defined in § 40.1(i), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(4) of the Act, or of an option on such a contract or commodity.

\* \* \* \* \*

(b) \* \* \*

(2) For each delivery location, changes in lists of approved delivery facilities and delivery service providers, including weighmasters and inspectors, pursuant to previously set standards or criteria;

8. In § 40.5, revise paragraphs (a) introductory text and (c) introductory text to read as follows:

**§ 40.5 Voluntary submission of rules for Commission review and approval.**

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act and §§ 37.7, 38.4 and 39.4 of this chapter, a registered entity may request that the Commission approve a new or dormant rule prior to implementation, or if initially submitted under §§ 40.2 or 40.6 of this chapter, subsequent to implementation. A submission requesting approval shall:

(c) *Commencement and extension of time for review.* The Commission shall commence the review period in paragraph (b) of this section ten business days after receipt of a compliant submission under § 40.4(b)(9) and further may extend the review period in paragraph (b) of this section for:

9. Amend § 40.6 as follows:

A. Remove the term “designated contract market or registered derivatives clearing organization” and add in its place the term “registered entity” in paragraphs (a)(2), (c)(1), and (c)(3)(i);

B. Remove the term “designated contract market or a registered derivatives clearing organization” and add in its place the term “registered entity” in paragraph (c) introductory text;

C. Remove the term “designated contract markets and registered derivatives clearing organizations” and add in its place the term “registered entities” in paragraph (c)(3) introductory text;

D. Remove the term “contract market or a derivatives clearing organization’s” and add in its place the term “registered entity’s” in paragraph (c)(3)(ii)(B); and

E. In addition, revise the heading and paragraphs (a), (c)(2)(iii), and (c)(2)(iv), and add paragraphs (c)(2)(vii) through (c)(2)(ix), (c)(3)(ii)(G) and (c)(3)(ii)(H) to read as follows:

**§ 40.6 Self-certification of rules.**

(a) *Required certification.* Unless permitted otherwise by § 37.7 of this chapter, a registered entity must comply with the following conditions prior to the implementation of any rule that has not obtained Commission approval

under § 40.5 of this chapter or that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this chapter:

(1) \* \* \*

(2) The registered entity has filed its submission electronically with the Secretary of the Commission at *submissions@cftc.gov*, the Division of Market Oversight at *DMOSubmissions@cftc.gov*, and the relevant branch chief at the regional office having local jurisdiction over the registered entity, in a format specified by the Secretary of the Commission, and the Commission has received the submission at its headquarters by the open of business on the business day preceding implementation of the rule; *provided, however*, rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation; and

(c) \* \* \*

(2) \* \* \*

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than routine changes to securities indexes to the extent that such changes are not described in paragraph (c)(3)(ii)(F) of this section) referenced and defined in the product’s terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules, which may qualify for implementation without notice pursuant to section (c)(3)(ii)(G) of this section, relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis;

(v) \* \* \*

(vii) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(viii) *Delivery facilities and delivery service providers.* Changes in lists of approved delivery facilities and delivery service providers, including

weighmasters, assayers, and inspectors, pursuant to previously certified or Commission approved standards or criteria; or

(ix) *Trading Months.* Changes to the listing of trading months, which may qualify for implementation without notice pursuant to section (c)(3)(ii)(H), within the currently established cycle of trading months which do not have open interest.

(3) \* \* \*

(ii) \* \* \*

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of § 16.01(b) of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading Months.* For registered entities that are in compliance with the daily reporting requirements of § 16.01(a) of this chapter, changes to the listing of trading months which are within the currently established cycle of trading months and which do not have open interest.

\* \* \* \* \*

Issued in Washington, DC, on August 1, 2007 by the Commission.

Eileen A. Donovan,

*Acting Secretary of the Commission.*

[FR Doc. E7–15370 Filed 8–10–07; 8:45 am]

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Part 411**

[Docket No. SSA–2006–0084]

RIN 0960–AG44

**Improvements to the Ticket to Work and Self-Sufficiency Program**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We are proposing to revise our regulations for the Ticket to Work and Self-Sufficiency Program (Ticket to Work program), authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program provides beneficiaries with disabilities expanded options for access to employment, vocational rehabilitation, and other support services. The program is an important part of the comprehensive SSA work opportunity initiative which is focused on helping beneficiaries with disabilities who want to work to do so. We are proposing revisions to our