

COMMODITY FUTURES TRADING COMMISSION (CFTC)

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17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules that the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Assistant Secretary for FOIA Matters, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418-5096, edonovan@cftc.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

Semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda that shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1). 5 U.S.C. 602(a).

The Commission has prepared an agenda of significant rules that it presently expects may be considered during the course of the next year. These rules may have some impact on small entities.¹ In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: “Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda.”

The Commission’s fall 2003 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on September 2, 2003, by the Commission.

Jean A. Webb,
Secretary of the Commission.

Commodity Futures Trading Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3974	Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm—Leach—Bliley Act	3038—AC04

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3975	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States	3038—AB45
3976	Use of Broker—Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities	3038—AB70
3977	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons; Requirements for Foreign Stock Index Contracts To Qualify as Non—Narrow—Based Indices	3038—AB75
3978	Information Access and Price Transparency For Exempt Commercial Markets	3038—AC02
3979	Collection of Claims Owed the United States Arising from Activities Under the Commission’s Jurisdiction	3038—AC03
3980	Haircuts on Foreign Currency	3038—AC05

¹ The Commission published its definition of small entity to be used in connection with rulemaking proceedings on April 30, 1982 (47 FR 18618). Pursuant to that definition, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. See 5 U.S.C. 602(a)(1). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic

impact on a substantial number of small entities. Accordingly, the listing of a rule in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda that includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and

meaningful opportunity to participate in and comment on the formulation of new or revised regulations. In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar and, on a weekly basis, posts an advisory on its website (<http://www.cftc.gov>) that lists rules that the Commission is considering or will consider in the near future.

CFTC

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3981	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers	3038—AB64
3982	Investment of Customer Funds	3038—AC01

Commodity Futures Trading Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3983	Regulation of Hybrid Instruments	3038—AB69

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3984	Performance Disclosures for Commodity Trading Advisors and Commodity Pool Operators	3038—AB39
3985	Customer Identification Program for Futures Commission Merchants and Introducing Brokers	3038—AB90
3986	Allocation of Bunched Orders	3038—AB93
3987	Treatment of Foreign Futures or Foreign Options Secured Amount	3038—AB96
3988	Exclusion for Certain Otherwise Regulated Persons From Definition of Commodity Pool Operator (CPO); Exemption From Certain Part 4 Requirements for Commodity Pool Operators & Commodity Trading Advisors	3038—AB97

Commodity Futures Trading Commission (CFTC)

Prerule Stage

3974. • INTERAGENCY PROPOSAL TO CONSIDER ALTERNATIVE FORMS OF PRIVACY NOTICES UNDER THE GRAMM—LEACH—BLILEY ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 7b—2 and 12a(5); 15 USC 6801 et seq

CFR Citation: 17 CFR 160

Legal Deadline: None

Abstract: Subtitle A of the Gramm—Leach—Bliley Act (GLB Act), captioned Disclosure of Nonpublic Personal Information (15 U.S.C. 6801 et seq.), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution’s policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties, and provide a consumer a reasonable opportunity to direct the

institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The GLB Act agencies, including the CFTC, have published substantially identical regulations to implement GLB title V, known collectively as the “privacy rule.” Many notices issued under the privacy rule were long and complex, and difficult to compare with each other. Consequently, GLB Act agencies are considering whether to amend the privacy rule to provide for simpler, more useful notices. The GLB Act agencies intend to issue an advance notice of proposed rulemaking to determine whether to propose changes to the privacy rule, and if so, will seek further public comment on specific programs. The agencies expect that consumer testing would be a key component in the development of any specific proposals.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3038—AC04

Commodity Futures Trading Commission (CFTC)

Proposed Rule Stage

3975. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES**Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c**CFR Citation:** 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10**Legal Deadline:** None

Abstract: The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to customers located in the United States. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they carry only: (1) customer omnibus accounts for U.S. FCMs; (2) U.S. affiliate accounts that are proprietary to the foreign futures and options broker; or (3) U.S. accounts that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46613
NPRM Comment Period End	10/25/99	
Second NPRM	01/00/04	
Second NPRM Comment Period End	03/00/04	
Final Action	07/00/04	
Final Action Effective	08/00/04	

Regulatory Flexibility Analysis Required: No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Susan A. Elliott, Attorney Advisor, Division of Clearing and Intermediary Oversight,

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RIN: 3038-AB45**3976. USE OF BROKER—DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 1 et seq, as amended by PL 106—554, 114 Stat 2763**CFR Citation:** Not Yet Determined**Legal Deadline:** None

Abstract: The Commission is required to coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulators (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to implement the provisions of the Commodity Futures Modernization Act of 2000 relating to the use of broker—dealers, depository institutions, and farm credit system institutions as intermediaries on derivatives transaction execution facilities.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No**Government Levels Affected:** None**Agency Contact:** Lawrence B. Patent, Deputy Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581

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RIN: 3038-AB70**3977. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS; REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON—NARROW—BASED INDICES****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 1 et seq, as amended by PL 106—554, 114 Stat 2763**CFR Citation:** Not Yet Determined**Legal Deadline:** Other, Statutory, December 21, 2001, Other.

Abstract: The Commission and the Securities and Exchange Commission are required to jointly issue (1) rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign board of trade to United States persons, and (2) rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non—narrow—based indices.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No**Government Levels Affected:** None**Agency Contact:** Andrew V. Chapin, Attorney Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581

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RIN: 3038-AB75

CFTC

Proposed Rule Stage

3978. • INFORMATION ACCESS AND PRICE TRANSPARENCY FOR EXEMPT COMMERCIAL MARKETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 2(h)(3)—(5)

CFR Citation: 17 CFR 36.3

Legal Deadline: None

Abstract: The proposal would revise the rules on Commission access to information on transactions on electronic trading facilities operating as exempt commercial markets under the Commodity Exchange Act to provide for access to more relevant and useful information. The proposed rules also would require such markets to publicly disseminate certain trading data if, as defined, they perform a significant price discovery function in the underlying cash market.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038—AC02

3979. • COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 31 USC 3720D; 31 CFR 285.11

CFR Citation: 17 CFR 143

Legal Deadline: None

Abstract: Pursuant to the Debt Collection Improvement Act (DCIA) of 1996, the Department of the Treasury has promulgated regulations authorizing and governing the administrative garnishment of wages of persons, not employed by the Federal government, who owe claims to the United States. Under the DCIA and Treasury regulations, Federal agencies can promulgate rules allowing for the garnishment of such claims arising from actions within their jurisdiction. As a general matter, the individual agencies' rules must adopt, or otherwise conform to, the Treasury rules. To expedite the collection of claims arising from activity within its jurisdiction, the Commission is amending its part 143 rules, governing debt collections, to provide for administrative wage garnishment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Action	02/00/04	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038—AC03

3980. • HAIRCUTS ON FOREIGN CURRENCY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 6f(b)

CFR Citation: 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission is proposing to amend regulations that specify required capital charges, or exclusions from net capital, to be deducted by futures commission merchants (FCMs) and introducing brokers (IBs) when computing their adjusted net capital. For forward contracts that are not covered by an open futures contract or commodity option, and are in specified foreign currencies (British pounds, Canadian dollars, Japanese yen, Swiss francs or the Euro), the proposed amendment would apply a capital charge of 6 percent of the market value of the FCM's or IB's uncovered forward contracts in these currencies. Uncovered forwards in any other non—U.S. currency would remain subject to the 20 percent capital charge currently set forth in the Commission's regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis

Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038—AC05

Commodity Futures Trading Commission (CFTC)

Final Rule Stage

3981. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS**Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 6f**CFR Citation:** 17 CFR 1.17**Legal Deadline:** None**Abstract:** The Commission intends to propose amendments to Rule 1.17 that would adopt a risk-based capital requirement for futures commission merchants.**Timetable:**

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40835
NPRM Comment Period End	09/08/03	
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Thomas J. Smith, Chief Accountant and Associate

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RIN: 3038-AB64**3982. • INVESTMENT OF CUSTOMER FUNDS****Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.**Legal Authority:** 7 USC 6d**CFR Citation:** 17 CFR 1.25**Legal Deadline:** None**Abstract:** The Commission has proposed to amend Regulation 1.25 to allow futures commission merchants to engage in repurchase agreements with customer-deposited securities subject to certain conditions and to modify the portfolio time-to-maturity requirements for securities deposited in connection with certain collateral

management programs of derivatives clearing organizations.

Timetable:

Action	Date	FR Cite
NPRM	06/30/03	68 FR 38654
NPRM Comment Period Reopened	08/06/03	68 FR 46516
NPRM Comment Period End	09/05/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis**Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Phyllis P. Dietz, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581

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RIN: 3038-AC01

Commodity Futures Trading Commission (CFTC)

Long-Term Actions

3983. REGULATION OF HYBRID INSTRUMENTS**Priority:** Substantive, Nonsignificant**CFR Citation:** Not Yet Determined**Timetable:**

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis**Required:** No**Government Levels Affected:** None**Agency Contact:** Nancy E. Yanofsky

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RIN: 3038-AB69

Commodity Futures Trading Commission (CFTC)

Completed Actions

3984. PERFORMANCE DISCLOSURES FOR COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS**Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 4.25; 17 CFR 4.35**Completed:**

Reason	Date	FR Cite
Final Action	07/21/03	68 FR 42964
Final Action Effective	08/20/03	

Regulatory Flexibility Analysis**Required:** No**Government Levels Affected:** None**Agency Contact:** Robert B. Wasserman
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Reason	Date	FR Cite
Final Action	05/09/03	68 FR 25149
Final Action Effective	06/09/03	

Regulatory Flexibility Analysis**Required:** No**Government Levels Affected:** None**Agency Contact:** Office of General Counsel

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RIN: 3038-AB90

CFTC

Completed Actions

3986. ALLOCATION OF BUNCHED ORDERS**Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 1.35**Completed:**

Reason	Date	FR Cite
Final Action	06/11/03	68 FR 34790
Final Action Effective	07/11/03	

Regulatory Flexibility Analysis**Required:** No**Government Levels Affected:** None**Agency Contact:** R. Trabue Bland

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RIN: 3038—AB93**3987. TREATMENT OF FOREIGN FUTURES OR FOREIGN OPTIONS SECURED AMOUNT****Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 30.7**Completed:**

Reason	Date	FR Cite
Withdrawn	07/31/03	

Regulatory Flexibility Analysis**Required:** No**Government Levels Affected:** None**Agency Contact:** Thomas J. Smith

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RIN: 3038—AB96**3988. EXCLUSION FOR CERTAIN OTHERWISE REGULATED PERSONS FROM DEFINITION OF COMMODITY POOL OPERATOR (CPO); EXEMPTION FROM CERTAIN PART 4 REQUIREMENTS FOR COMMODITY POOL OPERATORS & COMMODITY TRADING ADVISORS****Priority:** Substantive, Nonsignificant**CFR Citation:** 17 CFR 4.5; 17 CFR 4.7; 17 CFR 4.12 to 4.14; 17 CFR 4.21; 17 CFR 4.22; 17 CFR 4.31**Completed:**

Reason	Date	FR Cite
Final Action	08/08/03	68 FR 47221
Final Action Effective	08/08/03	

Regulatory Flexibility Analysis**Required:** Yes**Government Levels Affected:** None**Agency Contact:** Barbara S. Gold

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RIN: 3038—AB97

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