

with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraph (a) of this AD may be removed from the AFM and the placard required by paragraph (b)(1) of this AD may be removed from each airplane.

New Requirements of This AD

(c) If a DFFN is installed on any airplane in a specific operator's fleet, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD; in accordance with either Boeing Alert Service Bulletin 747-11A2052 (for Model 747 series airplanes) or Boeing Alert Service Bulletin 767-11A0031 (for Model 767 series airplanes), both dated September 11, 1997; as applicable.

(1) Within 14 days after the effective date of this AD, all airplanes in a specific operator's fleet must revise Section 1 of the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

(i) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM-D-1655, Jet A, and Jet A-1 are authorized for unlimited use in this engine. Fuels conforming to MIL-T-5624 grade JP-5 and MIL-T-83113 grade JP-8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

(ii) Add the following sentence to paragraph 2 of the Engine Fuel System section: "The use of Jet B and JP-4 fuel is prohibited."

(2) Within 30 days after the effective date of this AD, all airplanes in a specific operator's fleet must accomplish the actions required by paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable.

(i) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP-4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(ii) Remove the DFFN, and replace it with a standard fuel nozzle, in accordance with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraphs (c)(1)(i) and (c)(1)(ii) of this AD may be removed from the AFM, and the new placard required by paragraph (c)(2)(i) of this AD may be removed from each airplane.

(d) Except as provided by paragraph (e) of this AD, if a DFFN is not installed on any airplane in a specific operator's fleet, no further action is required by this AD.

(e) As of the effective date of this AD, no person shall install any DFFN having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41 on any airplane unless the requirements specified by paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this AD have been accomplished for the operator's entire fleet.

(f) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished (except no loading of JP-4 or Jet B fuel).

(h) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747-11A2052, dated September 11, 1997, or Boeing Alert Service Bulletin 767-11A0031, dated September 11, 1997; as applicable. The incorporation by reference of these service bulletins was approved previously by the Director of the Federal Register as of November 12, 1997 (62 FR 55728, October 28, 1997). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 1, 1998.

Issued in Renton, Washington, on April 9, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Procedures in Prior Approval Proceedings

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending its regulations, which govern applications for approval of proposed divestitures, acquisitions, or similar transactions that are subject to Commission review under outstanding orders, and is also making a conforming amendment. The principal changes accomplished by these amendments are to clarify the nature of the materials that will be placed on the public record in prior approval proceedings, to clarify the timing of such placement, and to provide expressly that, in appropriate

cases, the Commission may shorten, eliminate, extend or reopen a comment period.

DATES: The amendments are effective April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, 202-326-2451.

SUPPLEMENTARY INFORMATION:

I. Materials To Be Placed on the Public Record in Prior Approval Proceedings

Amended Rule 2.41(f)(1) replaces the requirement that prior approval applications under that rule be placed on the public record "together with supporting materials." The revised rule explains that applications shall "fully describe the terms of the transaction and shall set forth why the transaction merits Commission approval." It provides for placement on the public record of the application, together with any additional applicant submissions that the Commission directs be placed on the public record.¹ It also delegates to the Director of the Bureau of Competition the authority to direct placement of additional applicant submissions on the public record (subject to confidentiality determinations by the General Counsel).

The rule also clarifies a requirement for placing on the public record any written or oral communication that concerns a prior approval proceeding and that is directed to a Commissioner or "any employee involved in the decisional process." As construed by the Commission, and as amended § 2.41(f)(3) makes explicit, this disclosure requirement applies only to communications between outside parties and Commissioners or their personal staffs. The amended rule also replaces the provision that such disclosures will be made "immediately" with a provision that disclosures will be made "expeditiously."

Section 2.41(f)(5) makes clear that all disclosure requirements under the rule are subject to confidentiality requests. If such requests are denied, the submitter will receive notice before any disclosure of affected information takes place. See also 15 U.S.C. 57b-2(c). Section 2.41(f)(5) also explains that confidentiality requests need not be

¹ Such disclosures would be made to further the goal of the comment period. That goal is to inform the Commission's judgment, and not to confer any substantive rights on submitters. Letter, Donald S., Clark, Secretary (by direction of the Commission), to Robert A. Hammond, Esq., Re: Institute Merieux, S.A. Docket No. C-3301 (April 20, 1992). Cf. *General Motors Corp.*, 103 F.T.C. 58, 63 (1984) (explaining rationale for the public comment period on proposed settlements under Rule 2.34).

resolved before, or at the time of, the application's disposition.

II. Provision To Shorten, Eliminate Extend or Reopen Comment Periods

Amended Rule 2.41(f)(2) provides that the 30-day comment period for a prior approval application may be shortened, eliminated, extended or reopened in appropriate cases. The Commission has occasionally shortened a comment period in the past or decided not to hold one,² consistent with case law establishing that agencies can deviate from a rule (like the public comment provision of the prior approval rule) if the rule is not intended to confer important procedural benefits on individuals and if the ends of justice require such action.³ Under the revised rule, the Commission may determine, in light of the relevant facts, to solicit comment respecting a prior application for less than 30 days, or not at all. For example, the Commission might shorten or eliminate a comment period if it had previously sought comment on a similar or identical proposal. The Commission may also reopen or extend a comment period if, for example, it wishes to elicit comment on materials that are placed on the public record late in the comment period or after the comment period closes.

III. Conforming Amendment to § 4.9

Finally, the Commission has made a conforming amendment to § 4.9, which identifies the materials that are placed routinely on the Commission's public record. Rule 4.9(b)(7)(ii) formerly provided for disclosure of certain specified materials in prior approval proceedings, and Rule 4.9(b)(7)(iii) provided, with some overlap, for disclosure of "requests for advice concerning proposed mergers and materials required to be made public under § 2.41(f)." The Commission has replaced these provisions with a new subsection (ii), providing for disclosures of "[m]aterials required to be made public under § 2.41(f) in connection with applications for approval of proposed divestitures, acquisitions or similar transactions subject to Commission review under outstanding

² E.g., Press Release, "Public Comment Period on Supermarket Divestiture Shortened" (November 4, 1996) (divestiture by Knokklijke Ahold NV). In 1986, the Commission decided not to seek comment on a divestiture application from Flowers Industries, Inc., where the Commission had denied a similar prior application after receiving public comment, and Flowers had then submitted a further application with additional materials.

³ See *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 538-39 (1970); *Onslow County v. United States Dep't of Labor*, 774 F.2d 607, 611 (4th Cir. 1985).

orders." ⁴ Rule 2.41(f), in turn, specifies the applicant submissions, third party submissions, and Commission responses that routinely will be placed on the public record.

IV. Procedural Matters

The proposed amendments are exempt from the notice and comment requirements of the Administrative Procedure Act as "rules of agency organization, procedure, or practice." ⁵ U.S.C. 553(b)(A). They do not entail information collection for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information.

Accordingly, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, the Code of Federal Regulations as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 2.41(f) is revised to read as follows:

§ 2.41 Reports of compliance.

* * * * *

(f)(1) All applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders shall fully describe the terms of the transaction and shall set forth why the transaction merits Commission approval. Such applications will be placed on the public record, together with any additional applicant submissions that the Commission directs be placed on the public record. The Director of the Bureau of Competition is delegated the authority to direct such placement.

(2) The Commission will receive public comment on a prior approval application for 30 days. During the

⁴ The reference to "requests for advice concerning proposed mergers" in former Rule 4.9(b)(7)(ii) has been deleted. It is a vestige of a previously deleted provision in § 1.1 of the Commission's rules. See 54 FR 14072 (1989).

comment period, any person may file formal written objections or comments with the Secretary of the Commission, and such objections or comments shall be placed on the public record. In appropriate cases, the Commission may shorten, eliminate, extend, or reopen a comment period.

(3) If a Commissioner or a member of a Commissioner's personal staff receives a written communication from a person not employed by the agency concerning a proposed transaction that is subject to this section, such communication will be placed on the public record expeditiously after its receipt. If a Commissioner or a member of a Commissioner's personal staff receives an oral communication concerning such a transaction from a person not employed by the Commission, the recipient shall expeditiously prepare and have placed on the public record a memorandum setting forth the full contents of such communication and the circumstances thereof.

(4) Responses to applications under this section, together with a statement of supporting reasons, will be published when made, together with responses to any public comments filed under this section.

(5) Persons submitting information that is subject to public record disclosure under this section may request confidential treatment for that information or portions thereof. Such requests shall be made in accordance with 16 CFR 4.9(c) and the General Counsel will determine whether to grant confidentiality in accordance with 16 CFR 4.9(c). Nothing in this section requires that confidentiality requests be resolved prior to, or contemporaneously with, the disposition of the application.

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.9 is amended by removing paragraph (b)(7)(iii) and revising paragraph (b)(7)(ii) to read as follows:

§ 4.9 The public record.

* * * * *

(b) * * *

(7) * * *

(ii) Materials required to be made public under 16 CFR 2.41(f) in connection with applications for approval of proposed divestitures, acquisitions or similar transactions subject to Commission review under outstanding orders.

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By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 32 and 33

Trade Options on the Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rules.

SUMMARY: Generally, the offer or sale of commodity options is prohibited except on designated contract markets. 17 CFR 32.11. One of several specified exceptions to the general prohibition on off-exchange options is for "trade options." Trade options are off-exchange options "offered by a person having a reasonable basis to believe that the option is offered to" a person or entity within the categories of commercial users specified in the rule, where such commercial user "is offered or enters into the transaction solely for purposes related to its business as such." 17 CFR 32.4(a). Trade options, however, are not permitted on the agricultural commodities which are enumerated in the Commodity Exchange Act (Act). 7 U.S.C. 1a(3).

The Commodity Futures Trading Commission (Commission or CFTC) is removing the prohibition on off-exchange trade options on the enumerated agricultural commodities pursuant to a three-year pilot program. Because it intends to reexamine these rules during and at the conclusion of the pilot program, these rules are being promulgated as interim final rule (interim rules). The interim rules, like the proposed rules, permit only agricultural trade options which, if exercised, will result in delivery of the commodity. Such options may not be resold, repurchased, or otherwise cancelled other than through the exercise or natural expiration of the contract.

Also, the interim rules permit only those entities which handle the commodity in normal cash market channels to solicit, to offer to buy or sell, or to buy or sell such options. Vendors of such options would be required to become registered as agricultural trade option merchants, to report to the Commission on their transactions, to provide their customers with disclosure statements, and to

safeguard their customers' premiums. The interim rules substantially streamline requirements contained in the proposed rules, particularly the proposed registration, reporting rules, particularly the proposed registration, reporting and customer fund segregation requirements. The Commission is exempting from the prohibition and these interim rules individuals or entities which meet a substantial financial requirement, as it proposed. Finally, the Commission is removing the prohibition on the offer or sale of exchange-traded options on physicals on these commodities.

CFTC will publish at a late time a document in the **Federal Register** requesting comments on these interim rules.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418-5260, or electronically at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Prohibition of Agricultural Trade Options*

In 1936, responding to a history of large price movements and disruptions in the futures markets attributed to speculative trading in options, Congress completely prohibited the offer or sale of option contracts both on and off exchange in the specific list of agricultural commodities then under regulation.¹ Any commodity not so enumerated was unaffected by the prohibition.

A history of abusive practices and fraud in the offer and sale of off-exchange options in the non-enumerated commodities was one of the catalysts leading to enactment of the Commodity Futures Trading Commission Act of 1974 (1974 Act). The 1974 Act created the Commission, substantially strengthened the Commodity Exchange Act and broadened its scope by bringing all commodities under

¹The specific agricultural commodities originally regulated under the 1936 Act included, among others, grains, cotton, butter, eggs, and potatoes. Later, fats and oils, soybeans and livestock, as well as others, were added to the list of enumerated agricultural commodities. Commodity Exchange Act of 1936, Public Law No. 74-675, 49 Stat. 1491 (1936). See, H. Rep. No. 421, 74th Cong., 1st Sess. 1, 2 (1934); H. Rep. No. 1551, 72d Cong., 1st Sess. 3 (1932). A more complete statement of the statutory and regulatory history of the ban is provided in the Notice of Proposed Rulemaking, 62 FR 59624 (November 4, 1997).

regulation for the first time. The newly-created CFTC, vested with plenary authority to regulate the offer and sale of commodity options,² promulgated a comprehensive regulatory framework applicable to off-exchange commodity option transactions in the non-enumerated commodities.³ This comprehensive framework exempted "trade options" from most of its provisions except for a rule prohibiting fraud (rule 32.9).⁴ In contrast, the prohibition on the offer and sale of all options on the enumerated agricultural commodities remained as a consequence of both statutory provision and Commission rule. See, 17 CFR 32.2.

However, the attempt to create a regulatory framework to govern the offer and sale of off-exchange commodity options was unsuccessful and was suspended.⁵ In 1982, based on the separate, successful pilot program to introduce exchange-traded options on the non-enumerated commodities, Congress eliminated the statutory prohibition on options on the enumerated agricultural commodities.⁶ As a consequence, the Commission

²Section 4c(b) of the Act provides that no person "shall offer to enter into, or confirm the execution of, any transaction involving any commodity regulated under this Act" which is in the nature of an option "contrary to any rule, regulation, or other of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe." 7 U.S.C. 6c(b).

³17 CFR part 32. See 41 FR 51808 (Nov. 24, 1976) (Adoption of Rules Concerning Regulation and Fraud in Connection with Commodity Option Transactions). See also, 41 FR 7774 (February 20, 1976) (Notice of Proposed Rules on Regulation of Commodity Option Transactions); 41 FR 44560 (October 8, 1976) (Notice of Proposed Regulation of Commodity Options).

⁴As noted above, trade options are defined as off-exchange options "offered by a person having a reasonable basis to believe that the option is offered to the categories of commercial users specified in the rule, where such commercial user is offered or enters into the transaction solely for purposes related to its business as such." 41 FR at 51815; rule 32.4(a) (1976). This exemption was promulgated based upon an understanding that commercial users of the underlying commodity has sufficient information concerning commodity markets insofar as transactions related to their business as such, so that application of the full range of regulatory requirements was unnecessary for business-related transactions in options on the non-enumerated commodities. See 41 FR 44563. "Report of the Advisory Committee on Definition and Regulation of Market Instruments," appendix A-4, p. 7 (January 22, 1976).

⁵Because of continuing, persistent, and widespread abuse and fraud in their offer and sale, the Commission in 1978 suspended all trading in commodity options, except for trade (and subsequently, dealer) options. 43 FR 16153 (April 17, 1976). Congress later codified the Commission's options ban, establishing a general prohibition against commodity option transactions other than trade and dealer options. Public Law No. 95-405, 92 Stat. 865 (1978).

⁶Public Law No. 97-444, 96 Stat. 2294, 2301 (1983).