

CONGRESSIONAL RECORD INSERT
EXTENSION OF REMARKS
CONGRESSMAN LES AuCOIN

Mr. Speaker: I shall be offering an amendment to the Commodity Exchange Act Extension (H.R. 10285) that would tighten up the procedures under which the Commodity Futures Trading Commission oversees rule changes proposed by the numerous contract markets in this country.

Among the many responsibilities assigned to the Commission under the Commodity Exchange Act, Section 5(a) places an oversight responsibility on the Commission to review and sanction all changes that are proposed in the rules that govern the operation of contract markets. The Commission currently receives approximately 300 notifications of rule changes per year, about 200 of which are actually presented to the Commissioners for approval.

The Commodity Exchange Act and the regulations which accompany it are vague, to say the least, on the administrative procedures which the contract markets and the Commission are required to abide by. There is currently no requirement for the posting of public notice of a proposed rule change. There is no right provided for in the Act or the regulations for an aggrieved party to petition for a public hearing before the Commissioners.

Although a contract market is currently required to state the purpose of a proposed rule change in its submission for approval to the Commission, there is no requirement that the underlying reasoning or possible impacts of the change be included in the submission.

The purpose of my amendment is to extend to the Commodity Futures Trading Commission similar administrative procedures that apply to other government agencies under the Administrative Procedures Act. Simply put, I believe that a public agency such as the CFTC charged with oversight functions in the public interest should operate openly and guarantee the right of the public to observe and take part if they so desire in the decision-making process.

My amendment calls for the submission by the contract markets of an economic and statistical analysis that would accompany any application to the Commission for approval of a rule change. Such an analysis would specify the rationale behind the change and the impacts on the commodity, industry or other persons likely to be affected by the rule change. Ironically, this provision would actually reduce the administrative workload of the Commission. By shifting the burden of proofing the proposed rule change on to the promulgator of the rule -- i.e., the contract markets -- this would serve to reduce the amount of investigative research that the Commission is currently required to undertake.

Other parts of my amendment incorporate similar language to that included in the Administrative Procedures Act. On receipt of a proposed rule change, the Commission would be required to publish notice of the change in the Federal Register and allow a period of 60 days for public comment and participation in the approval process. In addition my amendment would guarantee the right of a public hearing before the Commissioners to an aggrieved party. All decisions of the Commission would be required to be reached at a public hearing within ninety days of receipt of the proposed rule change.

In urging you to support my amendment, I want you to know that I would be the last person to propose unnecessary burdensome regulations on yet another agency. In this case, however, I think the administrative procedures that I am suggesting are fully justified both to protect the rights of the public in decision-making and protecting the Commission itself from possible charges of unfair or secretive practices. If the contract markets or the Commission have nothing to hide, there can be no strong objection to this amendment which seeks only to ensure that decisions are reached openly and above board.

I urge your support for this amendment.