

Issued in Des Plaines, Illinois on April 25, 2002.

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Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02-13215 Filed 5-28-02; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority to the Director of the Division of Enforcement To Institute Subpoena Enforcement Proceedings

AGENCY: Commodity Future Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending regulations to delegate authority to the Director of the Division of Enforcement, with the concurrence of the General Counsel or General Counsel’s delegee, to institute subpoena enforcement proceedings in federal court to seek an order compelling the attendance and testimony of witnesses and the production of documents pursuant to a validly-issued Commission subpoena and to clarify that notwithstanding the delegated authority, as he believes appropriate, the Director may submit any proposed subpoena enforcement action for Commission consideration and nothing in this delegation prohibits the Commission from exercising the delegated authority. This amendment will expedite the investigation process by enabling the staff more quickly to compel individuals or entities to comply with Commission subpoenas and conserve Commission resources. This action relates solely to the Commission’s organization, procedure and practice.

EFFECTIVE DATE: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Gretchen L. Lowe, Counselor to the Director, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 2058. Telephone: (202) 418-5379.

SUPPLEMENTARY INFORMATION:

I. Rule 11.4(e)

The CFTC today announced an amendment to its rules governing investigations, and in particular, subpoenas. The Commission is authorized to promulgate this rule

under sections 2a(11) and 8a(5), of the Commodity Exchange Act.¹

The amendment to Rule 11.4,² adding paragraph (e), authorizes the Director of Division of Enforcement, with the concurrence of the General Counsel or General Counsel’s delegee, to institute subpoena enforcement proceedings in federal court to seek an order compelling individuals or entities to comply with Commission subpoenas. This delegation will expedite the investigation process and conserve Commission resources by enabling the Division more expeditiously to seek to compel compliance with Commission subpoenas in cases where the entry of a court order is necessary. Notwithstanding this delegation of authority, in instances where potential subpoena enforcement actions raise any novel or complex issues, the Division may consult with the Commission before the action is filed in federal court.

The Commission has determined that this amendment relates solely to agency organization, procedure and practice and does not relate to a substantive rule. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rulemaking and opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make this rule effective immediately upon publication in the **Federal Register** because it will expedite the investigation process and conserve Commission resources.

II. Related Matters

A. Consideration of Costs and Benefits and Antitrust Laws

Section 15 of the Commodity Exchange Act requires the Commission to consider the costs and benefits of its action as well as the public interest to be protected by the antitrust laws before adopting a rule or regulation under the Act. Because the amendments to part 140 relate solely to agency organization, procedure and practice, they do not directly implicate the specific areas of concern identified in Section 15. In any event, the Commission has considered the costs and benefits of this

¹ Section 2a(11), 7 U.S.C. 4a(j), authorizes the Commission to “promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.” Section 8a(5), 7 U.S.C. 12a(5) gives the Commission the authority “to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the Act].”

² 17 CFR 11.4.

amendment and has concluded that the rule is fully consistent with the public interest and with the requirements and prohibitions of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(f) and (j), 12a(5) and 13.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules in accordance with 5 U.S.C. 553, consider the impact of those rules on small businesses. The Commission has determined that the provisions of the RFA do not apply to the promulgation of this regulation since it relates solely agency organization, procedure and practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (RPA), 4 U.S.C. 3501 *et seq.*, which imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the RPA, does not apply to these rules. This rule amendment does not contain information collection requirements as defined by the RPA.

List of Subjects in 17 CFR Part 11

Administrative practice and procedure, Commodity futures, Investigations, Rules relating to investigations.

In consideration of the foregoing and pursuant to the authority contained in the Act, and in particular, Sections 2a and 8a, 7 U.S.C. 2(a) and 8a, the Commission hereby amends Part 11 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 11—RULES RELATING TO INVESTIGATIONS

1. The authority citation for Part 11 continues to read as follows:

Authority: 7 U.S.C. 2(a), 4a(j), 9 and 15, 12, 12a(5), 12(f).

2. Section 11.4 is amended by adding paragraphs (e) and (f) to read as follows:

§ 11.4 Subpoenas.

* * * * *

(e) Pursuant to the authority granted under Sections 2(a)(11) and 8a(5) of the Act, the Commission hereby delegates to the Director of the Division of Enforcement, with the concurrence of the General Counsel or General Counsel’s delegee, and until such time as the Commission orders otherwise, the authority to invoke, in case of contumacy by, or refusal to obey a subpoena issued to, any person, the aid

of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda and other records pursuant to subpoenas issued in accordance with section 6(c) of the Act for the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of the Act.

(f) Notwithstanding the delegation of authority to the Director set forth in paragraph (e) of this section, in any case in which the Director believes it appropriate the matter may be submitted to the Commission for its consideration. Nothing in this section shall prohibit the Commission from exercising the authority delegated in paragraph (e) of this section.

Issued in Washington, DC on May 22, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02-13300 Filed 5-28-02; 8:45 am]

BILLING CODE 6351-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL189-1a; FRL-7212-9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to particulate matter control requirements for rural grain elevators in Illinois. On April 8, 1999, the Illinois Environmental Protection Agency (IEPA) submitted section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89-491) as a requested revision to the Illinois State Implementation Plan (SIP). The requested SIP revision exempts rural grain elevators from certain particulate matter control requirements. An air quality modeling analysis was conducted to show that this rule change would not cause or contribute to violation of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic

diameter less than or equal to a nominal 10 micrometers (PM₁₀).

DATES: This rule is effective on July 29, 2002, unless EPA receives relevant adverse written comments by June 28, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: Patricia Morris, Acting Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Is the EPA Approving?

EPA is approving section 9 of the Illinois Environmental Protection Act (as revised by Public Act 89-491) as a revision to the Illinois SIP. The revised Illinois Environmental Protection Act exempts rural grain elevators from particulate matter control requirements contained in section 212.462 of Title 35 of the Illinois Administrative Code (35 IAC 212.462).

a. What Sources Are Being Exempted?

The exemption applies to "any grain elevator located outside of a major population area" provided that the elevator:

1. does not violate the pollution prohibition in subsection (a) of section 9 of the Illinois Environmental Protection Act or have a certified

investigation on file with the Illinois EPA; and,

2. Is not required to obtain a Clean Air Act Permit Program permit.

"Major population areas" are defined at 35 IAC 211.3610. Generally, major population areas include Cook, Lake, DuPage, and Will Counties; portions of McHenry, Kane, and St. Clair Counties; as well as the municipalities of Kankakee, Rockford, Moline, Galesburg, Peoria, Pekin, Bloomington/Normal, Champaign/Urbana, Decatur, Springfield, and surrounding areas.

Subsection (a) of section 9 of the Illinois Environmental Protection Act states "No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the [Illinois Pollution Control Board] under this Act."

A "certified investigation" means "a report signed by Illinois Environmental Protection Agency personnel certifying whether a grain-handling operation (or portion thereof) or grain-drying operation is causing or tending to cause air pollution."

A Clean Air Act Permit Program permit is a permit required under section 39.5 of the Illinois Environmental Protection Act. For sources of particulate matter pollution, such as grain elevators, sources with a potential to emit over 100 tons of PM₁₀ per year are required to obtain permits under this program.

b. What Requirements Are They Being Exempted From?

The revised Illinois Environmental Protection Act exempts rural grain elevators from particulate matter control requirements contained in 35 IAC 212.462. The requirements in 35 IAC 212.462 are applicable only to operations with a total annual grain throughput of 300,000 bushels or more. 35 IAC 212.462 requires sources to apply for a permit subject to 35 IAC 201.35 IAC 212.462 also requires, among other requirements, control equipment with 90% particulate removal efficiency on cleaning and separating operations, major dump-pit areas, internal transferring areas, and watercraft loadout areas. 35 IAC 212.462 requires truck and hopper car loading to use socks, sleeves or choke loading, and for box car loading emissions to be controlled "to the fullest extent which is technically and economically feasible".