21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12009 Filed 5–11–01; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AB66

A New Regulatory Framework for Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement various provisions of the Commodity Futures Modernization Act of 2000 (''CFMA''), which fundamentally alters the regulation of derivatives clearing organizations. These proposed rules apply to derivatives clearing organizations that are, are required to, or seek to become registered with the Commission and implement the statutory framework in the CFMA governing those entities.

DATES: Comments must be received by June 13, 2001.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to ''Clearing Organizations.''

FOR FURTHER INFORMATION CONTACT: Alan L. Seifert, Deputy Director, Division of Trading and Markets, Lois J. Gregory, Special Counsel, or David P. Van Wagner, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5260 or e-mail ASeifert@cftc.gov., LGregory@cftc.gov, or DVanWagner@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Congress on December 15, 2000, passed, and the President on December 21, 2000, signed into law, the CFMA,[1] which substantially amended the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (''Act''). New Section 5b(a) of the Act, added by the CFMA, requires that contracts of sale of a commodity for future delivery, options on such contracts, and options on a commodity be cleared only by a derivatives clearing organization (''DCO'') registered with the Commission,[2] unless the contracts are: (i) Excluded under the Act, (ii) exempted under the Act, or (iii) security futures products cleared by a securities clearing agency. Contracts traded on a designated contract market, if cleared, must be cleared by a DCO.[3] Excluded or exempted contracts, including those elected pursuant to section 5a(g) to be traded on a registered derivatives transaction execution facility, are not required to be cleared by a DCO, although a clearing organization that clears these contracts may voluntarily apply, pursuant to section 5b(b), to register with the Commission as a DCO.[4] In addition, a DCO may clear other contracts, agreements, or transactions, including, but not limited to, certain over-the-counter (''OTC'') derivative instruments referenced in section 5b(b) of the Act and transactions in spot and forward contracts.[5]

To be registered as a DCO, an applicant must demonstrate that it complies with fourteen core principles set forth in the CFMA. Section 5b requires any person desiring to so register to submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of determining whether the applicant meets the core principles.

The Commission is now proposing rules to implement section 5b of the Act. This proposal follows the Commission's proposal of regulations to implement the CFMA's provisions governing trading facilities, which was published for comment on March 9, 2001.[6] Part 39 would stipulate the form and provide guidance for the content of applications for DCO registration, as well as procedures for processing such applications. Other provisions would assist the Commission in carrying out its oversight responsibilities with respect to the operations and activities of DCOs, enforcing compliance by DCOs with the core principles and other provisions of the Act and regulations, protecting clearing participants from fraud, and ensuring the enforceability of contracts cleared on DCOs. Part 39 does not apply to the execution of transactions cleared by DCOs; its provisions apply specifically and only to the clearing of transactions by DCOs.[7]

II. Proposed Part 39

A. Application and Approval Procedures

Proposed part 39 would apply to any DCO, as defined under section 1a(9) of the Act,[8] that is registered with the

[1] See Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] For purposes of this release, use of the term ''derivatives clearing organization'' means an applicant seeking registration as a DCO, or a DCO registered or required to be registered, with the Commission pursuant to section 5b of the Act.

[3] The Commission will consider, however, under the exemptive authority provided by section 4(c) of the Act, requests to clear transactions through alternative means.

[4] Thus, under the CFMA, DCOs are treated as entities that are separate and distinct from the markets for which they provide clearing services.

[5] Under section 409 of the Federal Deposit Insurance Corporation Act of 1991, as amended by section 112 of the CFMA, OTC derivatives also may be cleared by a multilateral clearing organization supervised by federal banking authorities, a clearing agency registered under the Securities Exchange Act of 1934, or a clearing organization supervised by a foreign financial regulator that satisfies appropriate standards as determined by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the CFTC. This approach to clearing is consistent with the Report of the President's Working Group on Financial Markets (''PWG''), which encouraged the development of clearing systems for OTC derivatives to reduce systemic risk. *See* Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the PWG (Nov. 1999). The Commission believes that appropriate standards referred to above include regulating and overseeing the organization pursuant to principles comparable to the core principles set forth in section 5b of the Act and a requirement to participate in appropriate and adequate information sharing arrangements.

[6] 66 FR 14262. That release, when it is published as a final rulemaking, will be conformed to this release insofar as this release clarifies the application of the DCO-related provisions of the CFMA.

[7] Section 1a(9) of the Act defines the term DCO to encompass entities that, ''with respect to an agreement, contract, or transaction—(i) enables each party to the agreement * * * to substitute, through novation or otherwise, the credit of the [DCO] for the credit of the parties; (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements * * * executed by participants in the [DCO]; or (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the [DCO] the credit risk arising from such agreements * * * executed by the participants.''

[8] The CFMA's definition of DCO does not necessitate the performance of a direct credit enhancement function. *See* section 1a(9)(ii). Thus, the provision of certain settlement or netting services in the absence of direct credit enhancement would generally meet the definition of a DCO. An organization that intends to provide settlement or other clearing-type services to a designated contract

Commission, is required to become so registered, or which voluntarily seeks to become so registered. If certain conditions were met, an organization would be deemed to be registered with the Commission as a DCO under part 39 or, as determined by Commission order, registered upon conditions, sixty days after receipt by the Commission of an application for registration, unless notified otherwise.[9] This would include submission of the applicant's rules, a demonstration that the applicant satisfies the core principles of the Act, submission of any agreements with third parties that enable the applicant to meet one or more of the core principles, and descriptions of any system test procedures and results.

Appendix A to part 39 would provide guidance that applicants could use to meet the core principles. The CFMA provides that an applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles. The guidance in proposed Appendix A is intended merely to illustrate the manner in which a clearing organization may meet a core principle and is not intended to be a mandatory checklist.

If an applicant did not meet registration requirements, Commission staff would inform the applicant of the shortcomings and notify it that the Commission was terminating review under part 39 and would continue review of its application under section 6 of the Act. Within ten days of being notified, the applicant could ask the Commission to either register it or commence registration denial proceedings. An applicant also could withdraw its application.

An applicant may request that the Commission approve any of its rules. If an applicant requests approval of one or more of its rules, it would be required to do so pursuant to the applicable provisions of proposed § 40.5 in proposed part 40 governing the procedures and timeframes for rule approval.[10] An applicant may request approval of one or more of its rules at the time it makes its initial application or thereafter. In accordance with new section 5b(c)(3) of the Act, an applicant also may request that the Commission issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act. In considering any requests for such orders, the Commission intends to apply section 15(b) of the Act in a manner consistent with its previous application of section 15(b) to contract markets.

B. Existing Derivatives Clearing Organizations

New section 5b(d) of the Act provides that existing DCOs shall be deemed to be registered with the Commission to the extent that the DCO clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions prior to enactment of the CFMA. This provision captures all futures clearing organizations regulated by the Commission that have ever cleared any futures contracts for designated contract markets prior to December 21, 2000, the effective date of the CFMA. This language does not capture any organization approved to clear futures in connection with a pre-CFMA contract market designation which has not yet cleared any contracts.[11] However, since review and approval of such an organization took place pursuant to criteria comparable to that contained in the fourteen core principles set forth in the amended Act, the Commission clarifies that any such organization will be deemed by the Commission to be registered with the Commission as a DCO upon receipt by the Commission of a certification that the organization currently meets and will continue to meet the core principles and all applicable requirements of the Act and Commission regulations.

C. Derivatives Clearing Organizations

Under proposed part 39, a DCO and the clearing of transactions on a DCO are exempt from all Commission regulations except for proposed parts 39 and 40, and certain select regulations relating to, for example, the segregation of customer funds and recordkeeping.[12] To maintain registration as a DCO, part 39 would require DCOs to remain in compliance at all times with the core principles. The Commission could ask a DCO to submit in writing at any time, any information that the Commission deemed necessary to demonstrate that the DCO is in compliance with one or more of the core principles.[13] The guidance in Appendix A with respect to applicants may be used by registrants as well, for guidance on ongoing compliance with the core principles. A DCO may request that the Commission approve any of its rules either prior to or after implementation of the rule(s).[14] Such requests would be handled under the applicable procedures of proposed part 40. Any new or amended rule not voluntarily submitted to the Commission for approval must be submitted with a certification that the new rule or amendment complies with the Act, pursuant to applicable procedures of proposed part 40. As noted above, a DCO also may request that the Commission issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act. The Commission intends to apply section 15(b) of the Act in a manner consistent with its previous application of section 15(b) to contract markets.

In addition to the information requests relevant to demonstrating compliance with core principles, proposed rule 39.5 requires that large trader information be provided to the Commission by futures commission merchants, clearing members and foreign brokers. This requirement complements the rules relating to large trader position reports for transaction execution facilities. The Commission has also proposed special call authority parallel to that proposed for transaction execution facilities.

Proposed part 39 also contains an antifraud provision. This provision

market without accompanying credit enhancement must still demonstrate compliance with all section 5b core principles to obtain unconditional registration as a DCO. Otherwise, the Commission may grant DCO registration with conditions when and as appropriate.

[9] The Act does not include an express time limit for Commission consideration of applications to become registered DCOs.

[10] 66 FR 14262 (March 9, 2001).

[11] This includes one organization, namely, FutureCom Commodity Exchange, Ltd.

[12] Commission Regulation 1.31 is reserved in part 39. Regulation 1.31 was updated and amended by the Commission in 1999 so as to provide broad, flexible performance standards for recordkeeping. In addition, Regulation 1.31 is substantially similar to the recordkeeping requirements maintained by the Securities and Exchange Commission. Pursuant to the guidance provided in the appendix to part 39, a DCO's recordkeeping has to satisfy the performance standards in Regulation 1.31.

[13] Section 5c(d) of the Act provides a mechanism for notifying DCOs (and other registered entities) that they are violating a core principle. The request for a demonstration of compliance operates independently of the section 5c(d) procedure. Indeed, the request for such a demonstration from a registered entity, and the Commission's consideration of the entity's response may constitute a useful alternative to the more formal procedures of section 5c(d) of the Act. It would be the Commission's intent to explore such informal methods of resolving issues of compliance with core principles by DCOs prior to invoking more formal mechanisms.

[14] The Act limits a registered entity seeking approval to request approval only ''prior'' to implementation. Thus, the Commission is proposing to use its section 4(c) exemptive authority with respect to this provision. The Commission believes that this exercise of exemptive authority should provide DCOs with greater procedural flexibility and would be consistent with the public interest.

would be specifically limited to prohibit fraudulent actions by persons in or in connection with the clearing of transactions on a DCO. Part 39's antifraud provision is proposed pursuant to the authority provided by section 8a(5) of the Act to make such rules, as in the judgment of the Commission, are reasonably necessary to effectuate the provisions of the Act. Section 5b of the Act grants new authority to the Commission to regulate DCOs, which is separate from the authority to regulate the trading facilities for which they clear. In this context, the proposed antifraud provision is necessary to address fraud in or in connection with clearing, which might not be covered by any other antifraud provision or by one of the core principles. As is the case with the other provisions of part 39, the antifraud rule would apply specifically and only to the activity of clearing.

Proposed part 39 would not interfere with the enforceability of contracts cleared on DCOs. It provides that a contract or transaction cleared pursuant to the rules of a DCO shall not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of a violation by the DCO of the provisions of section 5b of the Act or part 39, or as a result of any Commission proceeding to alter, supplement, or require the DCO to adopt a specific rule or procedure or refrain from taking a specific action.

III. Section 4(c) Findings

One of the provisions of the proposal contained in this **Federal Register** notice is being proposed under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts, or transactions, either unconditionally or on stated terms or conditions, from any of the requirements of any provision of the Act (except certain provisions governing a group or index of securities and security futures products). As relevant here, when granting an exemption pursuant to section 4(c), the Commission must find that the exemption would be consistent with the public interest.

The Commission is proposing to use its section 4(c) exemptive authority here to provide registered entities with greater procedural flexibility than is contained in the Act. Pursuant to proposed rule 39.4, a DCO may request that the Commission approve its rules or rule amendments prior to their implementation or any time thereafter, notwithstanding the Act's limitation on registered entities seeking approval to do so only prior to implementation. The Commission believes that this exercise of exemptive authority should provide DCOs with greater procedural flexibility and would be consistent with the public interest.

IV. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. The Commission is applying the cost-benefit provisions of section 15 in this rulemaking and understands that, by its terms, section 15 as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its action.

The amended section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas of concern and could in its discretion determine, that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Part 39 is part of a package of related rule provisions implementing the CFMA. The Commission has considered the costs and benefits of proposed part 39 and the costs and benefits of the related rule provisions. Significantly, part 39 would limit the period of time for Commission review of DCO applications to 60 days, thereby providing the important benefit of an expedited review, even though the Act does not specify any time limit for review of DCO applications. The rules also provide the benefit of substantial additional, non-binding guidance to DCO applicants and DCOs as to how they may comply with the statutory core principles. The rules only impose reporting, recordkeeping and other informational requirements on DCOs that either are mandated by or carry out, or are fully consistent with the new provisions of the CFMA concerning DCOs.

The Commission has considered the costs and benefits of this rule package in light of the specific areas of concern identified in the CFMA. The rules would impose limited costs on the entities in requiring them to gather, compile, and submit certain information that the Commission needs in order to perform its function of overseeing futures and clearing and enforcing compliance by DCOs with the provisions of the Act. The proposed rules would not increase costs related to market competitiveness and would not affect the price discovery function of markets. The Commission believes that part 39's antifraud provision would benefit market participants and the public interest by deterring illegal behavior and that its enforceability provision would benefit the public interest by furthering legal certainty.

After considering these factors, the Commission has determined to propose part 39. Commenters are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules.

V. Implementation

The provisions of the Act governing DCOs contained in the CFMA became effective on December 21, 2000, the same date that the CFMA was signed into law. In light of the need to promulgate implementing regulations without delay, the Commission encourages commenters to submit their comments on the proposed rulemaking as early as possible during the comment period, but in any event, by the end of the comment period. The Commission believes at this time that any extension of the comment period would be contrary to the public interest. The Commission will not bring any enforcement action against any person who complies with the rules proposed herein. Persons who do comply with the proposed rules, however, will be required to bring their conduct into compliance with the final rules to the extent that the final rules differ from the proposed rules.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that agencies, in proposing regulations, consider the impact of those regulations on small entities. The rules adopted herein would affect DCOs. The Commission has previously established certain definitions of ''small entities'' to

be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[15] In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.[16] DCOs clear contracts executed on contract markets and other trading facilities. DCOs, as defined in the CFMA, should not be considered small entities. Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether DCOs covered by these rules should be considered small entities for purposes of the RFA.

B. Paperwork Reduction Act

Part 39 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this part to the Office of Management and Budget (''OMB'') for its review.

Collection of Information: Clearing Organizations, OMB Control Number 3038–0051.

The proposed rules will not change the burden previously approved by OMB. The burden associated with the proposed new rules is estimated to be 2,000 hours that will result from new submission requirements for first-time applicants for registration as DCOs. The estimated burden of the new part 39 was calculated as follows:

Estimated number of respondents: 10.

Reports annually by each respondent: 1.

Total annual responses: 10.

Estimated Average number of hours per response: 200.

Annual burden in fiscal year: 2,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 39

Commodity futures, Consumer protection.

In consideration of the foregoing, and pursuant to the authority contained in section 7b of title 7 of the U.S.C., as added by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000), the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by adding part 39 to read as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

Sec.

Authority: 7 U.S.C. 7b as added by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

§ 39.1 Scope.

The provisions of this part apply to any derivatives clearing organization as defined under section 1a(9) of the Act which is registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily applies to register as such with the Commission pursuant to section 5b(b) or otherwise.

§ 39.2 Exemption.

A derivatives clearing organization and the clearing of agreements, contracts and transactions on a derivatives clearing organization are exempt from all Commission regulations except for the requirements of this part 39 and §§ 1.12(f)(1), 1.3, 1.20, 1.24, 1.25, 1.26, 1.27, 1.29, 1.31, 1.36, 1.38, 33.10, part 40 and part 190 of this chapter, and as applicable to the agreement, contract or transaction cleared, parts 15 through 18 of this chapter, which are applicable to a derivatives clearing organization and its activities as though they were set forth in this section and included specific reference to derivatives clearing organizations.

§ 39.3 Procedures for registration.

(a) *Registration by application.* An organization shall be deemed to be registered as a derivatives clearing organization sixty days after receipt by the Commission of an application for registration as a derivatives clearing organization unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(1) The application is labeled as being submitted pursuant to this part 39;

(2) The applicant meets the definition of derivatives clearing organization contained in section 1a(9) of the Act;

(3) The application includes a copy of the applicant's rules;

(4) To the extent it is not self evident from the applicant's rules, the application demonstrates how the applicant satisfies each of the core principles specified in section 5b(c)(2) of the Act;

(5) The applicant submits any agreements entered into or to be entered into between or among the applicant, its

[15] 47 FR 18618 (April 30, 1982).

[16] 47 FR 18618, 18619 (discussing contract markets).

operator or its participants that enable or empower the applicant to comply with the core principles specified in section 5b(c)(2) of the Act, and descriptions of any system test procedures, tests conducted or test results;

(6) The applicant does not amend or supplement the application except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(7) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(b) *Termination of part 39 review.* If, during the sixty-day period for review provided by paragraph (a) of this section, it appears that the application's form or substance fails to meet the requirements of this part, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the time period and procedures of section 6 of the Act. This termination notification will state the nature of the issues raised and the specific condition of registration that the applicant would violate, appears to violate, or the violation of which cannot be ascertained from the application. Within ten days of receipt of this termination notification, the applicant seeking registration may request that the Commission render a decision whether to register the applicant or to institute a proceeding to deny the proposed application under procedures specified in section 6 of the Act by notifying the Commission that the applicant views its submission as complete and final as submitted.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application by filing with the Commission such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Guidance for applicants and registrants.* Appendix A to this part provides guidance to applicants and registrants on how the core principles specified in section 5b(c)(2) of the Act may be satisfied.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Trading and Markets or the Director's delegatees, with the concurrence of the General Counsel or the General Counsel's delegatees, the authority to exercise the functions under paragraphs (a) and (b) of this section and under § 39.5.

(2) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

§ 39.4 Procedures for implementing derivatives clearing organization rules.

(a) *Request for approval of rules.* An applicant for registration, or a registered derivatives clearing organization, may request, pursuant to the procedures of § 40.5 of this chapter, that the Commission approve any or all of its rules and subsequent amendments thereto, including operational rules, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at any time thereafter, under the procedures of § 40.5 of this chapter. A derivatives clearing organization may label as, ''Approved by the Commission,'' only those rules that have been so approved.

(b) *Self-certification of rules.* Proposed new or amended rules of a derivatives clearing organization not voluntarily submitted for prior Commission approval pursuant to paragraph (a) of this section must be submitted to the Commission with a certification that the proposed new rule or rule amendment complies with the Act and rules thereunder pursuant to the procedures of § 40.6 of this chapter.

(c) *Orders regarding competition.* An applicant or a registered derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act.

§ 39.5 Information relating to derivatives clearing organization operations.

(a) Upon request by the Commission, a derivatives clearing organization shall file with the Commission such information related to its business as a clearing organization, including information relating to trade and clearing details, in the form and manner and within the time as specified by the Commission in the request.

(b) Upon request by the Commission, a derivatives clearing organization shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify that the derivatives clearing organization is in compliance with one or more core principles as specified in the request.

(c) Information regarding transactions by large traders cleared by a derivatives clearing organization shall be filed with the Commission, in a form and manner acceptable to the Commission, by futures commission merchants, clearing members, foreign brokers or registered entities other than a derivatives clearing organization, as applicable. Provided, however, that if no such person or entity is required to file large trader information with the Commission, such information must be filed with the Commission by a derivatives clearing organization.

(d) Upon special call by the Commission, each person registered as a futures commission merchant, clearing member or foreign broker shall provide information to the Commission concerning customer accounts or related positions cleared on a derivatives clearing organization or other multilateral clearing organization in the form and manner and within the time specified by the Commission in the special call.

§ 39.6 Enforceability.

An agreement, contract or transaction cleared pursuant to the rules of a derivatives clearing organization shall not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the derivatives clearing organization of the provisions of section 5b of the Act or this part 39; or

(b) Any Commission proceeding to alter or supplement a rule under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a derivatives clearing organization to adopt a specific rule or procedure, or to take or refrain from taking a specific action.

§ 39.7 Fraud in connection with the clearing of transactions on a derivatives clearing organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with the clearing of transactions by a derivatives clearing organization:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) Willfully to make or cause to be made to any other person any false

report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any other person by any means whatsoever.

Appendix A to Part 39—Application Guidance and Compliance With Core Principles

This appendix provides guidance concerning the core principles with which a clearing organization must demonstrate compliance to be granted and to maintain registration as a derivatives clearing organization under section 5b of the Act and § 39.3 and § 39.5 of the Commission's regulations. The guidance follows each core principle and can be used to demonstrate core principle compliance under § 39.3(a)(iv) and § 39.5(d). The guidance for each core principle is illustrative only of the types of matters a clearing organization may address, as applicable, and is not intended to be a mandatory checklist. Addressing the criteria set forth in this appendix would help the Commission in its consideration of whether the clearing organization is in compliance with the core principles. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of a clearing organization's rules, an application pursuant to § 39.3 or a submission pursuant to § 39.5 should include an explanation or other form of documentation demonstrating that the clearing organization complies with the core principles.

Core Principle A: In General—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

An entity preparing to submit to the Commission an application to operate as a derivatives clearing organization is encouraged to contact Commission staff for guidance and assistance in preparing its application. Applicants may submit a draft application for review prior to the submission of an actual application without triggering the application review procedures of § 39.3 of the Commission's regulations. The Commission also may require a derivatives clearing organization to demonstrate to the Commission that it is operating in compliance with one or more core principles.

Core Principle B: Financial Resources—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

In addressing Core Principle B, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. The amount of resources dedicated to supporting the clearing function:

a. The amount of resources available to the clearing organization and the sufficiency of those resources to assure that no break in clearing operations would occur in a variety of market conditions; and

b. The level of member/participant default such resources could support as demonstrated through use of hypothetical default scenarios that explain assumptions and variables factored into the illustrations.

2. The nature of resources dedicated to supporting the clearing function:

a. The type of the resources, including their liquidity, and how they could be accessed and applied by the clearing organization promptly;

b. How financial and other material information will be updated and reported to members, the public, and the Commission on an ongoing basis; and

c. Any legal or operational impediments or conditions to access.

Core Principle C: Participant and Product Eligibility—The applicant shall establish (i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and (ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

In addressing Core Principle C, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Member/participant admission criteria:

a. How admission standards for its clearing members/participants would contribute to the soundness and integrity of operations; and

b. Matters such as whether these criteria would be in the form of organization rules that apply to all clearing members/participants, whether different levels of membership/participation would relate to different levels of net worth, income, and creditworthiness of members/participants, and whether margin levels, position limits and other controls would vary in accordance with these levels.

2. Member/participant continuing eligibility criteria:

a. A program for monitoring the financial status of its members/participants; and

b. Whether and how the clearing organization would be able to change continuing eligibility criteria in accordance with changes in a member's/participant's financial status.

3. Criteria for instruments acceptable for clearing:

a. How the clearing organization would establish specific criteria for the types of agreements, contracts, or transactions it will clear; and

b. How those criteria take into account the different risks inherent in clearing different agreements, contracts, or transactions and how they affect maintenance of assets to support the guarantee function in varying risk environments.

4. The clearing function for each instrument the organization undertakes to clear.

Core Principle D: Risk Management—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

In addressing Core Principle D, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Use of risk analysis tools and procedures:

a. How the adequacy of the overall level of financial resources would be tested on an ongoing periodic basis in a variety of market conditions;

b. How the organization would use specific risk management tools such as stress testing and value at risk calculations; and

c. What contingency plans the applicant has for managing extreme market events.

2. Use of collateral:

a. How appropriate forms and levels of collateral would be established and collected;

b. How amounts would be adequate to secure prudentially obligations arising from clearing transactions and performing as a central counterparty;

c. The process for determining appropriate margin levels for an instrument cleared and for clearing members/participants;

d. The appropriateness of required or allowed forms of margin given the liquidity and related requirements of the clearing organization;

e. How the clearing organization would value open positions and collateral assets; and

f. The proposed margin collection schedule and how it would relate to changes in the value of market positions and collateral values.

1. Use of credit limits:

If systems would be implemented that would prevent members/participants and other market participants from exceeding credit limits and how they would operate.

Core Principle E: Settlement Procedures—The applicant shall have the ability to (i) complete settlements on a timely basis under varying circumstances; (ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and (iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

In addressing Core Principle E, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Settlement timeframe:

a. Procedures for completing settlements on a timely basis during times of normal operating conditions; and

b. Procedures for completing settlements on a timely basis in varying market circumstances including during a period when one or more significant members/participants have defaulted.

2. Recordkeeping:

a. The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

b. How such information would be recorded, maintained and accessed.

3. Interfaces with other clearing organizations:

How compliance with the terms and conditions of netting or offset arrangements with other clearing organizations would be met, including, among others, common banking or common clearing programs.

Core Principle F: Treatment of Funds—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

In addressing Core Principle F, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Safe custody:

a. The safekeeping of funds, whether in accounts, in depositories, or with custodians, and how it would meet industry standards of safety;

b. Any written terms regarding the legal status of the funds and the specific conditions or prerequisites for movement of the funds; and

c. The extent to which the deposit of funds in accounts in depositories or with custodians would limit concentration of risk.

2. Segregation between customer and proprietary funds:

Requirements or restrictions regarding commingling customer with proprietary funds, obligating customer funds for any purpose other than to purchase, clear, and settle the products the clearing organization is clearing, or procedures regarding customer funds which are subject to cross-margin or similar agreements, and any other aspects of customer fund segregation.

3. Investment standards:

a. How customer funds would be invested consistent with high standards of safety; and

b. How the organization will gather and keep associated records and data regarding the details of such investments.

Core Principle G: Default Rules and Procedures—The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

In addressing Core Principle G, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Definition of default:

a. The definition of default and how it would be established and enforced; and

b. How the organization would address failure to meet margin requirements, the insolvent financial condition of a member/participant, failure to comply with certain rules, failure to maintain eligibility standards, actions taken by other regulatory bodies, or other events.

2. Remedial action:

The authority pursuant to which, and how, the clearing organization may take appropriate action in the event of the default of a member/participant which may include, among other things, closing out positions, replacing positions, set-off, and applying margin.

3. Process to address shortfalls:

Procedures for the prompt application of clearing organization and/or member/participant financial resources to address monetary shortfalls resulting from a default.

4. Use of cross-margin programs:

How cross-margining programs would provide for clear, fair, and efficient means of covering losses in the event of a program participant default.

5. Customer priority rule:

Rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting members/participants and, where applicable, in the context of specialized margin reduction programs such as cross-margining or trading links with other exchanges.

Core Principle H: Rule Enforcement—The applicant shall (i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and (ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

In addressing Core Principle H, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Surveillance:

Arrangements and resources for the effective monitoring of compliance with rules relating to clearing practices and financial surveillance.

2. Enforcement:

Arrangements and resources for the effective enforcement of rules and authority and ability to discipline and limit or suspend a member's/participant's activities pursuant to clear and fair standards.

3. Dispute resolution:

Where applicable, arrangements and resources for resolution of disputes between customers and members/participants, and between members/participants.

Core Principle I: System Safeguards—The applicant shall demonstrate that the applicant (i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

In addressing Core Principle I, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Oversight/risk analysis program:

a. Whether a program addresses appropriate principles and procedures for the oversight of automated systems to ensure that its clearing systems function properly and have adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented in October 2000, are appropriate guidelines for an automated clearing system to apply.

b. Emergency procedures and a plan for disaster recovery; and

c. Periodic testing of back-up facilities and ability to provide timely processing, clearing, and settlement of transactions.

2. Appropriate periodic objective system reviews/testing:

a. Any program for the periodic objective testing and review of the system, including tests conducted and results; and

b. Confirmation that such testing and review would be performed or assessed by qualified independent professionals.

Core Principle J: Reporting—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

In addressing Core Principle J, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Information available to or generated by the clearing organization that will be made routinely available to the Commission, upon request and/or as appropriate, to enable the Commission to perform properly its oversight function, including counterparties and their positions, stress test results, internal governance, legal proceedings, and other clearing activities;

2. Information the clearing organization will make available to the Commission on a non-routine basis and the circumstances which would trigger such action;

3. The information the organization intends to make routinely available to members/participants and/or the general public; and

4. Provision of information:

a. The manner in which all relevant routine or non-routine information will be provided to the Commission whether by electronic or other means; and

b. The manner in which any information will be made available to members/participants and/or the general public.

Core Principle K: Recordkeeping—The applicant shall maintain records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

In addressing Core Principle K, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. The different activities related to the entity as a clearing organization for which it must maintain records; and

2. How the entity would satisfy the performance standards of Commission Regulation 1.31 (17 CFR 1.31), reserved in this part 39 and applicable to derivatives clearing organizations, including:

a. What ''full'' or ''complete'' would encompass with respect to each type of book or record that would be maintained;

b. The form and manner in which books or records would be compiled and maintained with respect to each type of activity for which such books or records would be kept;

c. Confirmation that books and records would be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

d. How long books and records would be readily available and how they would be made readily available during the first two years; and

e. How long books and records would be maintained (and confirmation that, in any event, they would be maintained for at least five years).

Core Principle L: Public Information—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

In addressing Core Principle L, applicants and registered derivatives clearing organizations may describe or otherwise document:

Disclosure of information regarding rules and operating procedures governing clearing and settlement systems:

a. Which rules and operating procedures governing clearing and settlement systems should be disclosed to the public, to whom they would be disclosed, and how they would be disclosed;

b. What other information would be available regarding the operation, purpose and effect of the clearing organization's rules;

c. How members/participants may become familiar with such procedures before participating in operations; and

d. How members/participants will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options and obligations of the clearing organization preceding and upon the member's/participant's default.

Core Principle M: Information Sharing—The applicant shall (i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and (ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

In addressing Core Principle M, applicants and registered derivatives clearing organizations may describe or otherwise document:

1. Applicable appropriate domestic and international information-sharing agreements and arrangements including the different types of domestic and international information-sharing arrangements, both formal and informal, which the clearing organization views as appropriate and applicable to its operations.

2. How information obtained from information-sharing arrangements would be used to carry out risk management and surveillance programs:

a. How information obtained from any information-sharing arrangements would be used to further the objectives of the clearing organization's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its members/participants;

b. How accurate information is expected to be obtained and the mechanisms or procedures which would make timely use and application of all information; and

c. The types of information expected to be shared and how that information would be shared.

Core Principle N: Antitrust Considerations—Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading on the contract market.

Pursuant to section 5b(c)(3) of the Act, a registered derivatives clearing organization or an entity seeking registration as a derivatives clearing organization may request that the Commission issue an order concerning whether a rule or practice of the organization is the least anticompetitive means of achieving the objectives, purposes, and policies of the Act. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

Dated: May 8, 2001.

By the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 01–12084 Filed 5–11–01; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–6978–6]

Public Information and Confidentiality: Advance Notice of Proposed Rulemaking; Notice of Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period.

SUMMARY: On December 21, 2000 (65 FR 80394), EPA published an advance notice of proposed rulemaking (ANPRM) regarding potential revision of the confidential business information (CBI). EPA is reopening the comment period in order to afford the public the opportunity to provide additional comments concerning the ANPRM. The comment period will close on June 13, 2001. We believe it is necessary to reopen the comment period as a courtesy to the public in response to public requests for additional time to consolidate comments on the proposal following the public meeting held on March 7, 2001.

DATES: EPA must receive comments on the ANPRM by June 13, 2001.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to Docket Number EC–2000–004, Enforcement and Compliance Docket and Information Center (ECDIC), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Room 4033, Mail Code 2201A, Washington, DC 20460; Phone, 202–564–2614 or 202–564–2119; Fax, 202–501–1011 E–Mail, *docket.oeca@epa.gov.* Documents related to this advance notice of proposed rulemaking are available for public inspection and viewing by contacting the ECDIC at this same address. The ECDIC is open from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Margolis, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 2822, Washington, DC 20460; Phone, 202–260–9329; Fax, 202–401–4544; Email, *margolis.alan@epa.gov.*

Dated: May 7, 2001.

Margaret N. Schneider,

Acting Assistant Administrator, Office of Environmental Information.

[FR Doc. 01–12044 Filed 5–11–01; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7508]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management