

ized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(6) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of section 9 of this title, and the orders issued pursuant to the provisions of section 7a of this title, and for compliance in all other respects with the requirements applicable to such board of trade under this chapter.

(7) When such board of trade demonstrates that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest.

(8) When such board of trade demonstrates that every contract market for which such board of trade is designated complies with the requirements of section 7a(b) of this title.

(Sept. 21, 1922, ch. 369, § 5, 42 Stat. 1000; June 15, 1936, ch. 545, §§ 2, 6, 49 Stat. 1491, 1497; Feb. 19, 1968, Pub. L. 90-258, §§ 10, 11, 82 Stat. 29; Oct. 23, 1974, Pub. L. 93-463, title I, § 103(a), (f), (g), title II, § 207, 88 Stat. 1392, 1400; Oct. 28, 1992, Pub. L. 102-546, title II, §§ 201(c), 209(b)(2), 106 Stat. 3597, 3606.)

REFERENCES IN TEXT

Section 9 of this title, referred to in par. (6), was in the original "section 6(c)" meaning section 6(c) of act Sept. 21, 1922, ch. 369, which is classified to sections 9 and 15 of this title. See Codification note set out under section 8 of this title.

AMENDMENTS

1992—Pub. L. 102-546, § 209(b)(2), in par. (6) made technical amendment to reference to section 9 of this title to reflect change in reference to corresponding section of original act.

Pub. L. 102-546, § 201(c), redesignated pars. (a) to (g) as (1) to (7), respectively, realigned margins, and added par. (8).

1974—Pub. L. 93-463, § 103(a), substituted "Commission" for "Secretary of Agriculture" in provisions preceding par. (a).

Par. (a). Pub. L. 93-463, § 103(a), (g), substituted "official inspection service approved by the Secretary of Agriculture or the Commission for the purpose" for "official inspection service approved by the Secretary of Agriculture for the purpose" and "Commission" for "Secretary of Agriculture".

Par. (b). Pub. L. 93-463, § 103(a), (f), substituted "Commission" for "Secretary of Agriculture" and "United States Department of Agriculture".

Par. (g). Pub. L. 93-463, § 207, added par. (g).

1968—Par. (b). Pub. L. 90-258, § 10, substituted "cash transactions or transactions for future delivery consummated on or subject to the rules of a board of trade" for "cash transactions consummated at, on, or in a board of trade, or transactions for future delivery" and "consummated on or subject to the rules of a board of trade" for "consummated at, on, or in a board of trade" where appearing the second time, respectively.

Par. (f). Pub. L. 90-258, § 11, prescribed as additional conditions and requirements for designation of board of trade as contract market that governing board provide for making effective the orders issued pursuant to the provisions of section 7a of this title and for compliance in all other respects with the requirements applicable to the board of trade under this chapter.

1936—June 15, 1936, § 2, substituted "commodity", "any commodity", or "commodities", as the case may require, for "grain" wherever appearing.

Act June 15, 1936, § 6, inserted proviso in par. (a), and substituted "and" for "or" after "prices".

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

CROSS REFERENCES

Showing of compliance with conditions and requirements of this section to accompany application for designation as contract market, see section 8 of this title.

Showing of noncompliance with conditions and requirements of this section as authorizing suspension or revocation of designation as a contract market, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 6, 8, 13a of this title; title 15 section 78c.

§ 7a. Duties of contract markets

(a) In general

Each contract market shall—

(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) keep all books, records, minutes, and journals of proceedings of such contract market, and its governing board, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed by such contract market, governing board, committees, subsidiaries and affiliates and reveal any action taken in such matters, and allow inspection at all times by any authorized representative of the Commission or United States Department of Justice of all such books, records, minutes, and journals of proceedings. Such books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct;

(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Commission may prescribe. Such books and records shall be required to be kept for a

period of three years from the date thereof, or for a longer period if the Commission shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the Commission or United States Department of Justice;

(4) when so directed by order of the Commission, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Commission finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, it shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as it finds will prevent or tend to prevent such "squeezes" and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Commission finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, it shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as it finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated and adopted by the Commission;

(7) require that receipts issued under the United States Warehouse Act [7 U.S.C. 241 et seq.] shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any state or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes: *And provided further,* That this paragraph shall apply

only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act;

(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, that (i) have been approved by the Commission pursuant to paragraph (12) of this section, (ii) have become effective under such paragraph, or (iii) must be enforced pursuant to any Commission rule, regulation, or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, which has been disapproved by the Commission;

(9) enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market, and which have been approved by the Commission;

(10) permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this paragraph, then the Commission shall notify the contract market of its findings and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this paragraph, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives: *Provided,* That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open: *And provided further,* That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points;

(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: *Provided,* That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the con-

tract market, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a contract market, such procedure shall provide, to the extent appropriate—

(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under sections 2, 2a, and 4 of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under sections 2, 2a, and 4 of this title for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation;:¹

(12)(A) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ("rules") made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register.

The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this chapter or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this chapter or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this chapter or the Commission's regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this chapter or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph.

(B)(i) The Commission shall issue regulations to specify the terms and conditions under which, in an emergency as defined by the Commission, a contract market may, by a two-thirds vote of its governing board, make a rule (hereinafter referred to as an "emergency rule") effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under subparagraph (A), or during any period of review by the Commission, if the contract market makes every effort practicable to notify the Commission of such emergency rule, along with a complete explanation of the emergency involved, prior to making the emergency rule effective. If the contract market does not provide the Commission with such notification and explanation before making the emergency rule effective, the contract market shall provide the Commission with such notification and explanation at the earliest possible date. The Commission may delegate the power to receive such notification and explanation to such individuals as the Commission determines necessary and appropriate.

(ii) Within ten days of the receipt from a contract market of notification of such an emergency rule and an explanation of the

¹ So in original.

emergency involved, or as soon as practicable, the Commission shall determine whether it is appropriate either—

- (I) to permit such rule to remain in effect during the pendency of the emergency, or
- (II) to suspend the effect of such rule pending review either under the procedures of subparagraph (A) or otherwise.

The Commission shall submit a report on its determination and the basis thereof with respect to such emergency rule to the affected contract market, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the report is submitted more than ten days after the Commission's receipt of notification of such an emergency rule from a contract market, the report shall explain why submission within such ten-day period was not practicable. A determination by the Commission to suspend the effect of a rule under this subparagraph shall be subject to judicial review on the same basis as an emergency determination under section 12a(9) of this title. Nothing in this paragraph shall be construed to limit the authority of the Commission under section 12a(9) of this title;

(13) provide for disclosure to the contract market and the Commission of any trade, business, or financial partnership, cost-, profit-, or capital-sharing agreements or other formal arrangement among or between floor brokers and traders on such contract market where such partnership agreement or arrangement is material and known to the floor broker or floor trader;

(14)(A) provide for meaningful representation on the governing board of the contract market's board of trade of a diversity of interests, including—

- (i) futures commission merchants;
- (ii) producers of, and consumers, processors, distributors, or merchandisers of, principal commodities traded on the board of trade;
- (iii) floor brokers and traders; and
- (iv) participants in a variety of pits or principal groups of commodities traded on the exchange.

(B) provide that no less than 20 percent of the regular voting members of such board be comprised of nonmembers of such contract market's board of trade with—

- (i) expertise in futures trading, or the regulation thereof, or in commodities traded through contracts on the board of trade; or
- (ii) other eminent qualifications making such person capable of participating in and contributing to board deliberations.

(C) provide that no less than 10 percent of the regular voting members of such board be comprised where applicable of farmers, producers, merchants, or exporters of principal commodities traded on the exchange;

(15)(A) provide on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.

(B) Consistent with Commission rules, a major disciplinary committee hearing a disciplinary matter shall include—

- (i) a majority of qualified persons representing a trading status other than that of the subject of the proceeding; and
- (ii) where appropriate to carry out the purposes of this chapter, qualified persons who are not members of the exchange.

(C) For purposes of this paragraph, a trading status on a contract market may include, consistent with Commission rules, such categories as²

- (i) floor brokers and traders;
- (ii) producers, consumers, processors, distributors, or merchandisers of commodities;
- (iii) futures commission merchants; and
- (iv) members of the aforementioned categories who participate in particular contract markets or principal groups of commodities on the board of trade.

(D) If a contract market takes final disciplinary action against a member for a violation that involves the execution of a customer transaction and results in financial harm to such customer, the contract market shall promptly inform the futures commission merchant identified on the records of such contract market as having cleared such transaction, and such futures commission merchant shall promptly inform the person identified on its records as the owner of the account for which such transaction was executed, of the disciplinary action and the principal facts thereof;

(16) provide that no member found by the Commission, a contract market, a registered futures association, or a court of competent jurisdiction to have committed any violation of this chapter or any other provision of law that would reflect on the fitness of the member may serve on any contract market oversight or disciplinary panel for an appropriate period (as defined by Commission rule); and

(17)(A) provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and oversight committees. In order to comply with this subparagraph, each contract market shall adopt rules and procedures to require, at a minimum, that²

(i) any member of a governing board or a disciplinary or other oversight committee must abstain from confidential deliberations and voting on any matter where the named party in interest is the member, the member's employer, the member's employee, or any other person that has a business, employment, or family relationship with the member that warrants abstention by the member;

(ii) any member of a governing board or a disciplinary or other oversight committee must abstain from voting on any significant action that would not be submitted to the Commission for its prior approval, if, as determined in accordance with regulations promulgated by the Commission, the mem-

² So in original. Probably should be followed by a dash.

ber knowingly has a direct and substantial financial interest in the result of the vote, based either on positions held personally or at an affiliated firm;

(iii) prior to the deliberations of the governing board, disciplinary board, or other oversight committee, acting directly or indirectly through an authorized member or contract market official, the positions of the members of such board or committee, and positions of the firm or firms with which such members are affiliated, are reviewed: *Provided, however,* That no contract market or official, employee, member, other than the member whose position or positions are being reviewed, or agent thereof shall be subject to liability, except for liability in an action initiated by the Commission, for having conducted this review and for having taken or not taken further action; and

(iv) the board or committee shall clearly reflect, in the minutes of such meeting, that the review required in clause (iii) occurred and any decisions by a member to abstain or by the board or committee whether to direct a member or members to abstain from deliberations or voting on the matter before the board or committee.

Any member prohibited from voting on a rule pursuant to this paragraph shall not be included in determining whether there has been a two-thirds vote of members of the governing board or committee as required by subparagraph³ (12).

(B) For the purposes of this paragraph, the term "significant action that would not be submitted to the Commission for its prior approval" includes—

(i) any nonphysical emergency rule; or

(ii) any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect on prices in any contract traded on such contract market, but does not include any rule not submitted for prior Commission approval because such rule is unrelated to terms and conditions of any contract traded on such contract market.

(C) Notwithstanding the provisions of subparagraph (A)(ii), the Commission shall issue rules establishing the conditions under which a member of a board or committee who is required to abstain from voting on a significant action, as provided in subparagraph (A)(ii), may participate in deliberations on that action prior to such vote, where the member's participation is consistent with the public interest.

(b) Monitoring system to detect violations of rules and regulations

(1) Each contract market shall maintain and utilize a system to monitor trading to detect and deter violations of the contract market's rules and regulations committed in the making of trades and the execution of customer orders on the floor or subject to the rules of such contract market. The system shall include—

(A) physical observation of trading areas;

(B) audit trail and recordkeeping systems able to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and out-trades);

(C) systems capable of reviewing, and used to review, data on trades effectively on a regular basis to detect violations committed in making trades and executing customer orders on the floor or subject to the rules of such contract market, including—

(i) all types of violations attributable to dual trading; and

(ii) to the full extent feasible, as determined by the Commission, all other types of violations involving the making of trades and the execution of customer orders;

(D) the use of information gathered through such system on a consistent basis to bring appropriate disciplinary actions against violators;

(E) the commitment of resources to such system necessary for such system to be effective in detecting and deterring such violations, including adequate staff to develop and prosecute disciplinary actions; and

(F) the assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

(2) The audit trail system of the contract market shall, consistent with Commission regulations, accurately record—

(A) the times of trades in increments of no more than one minute in length; and

(B) the sequence of trades for each floor trader and broker.

(3) Beginning three years after October 28, 1992, the audit trail system of each contract market, except as provided in paragraph (5) and except to the extent the Commission determines that circumstances beyond the control of the contract market prevent compliance despite the contract market's affirmative good faith efforts to comply, shall—

(A) for all trades, record accurately and promptly the essential data on terms, participants, and times as required by the Commission by rule, including the time of execution of such trade, through a means that—

(i) records such data in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

(ii) continually provides such data to the contract market;

(iii) identifies such time, to the extent practicable as determined by the Commission—

(I) independently of the person making the trade;

(II) through a mechanism that records the time automatically when entered by the person making the trade; or

(III) through such other means that will capture a similarly reliable time; and

(iv) is adequately precise to determine, to the extent practicable as determined by the Commission by rule or order—

³ So in original. Probably should be "paragraph".

(I) the sequence of all trades by each floor trader; and

(II) the sequence of all trades by each floor broker; and

(B) to the extent practicable as determined by the Commission by rule or order, for customer trades, record the time that each order is received on the floor of the board of trade, is received by the floor broker for execution (or when such order is transmitted in an extremely rapid manner to the broker), and is reported from the floor of the board of trade as executed, through a means that—

(i) records such times in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

(ii) continually provides such data to the contract market;

(iii) identifies such time—

(I) independently of the person making the trade or processing the order;

(II) through a mechanism that records the time automatically when entered by the person making the trade or processing such order, as appropriate; or

(III) through such other means as will capture a similarly reliable time; and

(iv) is adequately precise to determine—

(I) the sequence in which, for each futures commission merchant, floor broker, or member firm, as applicable, all orders are received on and reported from the floor of the contract market; and

(II) the sequence in which orders are received by each floor broker for execution.

(4) The Commission may, by rule, establish standards under which the audit trail systems required under paragraph (3) shall record, to the extent practicable—

(A) the sequence of all trades made by all floor traders and floor brokers; and

(B) the interval between the time of receipt and the time of execution of each order by the floor broker executing the order.

(5)(A) The Commission shall, by rule or order, make exemptions from the requirements of paragraph (3)—

(i) for an exchange with respect to which the Commission finds that—

(I) the volume of trading on such exchange is relatively small and the exchange has demonstrated substantial compliance with the objectives of such paragraph; and

(II) the trade monitoring system at such exchange otherwise maintains a high level of compliance with this subsection; and

(ii) to the extent determined appropriate by the Commission, for categories of customer orders with respect to which the Commission finds that such orders are transmitted to and reported from the trading pit in an extremely rapid manner such that substantial compliance with the objectives of paragraph (3) can be otherwise achieved.

(B) For purposes of subparagraph (A)(i)(I) the Commission shall find that the volume of trading at an exchange is relatively small if, among

other things, the Commission determines that the average daily trading volume for each contract market for which the board of trade is designated is less than the threshold trading level established for the contract market under section 6j(a)(4) of this title.

(6) Any rule or order adopted by the Commission under paragraphs (4) and (5) shall become effective thirty legislative days or ninety calendar days, whichever is later, after submission of such rule or order to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. For purposes of this paragraph, the term “legislative day” means any day on which either House of Congress is in session.

(Sept. 21, 1922, ch. 369, §5a, as added June 15, 1936, ch. 545, §7, 49 Stat. 1497; amended Feb. 19, 1968, Pub. L. 90-258, §12, 82 Stat. 29; Oct. 23, 1974, Pub. L. 93-463, title I, §103(a), (e), (f), title II, §§208-210, title IV, §§406, 407, 88 Stat. 1392, 1400, 1401, 1413; Sept. 30, 1978, Pub. L. 95-405, §§11, 12, 92 Stat. 870, 871; Jan. 11, 1983, Pub. L. 97-444, title II, §§216, 217(a), 96 Stat. 2306, 2307; Nov. 10, 1986, Pub. L. 99-641, title I, §110(2), 100 Stat. 3561; Oct. 28, 1992, Pub. L. 102-546, title I, §103, title II, §§201(a), 206(a)(1), 213(a), 217, 222(a), 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615.)

REFERENCES IN TEXT

The United States Warehouse Act, referred to in subsec. (a)(7), is part C of act Aug. 11, 1916, ch. 313, 39 Stat. 486, as amended, which is classified generally to chapter 10 (§241 et seq.) of this title. For complete classification of this Act to the Code, see section 241 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-546, §201(a)(1), designated existing provisions as subsec. (a).

Subsec. (a)(11). Pub. L. 102-546, §222(a), substituted “(A)” for “(i)” and “voluntary, (B)” for “voluntary and (ii)”, inserted “and” after “contract market”, and added subpar. (C).

Subsec. (a)(12). Pub. L. 102-546, §213(a), designated existing provisions as subpar. (A), added subpar. (B), and struck out last two sentences of subpar. (A) which read as follows: “The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, make a rule effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under this paragraph, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may immediately make effective a temporary rule dealing with such emergency if the contract market notifies the Commission of such action with a complete explanation of the emergency involved;”.

Subsec. (a)(13). Pub. L. 102-546, §103, added par. (13).

Subsec. (a)(14) to (16). Pub. L. 102-546, §206(a)(1), added pars. (14) to (16).

Subsec. (a)(17). Pub. L. 102-546, §217, added par. (17).

Subsec. (b). Pub. L. 102-546, §201(a)(2), added subsec. (b).

1986—Par. (12). Pub. L. 99-641 substituted “participate” for “participate”.

1983—Par. (8). Pub. L. 97-444, §216(1), struck out after initial “any committee,” the clause “which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relate to other trading requirements;” incorporated

existing text in provisions designated cl. (i); inserted cls. (ii) and (iii); and in revocation provision, struck out “such” before “bylaw” and substituted “that” for “which”.

Par. (11). Pub. L. 97-444, §217(a), redesignated cl. (iv) as (ii) and substituted “another member of the contract market” for “a futures commission merchant or a floor broker”; and struck out clauses “(ii) the procedure shall not be applicable to any claim in excess of \$15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties.”.

Par. (12). Pub. L. 97-444, §216(2), amended par. (12) generally to reduce the types of contract market rules that require prior approval of the Commission before they may be implemented.

1978—Par. (11). Pub. L. 95-405, §11, inserted “(such as by delegation to a registered futures association having rules providing for such procedures)” after “arbitration or otherwise”.

Par. (12). Pub. L. 95-405, §12, inserted “(or within sixty days of their receipt if the Commission determines them to be of major economic significance)” after “thirty days of their receipt” and inserted provisions requiring that the Commission at least thirty days before approving any bylaws, rules, etc., of major economic significance publish such bylaws, rules, etc., in the Federal Register and that the Commission give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments and making the determination of the Commission as to whether any such bylaws, rules, etc., are of major economic significance final and not subject to judicial review.

1974—Par. (1). Pub. L. 93-463, §103(a), substituted “Commission” for “Secretary of Agriculture”.

Par. (2). Pub. L. 93-463, §103(a), (f), substituted “Commission” for “United States Department of Agriculture” and “Secretary of Agriculture”.

Par. (3). Pub. L. 93-463, §103(a), (f), substituted “Commission” for “Secretary of Agriculture” and “United States Department of Agriculture”.

Pars. (4), (5). Pub. L. 93-463, §103(a), (e), substituted “Commission” for “Secretary of Agriculture” and “it” for “he”.

Par. (6). Pub. L. 93-463, §406, inserted “and adopted by the Commission” after “officially promulgated”.

Par. (7). Pub. L. 93-463, §208(a), inserted “: *And provided further*, That this paragraph shall apply only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act”.

Par. (8). Pub. L. 93-463, §407, substituted “been approved by the Commission pursuant to paragraph (12) of this section” for “not been disapproved by the Secretary of Agriculture pursuant to paragraph (7) of section 12a of this title” and “has been disapproved by the Commission” for “has been so disapproved”.

Par. (9). Pub. L. 93-463, §103(a), substituted “Commission” for “Secretary of Agriculture”.

Par. (10). Pub. L. 93-463, §208(d), added par. (10).

Par. (11). Pub. L. 93-463, §209, added par. (11).

Par. (12). Pub. L. 93-463, §210, added par. (12).

1968—Par. (2). Pub. L. 90-258, §12(a), required contract markets to keep their books and records of proceedings of the contract markets and their governing boards, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed and action taken.

Pars. (8), (9). Pub. L. 90-258, §12(b), (c), added pars. (8) and (9).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

REGULATIONS

Section 206(c) of Pub. L. 102-546 provided that: “Not later than two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992], the Commodity Futures Trading Commission shall adopt such rules as are necessary to carry out the amendments made by subsections (a) and (b) [amending this section and sections 12c and 21 of this title], including rules that—

“(1) specify membership categories that shall be represented on disciplinary panels;

“(2) define ‘major disciplinary committee’ for purposes of sections 5a(a)(15) and 17(b)(12) of the Commodity Exchange Act [7 U.S.C. 7a(a)(15) and 21(b)(12)] (as added by subsections (a) and (b), respectively); and

“(3) specify the conditions under which such panels shall include qualified persons who are not members of the exchange or association, which shall include at a minimum—

“(A) any disciplinary action where the subject of such action is a member of the contract market or association governing board or of any major disciplinary committee of such contract market or association; and

“(B) any disciplinary action based on facts related to a claim that the subject of such action manipulated or attempted to manipulate the price of a commodity or future or option.”

Section 213(b) of Pub. L. 102-546 provided that: “The Commodity Futures Trading Commission shall issue regulations to implement section 5a(12)(B) of the Commodity Exchange Act [7 U.S.C. 7a(a)(12)(B)], as added by subsection (a), no later than one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992]. Until the effective date of such regulations, any regulation of the Commission that implements the last two sentences of section 5a(12), as such sentences were in effect immediately before the date of enactment of this Act, shall remain in effect.”

STUDY

Section 201(b) of Pub. L. 102-546 provided that:

“(1) IN GENERAL.—Not later than two years after the date of enactment of this Act [Oct. 28, 1992], the Commodity Futures Trading Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that contains—

“(A) an assessment of the progress of each contract market in developing and implementing systems to record the times of transactions independently, precisely, and completely as required under section 5a(b) of the Commodity Exchange Act [7 U.S.C. 7a(b)] (as added by subsection (a) of this section); and

“(B) recommendations as to whether any extension of time for the completion of such systems or any modification of the standards contained in such section is appropriate.

“(2) GAO VIEWS.—The Comptroller General of the United States shall state to Congress the views of the Comptroller General with regard to the issues addressed in such report.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6j, 7, 12e, 25 of this title.

§ 7b. Suspension or revocation of designation as “contract market”

The failure or refusal of any board of trade to comply with any of the provisions of this chapter, or any of the rules, regulations, or orders of the Commission or the commission¹ thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a “contract market” in accordance with the procedure and subject to the judicial review provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §5b, as added June 15, 1936, ch. 545, §7, 49 Stat. 1498; amended Feb. 19, 1968, Pub. L. 90-258, §13, 82 Stat. 30; Oct. 23, 1974, Pub. L. 93-463, title I, §103(a), (b), 88 Stat. 1392; Oct. 28, 1992, Pub. L. 102-546, title II, §209(b)(3), 106 Stat. 3607.)

AMENDMENTS

1992—Pub. L. 102-546 substituted reference to section 8(b) of this title for reference to section 8 of this title.

1974—Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Because the word “commission” was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258 substituted “rules, regulations, or orders of the Secretary of Agriculture or the commission” for “rules and regulations of the Secretary of Agriculture”.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6j, 12e of this title.

§ 8. Application for designation as “contract market”; time; suspension or revocation of designation; hearing; review by court of appeals

(a) Any board of trade desiring to be designated a “contract market” shall make application to the Commission for such designation and accompany the same with a showing that it complies with the conditions of section 7 of this

title, and with a sufficient assurance that it will continue to comply with the requirements of such section 7. The Commission shall approve or deny an application for designation as a contract market within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate as a “contract market” any board of trade that has made application therefor, such board of trade shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a “contract market” upon a showing that such board of trade is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 7 of this title or that such board of trade, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission or the Commission¹ thereunder. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such board of trade appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due

¹So in original. The words “or the commission” probably should not appear.

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