COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 17, 18 and 150

Revision of Federal Speculative Position Limits and Associated Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) has long established and enforced speculative position limits for futures contracts on various agricultural commodities. On April 7, 1993, the Commission promulgated interim final rules amending Federal speculative position limits. The interim amendments generally maintained the existing speculative position limit levels for the delivery months and increased limit levels for the deferred months at levels below the levels originally proposed. The Commission, as proposed on July 17, 1998, is raising the speculative position limit levels to the levels originally proposed.

EFFECTIVE DATE: July 6, 1999.

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SUPPLEMENTARY INFORMATION: In addition, the Commission is codifying various policies relating to the requirement that exchanges set speculative position limits as required by rule 1.61, 17 CFR 1.61. These relate to the levels which the Commission has approved for such rules and to various exemptions from the general requirement that exchanges set speculative position limits for all contract markets. Specifically, the Commission is codifying an exemption permitting exchanges to substitute position accountability rules for position limits for high volume and liquid markets.

The Commission is also amending the applicability of the limited exemption from nonspot month speculative position limits under Commission rule 150.3, 17 CFR 150.3, for entities that authorize independent account controllers to trade on their behalf. Specifically, the Commission is amending the definition of entities eligible for this relief under Commission rule 150.1(d), 17 CFR 150.1(d), to expand the categories of eligible entities and to extend it to the separately organized affiliates of an eligible entity.

Finally, the Commission is amending its rule on aggregation. In particular, the Commission is requiring that limited partners with greater than a 25% ownership interest in a commodity pool the operator of which is exempt from the requirement to register as a commodity pool operator under Commission rule 4.13 aggregate their positions with the pool's. However, the Commission is also amending rule 150.3 to make such a limited partner eligible for relief from speculative position limit levels during nonspot months. The Commission is also amending its rules to clarify that a commodity pool operator's principals and its affiliates are treated the same as the commodity pool operator itself for purposes of the Commission's aggregation rule unless they maintain and enforce procedures for keeping their trading separate and independent from the pool's.

I. Background

Speculative position limits have been a tool for regulation of futures markets for over sixty years. Since the Commodity Exchange Act of 1936, Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations.[1]

The Commission directly administers speculative position limits on futures contracts for most of the domestic agricultural commodities listed in section 2(a)(1) of the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq. See,* 17 CFR part 150. Prior to the Act's amendment in 1974 which expanded its scope to all ''services, rights and interests'' in which futures contracts are traded, only these listed commodities were regulated. Both prior to and after the 1974 amendments to the Act, futures markets which traded commodities not so listed applied speculative position limits by exchange rule, if at all. In 1981 the Commission promulgated rule 1.61, requiring exchanges to adopt rules setting speculative position limits for all contract markets not subject to Commission-set speculative position limits. Since then, all contract markets have been subject to speculative position limits set by the Commission or an exchange.[2] The Commission and the exchanges share responsibility for enforcement of speculative position limits.[3]

The Commission periodically has reviewed its policies and rules pertaining to each of the three elements of the regulatory framework for speculative position limits—the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts.[4] Most recently, the Commission proposed to raise the levels of Commission-set speculative position limits, to codify a number of broad exemptions from the requirement of rule 1.61 that exchanges establish speculative position limits for

[1] *See,* H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). *See also,* H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986). Section 4a(1) of the Commodity Exchange Act (Act), 7 U.S.C. 6a(1), makes the explicit finding that:

(e)xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity * * *.

and provides the Commission with authority to:

fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

[2] Commission rule 1.61, 17 CFR 1.61, requires that, absent an exemption, exchanges adopt and enforce speculative position limits for all contract markets which are not subject to Commission-set limits. In addition, Commission rule 1.61 permits exchanges to adopt and enforce their own speculative position limits for those contracts which have Federal speculative position limits, as long as the exchange limits are not higher than the Commission's.

[3] Section 4a(e) provides that a violation of a speculative position limit established by a Commission-approved exchange rule is also a violation of the Act. Thus, the Commission can directly take enforcement actions against violations of exchange-set speculative position limits as well as those provided under Commission rules.

[4] Initially, for example, the Commission redefined ''hedging'' (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and issued its statement of policy on aggregation of accounts and adoption of related reporting rules (1979 Aggregation Policy), 44 FR 33839 (June 13, 1979).

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the ''temporary substitute'' and ''incidental'' tests (52 FR 27195 (July 20, 1987)) and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission rule 150.3(a)(4), an exemption from speculative position limits for the position of multi-advisor commodity pools and other similar entities that use independent account controllers. The Commission subsequently amended Commission rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

In 1991, the Commission solicited public comment on, and subsequently approved, exchange requests for exemptions for futures and option contracts on certain financial instruments from the Commission rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

all contracts not subject to Commission-set limits, to broaden its speculative position limit exemption under rule 150.3 for independent account controllers and to codify its aggregation policy. 63 FR 38525 (July 17, 1998).

The comment period, after a thirty-day extension (63 FR 49883 (Sept. 18, 1998)), closed on October 19, 1998. The nine commenters included three futures exchanges, four industry associations, a professional association and an investment bank. All of the commenters favored expansion of the Commission's speculative position limits to the levels proposed. They expressed a range of opinions, however, about the other rule proposals. Those comments are discussed in greater detail below.

II. Commission Speculative Position Limit Levels

As the Commission noted in its notice of proposed rulemaking, it has updated Commission speculative position limits periodically. In 1992, the Commission last proposed major revisions to both the structure and levels of Commission-set speculative position limits. 57 FR 12766 (April 13, 1992). Departing from its previous practice, the Commission proposed to increase speculative position limit levels based upon the size of a contract market's open interest, in addition to the traditional standard of distribution of speculative traders in the market.[5] 63 FR at 38527. Specifically, the Commission proposed combined futures and option speculative position limits for both a single month and for all-months-combined at the level of 10% of open interest up to an open interest of 25,000 contracts, with a marginal increase of 2.5% thereafter. The Commisson also reiterated its view that spot-month speculative position limit levels are ''based most appropriately on an analysis of current deliverable supplies and the history of various spot-month expirations.'' *Id.*

The Commission received 63 comments in response to the 1992 proposed rules.[6] Typically, commodity pool operators, commodity trading advisors and futures commission merchants strongly favored the amendments. Most agricultural producers and their representative organizations strongly opposed any increase to the speculative position limits. Others, however, recommended that the Commission proceed, but in a more cautious manner. In particular, they recommended that the Commission raise speculative position limits on a phased or test basis. These commenters advocate taking additional time to study the need for, and the possible effects of, further increasing speculative position limits; in their view, the trial implementation of expanded speculative limits would provide such an additional opportunity.

Based on its consideration of the comments received and its favorable administrative experience with the rule's prior amendment, the Commission in April 1993 adopted interim final rules on Commission-set speculative position limits. These interim amendments increased the position limit levels by half of the increase originally proposed, in two steps. 58 FR 18057 (April 7, 1993).

As recounted in the 1998 notice of proposed rulemaking, the administrative experience with the interim rules was positive. 63 FR 38528. Moreover, Commission staff undertook an in-depth study of the possible effects of increasing the speculative position limit levels in these markets and concluded that ''overall the impact of the interim final rules on actual, observed large trader positions was modest, and that any changes in market performance were most likely attributable to factors other than to changes in the rules.'' *Id.*

On July 17, 1998, the Commission again proposed to raise speculative position limit levels for the deferred trading months to the levels originally proposed. The Commission took this action based on the growth in open interest and the size of large traders' positions in these markets. 63 FR 38528.

The commenters uniformly supported the Commission's proposal to raise the speculative position limit levels for the deferred trading months. Based upon the positive administrative experience with the limits at their current levels, the growth in the contract's open interest and distribution of large trader positions, a staff study and analysis finding no adverse effects from the previous increase to the speculative position limit levels, and the consensus of the commenters, the Commission is increasing the speculative position limit levels for the deferred months as initially proposed in 1992 and as recently reproposed.[7]

Despite agreeing that the limit levels should be increased, the Board of Trade of the City of Chicago (CBT) urged the Commission to modify its spread exemption to include spreads between single months across crop-years. The CBT stated that:

> By normalizing inter-crop spread limits with the limits presently permitted for intra-crop spreads, noncommercial traders would be in a position to provide greater market liquidity in deferred new crops and eliminate a possible cause for the reduced liquidity that occurs near the end of a crop year.

Although recognizing that the CBT has been granted ''no-action'' letters by Division of Economic Analysis regarding the prohibition on inter-crop year spreads when the relationship between crop years so warranted, the exchange stated that ''the Commission has refrained from granting 'no actions' generally'' and that, in any event, the no-action process is ''cumbersome, unnecessary, causes confusion and uncertainty for market participants, * * * (and is) necessarily reactive and therefore ineffective because they are initiated only after the spreads have experienced significant price movement.''

As the Commission noted in adopting the interim final rules in 1933,

> Historically, the reason for including the spread exemption in the structure of speculative position limits was the relatively low limit for individual-month limits, especially in comparison to the all-moneys limits. Generally, individual-months limits were set at the same level as the spot-month limits in these contracts. Accordingly, the spread exemption may have been an important means for traders to exceed the relatively low individual-month limit.
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> The Commission remains unconvinced that the exemption for inter-month spreads should be modified at this time to permit generally such spreads across crop-years in excess of the speculative position limits which are being greatly expanded herein. The Commission remains concerned that depending upon conditions in the underlying case market, the separate legs of inter-crop year spreads may act more like separate outright positions than a spread within the same crop-year. In light of the increases to the limits being adopted herein, the Commission believes that such a modification of the spread exemption should be * * * based upon a demonstrated need for such additional relief.

[5] In proposing these increases to the limit levels, the Commission reasoned that, as the total open interest of a futures market increased, speculative position limit levels could be raised. The Commission therefore applied the open interest criterion by using a formula that specified appropriate increases to the limit level as a percentage of open interest.

[6] Those commenters included three futures exchanges; a futures industry association; four futures commission merchants; 26 commodity pool operators, commodity trading advisors or associations of such entities; 20 groups of firms representing agricultural interests; eight individual agricultural producers; and one exchange member. In addition, the proposed rules were a topic of discussion at the October 19, 1992, meeting of the Commission's Agricultural Advisory Committee.

[7] The Board of Trade of the City of Chicago commented that, in its view, granting ''the exchanges sole responsibility to establish and monitor speculative limits subject to Commission oversight'' would ''result in limits which better reflect and are more responsive to the dynamics of the markets.'' The Commission believes that this suggestion may merit future consideration.

58 FR 17981.

The Commission believes that the reasons for its policy of permitting a spread exemption only for positions within the same crop year remain sound (*see, e.g.,* Division of Economic Analysis Statement of Guidance [1994–1996 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 26 691 (May 15, 1996)), and that none of the reasons advanced by the CBT's comment warrants a reversal of that policy. To the contrary, a number of markets during the intervening years exhibited the very risks that concerned the Commission. In these markets, the risk associated with the individual legs of inter-crop year spread positions did in fact act more like that associated with separate outright positions than that of a spread. Moreover, the Division of Economic Analysis remains flexible in its willingness to entertain requests for ''no-action'' letters relating to inter-crop year spread positions when the economic conditions during a particular crop year so warrant.[8]

Another futures exchange, the Minneapolis Grain Exchange (MGE), noted that it was ''particularly pleased the CFTC determined to maintain a parity of limit levels for the major wheat contract at each domestic exchange which trades such.'' However, the exchange noted that the Commission did not propose an increase for the limit levels for its white wheat contract. Although the exchange was ''not aware of any curtailment of white wheat futures trade activity because of the current speculative position limits,'' it nevertheless noted that activity in the contract might increase with improvements in the Asian economies and therefore ''requests that the CFTC consider at least expanding the deferred white wheat limits proportionally as done with the Hard Red Spring Wheat futures contract.'' The exchange also noted that the durum wheat contract did not have Commission speculative position limits.

The Commission originally proposed the speculative position limit level for each wheat contract market based on the open interest and the distribution of large traders' positions specific to the contract market. 57 FR 12770. Subsequently, in 1993, the Commission's interim final rules provided for parity of levels, but only for each of the domestic futures exchanges' major wheat contacts. The Commission will consider future increases to the speculative position limit levels for the MGE white wheat contract and for all other contracts as open interest or large traders' positions increase. Of course, an exchange may petition the Commission for rulemaking any time that a contract meets the criteria supporting an increase in the levels.[9] *See,* 17 CFR 13.2.

III. Exchange Speculative Position Limit and Exemption Rules

As discussed above, Commission rule 1.61 requires that, absent an exemption, exchanges adopt and enforce rules setting speculative position limits for all contract markets not subject to Commission speculative position limit rules.[10] *See,* 17 CFR § 1.61. The Commission proposed to simplify and reorganize its rules by relocating the substance of rule 1.61's requirements to Part 150 of the Commission's rules, thereby incorporating within that Part all Commission rules relating to speculative position limits. Moreover, the Commission proposed explicitly to incorporate within the rule a number of administrative practices that have developed over time. These included the speculative position limit levels that the staff routinely has recommended be approved by the Commission for newly designated futures and option contracts.

In addition, the Commission proposed to clarify the magnitude of increases to the limit levels that it would approve for traded contracts. As the Commission explained in the notice of proposed rulemaking, the open-interest criterion and numeric formula used by the Commission in its 1991 proposed amendment of Commission-set speculative position limits provided the most definitive guidance by the Commission on acceptable levels for speculative position limits for tangible commodities and, along with several other commonly accepted measures, has been widely followed as a matter of administrative practice when reviewing proposed exchange speculative position limits under Commission rule 1.61.[11] Although rule 1.61 did not include specific criteria for determining acceptable limit levels for new contracts, promulgating the prior administrative practice as a rule will make the applicable standard more transparent and thereby make compliance easier to achieve. Moreover, as noted in the notice of proposed rulemaking, ''promulgating these policies within a single section of the Commission's rules will increase significantly their accessibility and clarify their terms.'' 63 FR 38536.

Specifically, proposed rule 150.5(a) tracks the provisions of rule 1.61(a) and clarifies that exchange speculative position limits are not required for futures and option contracts on major foreign currencies. Proposed rule 150.5(b) makes explicit the speculative position limit levels which the Commission finds appropriate for new contract market designations. As noted in the notice of proposed rulemaking, the proposed limit levels for new contract designations, which are based upon the formula and associated minimum levels used by the Commission in its 1992 proposed rulemaking, have long been used as a matter of informal administrative practice. 63 FR 38530.

The New York Mercantile Exchange (NYMEX) commented generally that the Commission should ''reexamine the appropriate roles of the Commission and the exchanges in pursuing their shared goal of market integrity'' and suggested further that ''futures exchanges are best positioned to establish speculative position limits for their markets and should be given sole responsibility to do so.'' NYMEX expressed concern that:

> Codification of informal practices in proposed new regulation § 150.5 would appear to remove the flexibility that was perceived to be available under the informal procedures. Therefore even if the Commission determines not to undertake an assessment at this time of the appropriate degree of self-regulatory organization responsibilities for speculative position limits, the CFTC, at a minimum, should

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[8] Although the last no action letter issued concerning the prohibition on inter-crop year spreads was a number of years ago, the Division of Economic Analysis noted that ''no-action'' relief is appropriate when the spreads between old and new crop year are stable and in full-carry and there is a large crop carryover expected, and requests for future no-action treatment would be considered during crop years that meet these criteria.

[9] The Commission did not propose to establish a Commission-set speculative position limit for the durum contract because that contract was designated after the promulgation of rule 1.61, which requires that designated contract markets set and enforce speculative position limits for contracts not subject to the Commission-set limits. Since then, the Commission has preferred to rely upon the exchanges to set and enforce speculative position limits and has adopted new Commission speculative position limits only for soybean meal and soybean oil. As the Commission explained previously, because of an historical anomaly, only these two contracts among those in the soybean complex were not included under Commission-set limits. 52 FR 38914 (October 20, 1987).

[10] For contract markets that have Commission-set speculative position limits, section 4a(e) of the Act permits exchanges to adopt and enforce their own speculative position limits as long as the exchange limits are not higher than the Commission's.

[11] In addition, in reviewing applications for contract designation for tangible commodities, the staff has relied upon the Commission's formulation providing for a minimum level of 1,000 contracts for nonspot-month speculative position limits. Moreover, the Commission has routinely approved a level of 5,000 contracts for nonspot months in applications for designation of financial futures and energy contracts, and that level has become a rule of thumb as a matter of administrative practice.

consider revising proposed new Regulation § 150.5 to provide exchanges with sufficient flexibility to address the differing conditions in their respective markets.

Specifically, NYMEX, joined by the CBT, questioned reliance on the sole criterion that the speculative position limit not exceed one-quarter of the deliverable supply during the spot month. NYMEX reasoned that the Commission has recognized that the limits that may be appropriate for one commodity may not be appropriate for another.

Guideline No. 1, 17 CFR part 5, appendix A, requires that, in order to become and to remain a designated contract market, the futures contract's "terms and conditions, as a whole, will result in a deliverable supply which will not be conducive to price manipulation or distortion." 17 CFR part 5, appendix A(a)(2)(ii). Administrative practice has long interpreted this provision as requiring a deliverable supply that is at least four times the spot month speculative position limit. 62 FR 60831, 60838 (November 13, 1997). A spot month speculative position limit that exceeds this amount enhances the susceptibility of the contract to market manipulation, price distortion or congestion.[12]

NYMEX suggests that this standard may not be appropriate for nonagricultural tangible or intangible commodities. However, except for cash-settled contracts,[13] Commission staff have used this standard to review every application for contract market designation or proposals to increase existing exchange speculative position limits since 1981, when rule 1.61 was issued.[14] Experience has demonstrated that many commodities, particularly intangible commodities, have sufficiently large deliverable supplies to meet this standard without requiring a spot month level that is lower than the individual month level. For other commodities, however, especially commodities having strong seasonal characteristics, spot month speculative position limits are required to be set at a level lower than the individual month limit for all or some trading months.[15] Accordingly, codification of this standard only makes explicit the standard which, since 1981, has been applied to, and met by, every physical delivery futures contract at the time of initial designation and upon subsequent increases to the spot month speculative position limit.

CBT also suggests that the proposed rule define the methodology for estimating the deliverable supply and that, in proposing such a definition, "the Commission discuss how deliverable supply is measured; who determines deliverable supply; what constitutes deliverable supply; and when deliverable supply should be measured for the purpose of the rule." As noted by CBT, the Commission proposed such a definition as part of the proposed amendments to Guideline No. 1. 63 FR 38537 (July 17, 1998). Guideline No. 1 details the information that an application for contact market designation should include in order to demonstrate compliance with the applicable legal requirements, including the requirement of rule 1.61 that exchanges set speculative position limits. As the Commission discussed at length in that notice of proposed rulemaking, the Commission is proposing explicitly to require exchanges to estimate deliverable supplies for the specified delivery months of a proposed contract. *Id.* at 38539. Moreover, the Commission explained that the exchange should describe the methodology it uses to derive the estimate and should base its estimate "on statistical data when reasonably available covering an historical period that is representative of actual patterns of production and consumption of the commodity." [16] *Id.*

In addition to providing greater clarity regarding the speculative position limit levels required at initial designation, proposed rule 150.5(b) would make explicit the conditions for subsequent increases to the deferred trading month levels. The proposed rule includes both a numeric formula for determining the permissible limit level and a descriptive standard. The descriptive standard tracks the standard of Commission rule 1.61—that the level be set "based on position sizes customarily held by speculative traders on the contract market, the breadth and liquidity of the cash market and the opportunity for arbitrage between the futures market and the cash market." *Compare,* proposed rule 150.5(c)(2) and rule 1.61(a)(2). As noted above, the numeric formula is based upon the formula first used by the Commission in 1992 for proposing the speculative position limit levels now being considered.

The Commission proposed that adjustments to a contract market's speculative position limit could be made one year after its initial listing based on either the proposed formula or the descriptive standard. NYMEX suggests that the provision that adjustments be made only after one year

[12] In 1997 the Commission conducted a section 5a(a)(10) proceeding requiring CBT to amend the delivery terms of its corn and soybean futures contracts. In commencing the action, the Commission found that deliverable stocks under the contract terms as then specified frequently had dropped to levels near or below the maximum number of contracts a single speculative trader may hold during the delivery periods of expiring trading months. 61 FR 67998, 68012 (December 26, 1996). The Commission found that, where a single speculator could control all of the deliverable stocks during a contract's delivery month, the contract fails to meet the Act's requirement that its contract's terms "will tend to prevent or diminish price manipulation, market congestion or the abnormal movement of such commodity in interstate commerce." *See,* section 5a(a)(10) of the Act.

[13] Current Guideline No. 1 requires that the contract terms for cash settled contracts not be "subject to the manipulation or distortion." 17 CFR part 5, appendix A(a)(2)(iii). Because some types of commodities which are cash settled may not have deliverable supplies per se, the Commission is modifying the spot month requirement to provide that the spot month level for cash-settled contracts must be set "no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price."

[14] CBT commented that the proposed spot month rule was arbitrary, having been "reversed engineered" as part of the corn and soybean section 5a(a)(10) proceeding. To the contrary, as discussed above, the proposed rule is based upon long-standing administrative practice and experience. The appropriate measures of adequacy of deliverable supply in a section 5a(a)(10) proceeding, which is initiated upon an affirmative finding that the contracts violate that section of the Act, were discussed in the Commission's orders in that proceeding and should not be confused with the standard of review for new contract applications. 62 FR at 60838.

CBT also commented that, "before codifying its 'rule-of-thumb' standard for determining speculative position limits for the respective delivery months, the Commission should include in a release for pubic comment a substantive description of the methodology it used to establish the basis for its proposed formula." As CBT recognized in its comment, however, the Commission's notice of proposed rulemaking on Guideline No. 1, a companion notice which was referred to in the notice of proposed rulemaking on speculative position limits, noted that the twenty-five percent criterion was based on the Commission's long-standing administrative practice and experience. 63 FR 38537, 38539 (July 17, 1998).

[15] The CBT objects that basing the spot month speculative position limits on an estimate of deliverable supplies which has been calculated separately for each trading month will result in "different spot month speculative limit levels for each of the months * * * (and) will be extremely confusing and cumbersome to the marketplace." However, the rule does not require that the spot month level vary from one trading month to the next, but only that it not exceed one-quarter of estimated deliverable supplies. An exchange can choose how it wishes to structure its limits, whether preferring to have the same limit apply to all months or to have different levels for particular trading months. It is not uncommon today for exchanges to apply lower spot month speculative position limits to selected trading months where there are strong seasonal variations in a contract's potential deliverable supplies.

[16] Although CBT complains that the Commission's definition is "far from conclusive" and "subjective," its comment suggests, not that the requirement is undefined, but rather that CBT disagreed with the Commission's exclusion of certain stocks and inventories of corn and soybeans from estimated deliverable supplies in the 1998 section 5a(a)(10) proceeding.

from a contract's listing ''would severely limit an exchange's ability to respond to changing market conditions during the first year after listing.'' Although few futures contracts have achieved the levels of open interest to qualify for increasing speculative position limits levels under the rule sooner than a year after listing, the Commission agrees that the rule should not foreclose the possibility of a new contract's qualifying the adjustment. Accordingly, the Commission is modifying the final rule to permit an exchange to adjust nonspot month limits based upon the proposed rule's descriptive standard at any time after initial listing. The formula for adjustments to levels, for simplicity, will be based on data for the previous calendar year, as proposed.[17]

Several commenters suggested that the proposed position accountability rules actually narrowed the prior grants of exemptive relief. The Managed Funds Association (MFA) suggested that, by not proposing an exemptive category for commodities with virtually inexhaustible deliverable supplies, a category which would apply to foreign currency futures contracts, the Commission was foreclosing new contracts from potential eligibility for this relief.[18] It also noted that the exemptive relief for position accountability was not restricted on its face to contracts that has been trading for at least a year. In addition, CBT expressed concern that one of its contracts that qualifies for exemption due to a highly liquid cash market would not meet the requirements of the proposed rule. NYMEX suggested that, through Commission codification of the past exemptive categories, exchanges would lose the flexibility to ''justify that an exception was warranted for a particular contract.''

Application of the rule is prospective only. No currently exempt contract market will lose its exemption as long as it remains actively traded under its current designation.[19] Moreover, with one minor exception, position accountability rules have been approved only for contracts with significant trading histories.[20] In addition, proposed rule 150.5(f) would permit a contract market to ''propose such other exemptions from its position limits consistent with the purposes of this section'' for Commission consideration. This provision is found in existing rule 1.61 and is the authority for the current trader accountability rules that the Commission is proposing to codify in this rulemaking. The Commission is modifying the final rule to clarify that the right to petition the Commission for exemption extends to all of the section's provisions, including the requirements for exemption that are being codified. Accordingly, these rules do not foreclose the Commission from considering in appropriate circumstances petitions for individual exemptions from the required levels for setting exchange speculative position limits and from the requirement that exchanges adopt speculative position limits for all futures contracts.

IV. Issues Relating to Exemption From Nonspot Speculative Position Limits for Independently Controlled Accounts

In response to the growth of professionally managed futures trading accounts and pooled futures investments, the Commission in 1988 promulgated rule 150.3, 17 CFR 150.3, an exemption from speculative position limits for commodity pools or similar entities which use independent account controller.[21] 53 FR 41563 (October 24, 1988). In 1991 the Commission extended eligibility for this exemption to commodity trading advisors and greatly streamlined the application procedure, subsequently making it self-executing.[22] 57 FR 44492 (September 28, 1992).

Commission rule 150.3 generally has worked well. It has provided flexibility to the markets, accommodating the continuing trend toward professional management of speculative trading accounts, while at the same time protecting the markets from the undue accumulation of large speculative positions owned by a single person or entity in the spot month. Since its amendment in 1991, most questions concerning rule 150.3 have related to its application in the context of integrated financial services companies. However, presently only commodity pool operators and commodity trading advisors meet the rule's eligibility requirement.

In light of the successful operation of the exemption since it was issued, the Commission proposed to extend eligibility for the exemption to banks, trust companies, savings associations, insurance companies and their separately incorporated affiliates. These additional categories were suggested for inclusion by some commenters when the Commission last proposed to revise rule 150.3.[23]

Generally, commenters favored broadening the definition of eligible entities under rule 150.1(d). Several, but not all, commenters agreed that the trends toward greater professional management of futures trading and the

[17] NYMEX's comment may misapprehend how the formula is applied. It should be noted that the maximum allowable speculative limit for nonspot individual months is not based on the data for any one particular individual month; instead, the applicable level is derived by computing the 12-month average level of month-end open interest for the most recent one-year period in any (usually the next to expire) contract month, considering futures and delta-adjusted options combined.

[18] Because the proposed rules make clear that neither a speculative position limit nor the position accountability rule is required for a designed contract market in ''major foreign currency,'' the Commisson proposed to reduce to three the number of exemptive categories. No exchange contracts other than the existing futures contracts on such foreign currencies have met the existing first exemptive criterion since this relief was first permitted. ''Major foreign currencies'' are defined in the Commission's fast-track designation rule. 17 CFR 5.1(a)(2)(i). The Commission proposed that contract markets in other, less liquid foreign currencies be treated as a futures or option contract on any other financial instrument or product.

[19] The Commission specifically noted in the notice of proposed rulemaking, 63 FR 38530, n. 21, that although the policy provided that position accountability could be based on either a liquid futures market or a liquid cash market, the Commission was proposing to require that both the cash and futures markets be liquid and that a contract market would have to establish a trading history. The Commission continued, however, by noting that the rule would apply prospectively and that any contracts (or pending applications) that have position accountability rules in place in reliance on the liquidity of the cash market alone may continue to rely on the policy.

[20] As noted by the Commission in the notice of proposed rulemaking, the only instances where position accountability rules were permitted in the absence of a prior trading history was where the contracts were spread contracts on contracts for which position accountability rules had already been approved. The only other instances where exemptions from speculative position limits were approved at contract designation were for major foreign currency contracts, a category that the Commission proposed to exclude from the requirement altogether.

[21] Commodity pools, pension funds, and other similar entities are required to aggregate their positions as the owner of the trading accounts, even if those accounts are traded independently by multiple independent account controllers. Commission rule 150.3 exempted such entities that use independent account controllers from speculative position limits outside of the spot-month. The exemption permits the total positions of the trading entity or vehicle to exceed speculative limits during nonspot months, but requires that each independent account controller trading on the entity's behalf comply with the applicable limits. During the spot month, all positions of the entity are required to be aggregated and are subject to the spot-month speculative position limit level.

[22] Under the exemption as originally promulgated, those seeking exemptive treatment were required to file an application with the Commission and to document the independence of their account controllers.

[23] Commenters, in connection with the 1991 proposed amendments to the rule 150.3 exemption, suggested that, in addition to commodity trading advisors, the exemption be extended to others, including investment banks, other financial intermediaries, parent/affiliate firms, separately managed divisions of a single corporation, commercial banks, merchant banks, and insurance companies.

consolidation of financial services companies support expanding the category of entities eligible for the exemption. Although supporting expanding the categories for eligibility, the Futures Industry Association (FIA) suggested that the Commission modify the phrase ''separately incorporated affiliates'' to read ''separately organized affiliates.'' The FIA explained that the modified language

> would clarify that the exemption applies to affiliates whether they are organized as corporations or not. For example, an affiliate may be organized as a partnership, business trust or limited liability business organization to achieve certain tax objectives. Under applicable law, any such entity would still have a separate identity, ownership and management structure and should be treated in the same manner as an affiliate which is organized as a corporation. Also, entities organized outside the United States may not technically be incorporated under local law but should be eligible as affiliates under the proposed revision as long as they are separately organized under applicable foreign law.

The MFA also favored expansion of the definition of eligible entities in § 150.1(d), but suggested that it be modified ''to * * * refer to trusts, financial intermediaries, corporate divisions and other similarly organized entities or associations.''

One commenter opposed expanding the categories of eligible entity, reasoning that:

> The expansion of rule 150.3 proposed in the release would include the separately incorporated affiliates of various specified financial services companies, including banks, insurance companies, and FCMs. We are deeply concerned that this proposal is intended to codify the view that rule 150.3 provides the exclusive basis under which relief from aggregation of positions is available for such entities rather than a nonexclusive exemption.

Rule 150.3, however, is an exemption from speculative position limit levels and does not itself restrict or expand the aggregation requirements. In this regard, several commenters expressed the view that, because futures commission merchants (FCMs) are exempt from aggregating certain types of accounts under proposed rule 150.4(d), they need not be included as eligible for exemption under Commission rule 150.3.

The Commission agrees with commenters that modifying the language of the final rule to apply to ''separately organized affiliates'' is appropriate in light of the wide variety of forms of business organization used by those active in the markets today and that removing FCMs from the list of entities eligible for rule 150.3 exemption may reduce unnecessary confusion.[24] Accordingly, the Commission is modifying proposed rule 150.1(d) as they suggest. However, the Commission is of the view that the rule 150.3 exemption should not be extended to the other recommended categories, such as corporate divisions and their separately organized affiliates. Such an extension may be overly broad and should not be undertaken without careful consideration. Nevertheless, the Commission remains receptive to considering further expansion of the categories of eligible institutions as market developments warrant.[25]

V. Aggregation of Accounts

The Commission also proposed a number of amendments to its rules relating to the aggregation of accounts. These proposed amendments were intended to respond to the continuing trend toward mergers and consolidation in the financial services sector, to clarify issues of rule interpretation that have arisen as a consequence of changing industry practice and to increase the accessibility of the applicable law by recodifying various related rules in one section of the Code of Federal Regulations and by codifying existing interpretations and policies.

Section 4a of the Act provides that, in determining whether a position exceeds the speculative position limits,

> the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.

As the Commission explained in the notice of rulemaking, it interprets the ''held or control'' criteria as applying separately to ownership of positions or to control of trading decisions.[26] Rule 150.4(a), which the Commission is adopting as proposed, restates the general aggregation requirement of section 4a of the Act. Following the general rule in § 150.4(a), proposed § 150.4(b) would detail the nature of a financial interest which would trigger application of the ownership criterion, proposed § 150.4(c) would impose conditions on exceptions from aggregation for limited partners, and proposed § 150.4(d) would codify the existing policy exempting FCMs from aggregating positions in customer discretionary accounts or guided account programs controlled by independent traders.

Compliance with the Commission's speculative position limit rules is often dependent upon the proper aggregation of positions. A central feature of the proposed rules is the codification of the aggregation standard itself. As the Commission stated in the notice of proposed rulemaking, the requirements relating to aggregation of positions, including the exceptions provided in the Commission's ''Statement of Policy on Aggregation of Accounts,'' 44 FR 83839 (June 13, 1979) (1979 Aggregation Policy), currently are included implicitly in the Commission's large-trader reporting rules. 63 FR 38532. The Commission proposed to codify the aggregation rules and Commission policies in the same part of the Code of Federal Regulations as the speculative position limit rules for ease of reference and to increase their accessibility to the general public.[27]

The 1979 Aggregation Policy sets forth an exception from the general aggregation principle providing that an FCM need not aggregate the discretionary trading accounts or customer trading programs through which a trader affiliated with, but independent of, the FCM directs trading of customer-owned positions or

[24] Moreover, broadening the definition of ''eligible entities'' to the separately organized affiliates of the entities listed in rule 150.1(d) in no way restricts the applicability of rule 150.4(d) (which applies to an FCM and its affiliates) because an FCM also happens to be an affiliate of a rule 150.1(d) ''eligible entity.''

[25] The Commission is also expanding the category of entities which are eligible for the exemption to the limited partners of pools, the operators of which are exempt from registration under rule 4.13 by virtue of having fewer than fifteen participants in the pools and less than $200,000 in capital contributions. As discussed in greater detail below, the Commission is of the view that the trading of certain of these limited partnerships should not be disaggregated from trading by the limited partner(s). However, the Commission believes that trading for the limited partners can be included appropriately within the exemption from speculative position limits for the nonspot month limits under Commission rule 150.3 if such trading meets the conditions of the rule.

[26] *See e.g.,* Commission rule 18.01 (''holds, has a financial interest in or controls''). As the Commission discussed in the notice of proposed rulemaking, the Commission's routine large trader reporting system is set up so that it does not double count positions which may be controlled by one and traded for the beneficial ownership of another. In such circumstances, although the routine reporting system will aggregate the positions reported by FCMs using only the control criterion, the staff may determine that certain accounts or positions should also be aggregated using the ownership criterion or may by special call receive reports directly from a trader.

[27] The Commission also proposed conforming amendments to rules 18.01 and 17.00(b), which specify the manner of identifying accounts for reporting purposes.

accounts.[28] In creating this exception, the Commission took an important step in recognizing the structural changes made by the futures industry to respond to the increased acceptance of professional management of trading accounts. Proposed rule 150.4(d) was intended merely to codify the substance of this policy.

Several commenters, including the MFA, FIA, the Committee on Futures Regulation of the Association of the Bar of the City of New York (NY Bar), and Goldman, Sachs & Co. (GS) expressed concern, however, that codification of the 1979 Aggregation Policy in the manner proposed might narrow its current application. The FIA suggested that:

> The 1979 Aggregation Policy, which is proposed to be adopted as Rule 150.4(d), should be extended to affiliates of the FCM and not limited to the FCM's independent traders * * *. (W)e note that the Commission has already accepted this position in terms of affiliates of FCMs pursuant to CFTC Interpretive Letter No. 92–15. CCH Commodity Futures Law Reporter, 1990–1992 Transfer Binder, para 25831 at page 39,285. Proposed Rule 150.4(d) should be revised to specifically include affiliates of the FCM so it remains consistent with the Commission's current interpretation of the Aggregation Policy.

By proposing to codify the substance of the 1979 Aggregation Policy, the Commission did not intend to narrow its interpretation or application. In this regard, Commission staff since 1991 has interpreted the policy as applying to an FCM's affiliates. Interpretative Letter 92–15, *supra.* Specifically, Commission staff opined that, where a diversified financial services holding company is the common parent of a commodity pool operator (CPO) or a commodity trading advisor (CTA) and an FCM and the entities' trading arrangements meet the 1979 Aggregation Policy's indicia of independence, the CPO/CTA ''may calculate its trading positions for determining compliance with speculative position limits and reporting requirements separate from the proprietary positions held by, or on behalf of, the parent.'' *Id.* at p. 39286.

In reaching this conclusion, the letter reasoned that ''the 1979 Aggregation Policy clearly would have been applicable, on its face, had [the parent] undertaken the same, or a similar, program through * * * its subsidiary which is a registered FCM, rather than through a separate affiliate * * *, the customer trading program directed by the (CPO/CTA) is kept independent * * * from the (parent's) other trading, including that of the other affiliates, nor does it appear * * * (that) assign(ing) these functions to separate affiliates is intended to circumvent speculative limits and reporting requirements.'' *Id.* at 39,285.

It is the Commission's intent in issuing rule 150.4(d) merely to codify the 1979 Aggregation Policy, including the continued efficacy of the 1991 interpretative letter, and not to modify the current state of the law on this issue. At the suggestion of various commenters, the Commission is making that intent clear by modifying the language of proposed rule 150.4(d) to include explicit reference to affiliates of an FCM.

The Commission also proposed to amend the limited partner exception of Commission rule 18.01.[29] Commission rule 18.01 defines account owners as those having a 10% or greater financial interest in the account, except for limited partners. Limited partners are exempt from being defined as owners on the assumption that limited partners, even if holding greater than a 10% ownership interest, are prohibited from exercising control over the partnership's trading activities. The Commission noted in the notice of proposed rulemaking, however, that it had become concerned by the trading by certain single-investor commodity pools. Accordingly, the Commission proposed that, when there were 10 or fewer limited partners or when a limited partner has an ownership interest of 25% or greater, the limited partner be required to aggregate the partnership's positions with his or her other positions. The Commission specifically noted that it did not intend this proposal to modify the general treatment of limited partners or shareholders[30] in typical commodity pools and requested that commenters address the typical organization for pools and whether the proposed levels would affect only unusual forms of ownership. 63 FR 38533.

A number of commenters advised the Commission that the proposed criteria would affect a number of typical forms of commodity pool organization. The FIA, MFA, NY Bar and GS all expressed the view that the Commission's proposed criteria ''casts too wide a net,'' noting that single investor pools are used today by institutional investors for a variety of legitimate purposes. For example, the FIA commented that:

> FIA's members are aware that many single investor pools, such as ERISA funds, are formed for reasons having nothing to do with the investor's desire to control or have input in the pool's trading decisions.
>
> Many such pools are formed to address the unique regulatory concerns that a larger pool faces or for other reasons, such as to maintain limited liability or to implement unique investment goals or fee structures.

These commenters also noted that the 25% ownership criterion could be exceeded routinely in start up or seed money situations. As GS explained:

> Even though the purported focus of the proposal is on the operators of small pools who are exempt from CPO registration pursuant to rule 4.13, the numerical criteria would reach many funds privately offered by registered CPOs. For example, in seed money situations where an affiliate of the CPO wishes to demonstrate to potential clients that the affiliate is committing its own capital to a particular strategy, its percentage share could well exceed 25%. It is also common for the initial offering of a pool to close and for the pool to begin trading after one or two large investments have been made. Such situations would run afoul of both criteria.

As the Commission noted in the notice of proposed rulemaking, its primary concern in proposing this change to the general exemption for limited partners was to address certain patterns of pool formation and trading that it had observed in connection with commodity pools the operators of which are exempt from CPO registration under Commission rule 4.13. Such trading patterns were not evidenced where the CPO was registered with the Commission or where greater than a 25% ownership interest was the result of a seed money or start up investment. Accordingly, the commission is modifying the final rule to apply only to limited partners participating in a pool the operator of which is exempt from registration under rule 4.13. The Commission is retaining the numeric criteria, so the aggregation requirement will apply only to limited partners having a 25% or greater ownership interest in commodity pools operated by

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[28] The 1979 Aggregation Policy also offered guidance on the criteria considered in determining whether the trader exercises independent control over the trading decisions of the customer discretionary accounts or trading programs. These included the customer account agreement, advertising, the agreements between the FCM and its employee or other trader, the degree of supervision, the confidentiality of the program's trading decisions, reliance of the FCM for market information, financial investment by the FCM in the program greater than 10% and common trading patterns. *Id.* at 33844.

[29] In counterpoint to this proposal, the Commission also proposed to include within the exemption from speculative position limits under Commission rule 150.3 the limited partners of small commodity pools the operators of which are exempt from CPO registration.

[30] The Commission also proposed to clarify that for this purpose other similar types of pool participant are treated the same as limited partners or shareholders. These include pool participants in other categories of limited liability business organizations, such as members of limited liability companies or beneficiaries of certain types of trusts. No commenters opposed this clarification and the final rules incorporate this change.

such an exempt commodity pool operator. Moreover, as explained above, the Commission also is amending rule 150.1(d) to include such limited partners as entities eligible for rule 150.3 relief under the exemption from speculative position limit levels for nonspot trading months. The Commission believes that as modified the rule will address its regulatory concern without unduly impacting legitimate market activity or otherwise burdening financial flexibility or innovation.

Commenters also objected to the Commission's proposed rule revising the limited partnership exemption to make explicit the Commission's understanding that the current rule treats the principals or affiliates of a commodity pool operator the same as the pool operator itself for aggregation purposes. Under current rules, a pool operator's having a greater than 10% financial interest in a pool requires the aggregation of the pool's positions with those of the pool operator. The Commission proposed a rule amendment to clarify that the principals or affiliates of a commodity pool operator which invest in the operator's pool as limited partners have a financial interest which requires them to aggregate their positions if their ownership interest in the pool is ten percent or greater.

The commenters suggested that the ability of affiliates or principals of a commodity pool operator to invest in its commodity pools is important to the formation of new pools. They maintained that such investment in the pools is often integral to their efforts to attract outside investors. They further maintained that the requirement that principals or affiliates aggregate the pool's position, even if only during the spot month, will include such investment. One commenter stated that:

> (i)t is more often the case that the affiliates of a commodity pool operator or commodity trading advisor will maintain a beneficial interest in the pool. Frequently, this structure is essential to initially form and capitalize the entity or to align the operator's interest with those of its investors, which is frequently not only beneficial to, but is demanded by, the entity's investors. In many cases, the commodity pool operator is insufficiently funded to maintain such an interest and, accordingly, affiliates meet the funding requirement.

The commenters further suggested that as a practical matter aggregating such partnership positions is exceedingly difficult. The commenters suggested that commodity pool operators or commodity trading advisors that are independent traders would not share information with limited partners on individual pool positions, viewing such information as proprietary. In their view, therefore, it would be difficult, if not impossible, for limited partners to obtain the information necessary to aggregate positions. GS noted that:

> Because limited partners or shareholders of a pool do not ordinarily receive position information on a real time basis, or otherwise, presumably it would be necessary for the pool's CPO to provide that information to them on a timely basis. However, CTAs view this information as confidential and proprietary, so that maintaining the confidentiality of this information is typically a heavily negotiated issue in management agreements entered into between pools and their CTAs. For this reason, CTAs frequently prefer to trade pooled accounts rather [than] individual managed accounts.

As many of the commenters recognized, the Commission intended by the proposed amendments to provide relief from the aggregation requirement for the pool operator's principals or affiliates under the rule 150.3 exemption from speculative position limits for nonspot trading months. The Commission has observed that commodity pools generally refrain from trading activity during a contract's spot months. The Commission therefore assumed that, coupled with relief under rule 150.3, the aggregation requirement would not impose an undue burden on the entities involved. The comments maintained, however, that the relative burden of compliance is greater than the Commission anticipated.

Accordingly, the Commission is modifying the requirement as proposed that principals or affiliates of a commodity pool operator with greater than a 10% limited partnership ownership interest aggregate their positions. The final rule provides that such limited partners or shareholders need not aggregate their positions with the pool's positions if the limited partner does not have direct supervisory authority over the pool's trading, the commodity pool operator maintains and enforces written procedures to preclude the limited partner from having knowledge of, or access to, information concerning the pool's positions or trading decisions and that the limited partner, if a principal of the pool operator, exercises only the minimum degree of supervision of the pool's trading consistent with a principal's duty of supervision. The final rule also provides that such entities must provide information to the Commission upon special call supporting their claim to relief from aggregation requirements under this provision.

VI. Other Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission solicited comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the 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.

The Commission previously submitted these rules in proposed form and its associated information collection requirements to the Office of Management and Budget (OMB). OMB approved the collection of information associated with these rules on March 10, 1999 and on July 26, 1996 and assigned OMB control numbers 3038–0013 and 3038–0009, respectively, to these rules. The burdens associated with these rules are as follows:

Collection No. (3038–0013)	
Average burden hours per response.	6
Number of respondents	12
Frequency of response	On occasion.

Collection No. 3038–0009	
Average burden hours per response.	4.74
Number of respondents	3709
Frequency of response	On occasion.

Persons wishing to comment on the information which would be required by these final rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are

available from the CFTC Clearance Officer, 1155 21st St NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of those rules on small businesses. The Commission has previously determined that large traders are not small entities for purposes of the RFA.[31] The Commission believes that the rule amendments to raise Federal speculative position limits will only impact large traders. In addition, the Commission is of the opinion that the amendments to Commission rule 150.3, under which certain eligible entities will be exempted from speculative limits (except in the spot-month), will apply exclusively to large traders, as will rule 150.4 codifying its policies on aggregation. The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules will lift speculative limit levels, extend exemptive relief from speculative limits (except in the spot-month) to certain eligible entities and codify the Commission policies on aggregation, including its rules on aggregating positions for speculative limit compliance. The rules permitting such transactions subject to the specified conditions, therefore, remove a burden for all entities, regardless of size.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Position limits, Spread exemptions.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 4f, 4g, 4i, 4n, 5, 5a, 6b, 6c, 8a, and 15, 7 U.S.C. 2, 6a, 6c, 6f, 6g, 6i, 6n, 7, 7a, 12a, 13a, 13a–1, and 19, the Commission amends parts 1, 17, 18, and 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

§ 1.61 [Removed and reserved]

2. Section 1.61 is removed and reserved.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

3. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6d, 6f, 6g, 6i, 7, and 12a.

4. Section 17.00 is amended by revising paragraph (b)(1), introductory text, by removing paragraphs (b) (2) and (c), by redesignating paragraphs (b) (1) (i) and (b) (1) (ii) as paragraphs (b) (1) and (b) (2), respectively, and by adding paragraph (b)(3) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

* * * * *

(b) *Interest in or control of several accounts.* Except as otherwise instructed by the Commission or its designee and as specifically provided in § 150.4 of this chapter, if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member or foreign broker as a single account for the purpose of determining special account status and for reporting purposes. For purposes of this section, the following shall apply:

* * * * *

(3) *Account ownership.* Multiple accounts owned by a trader shall be considered a single account as provided under §§ 150.4(b), (c) and (d) of this chapter.

PART 18—REPORTS BY TRADERS

5. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a, and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

6. Section 18.01 is revised to read as follows:

§ 18.01 Interest in or control of several accounts.

If any trader holds, has a financial interest in or controls positions in more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such positions and accounts shall be considered as a single account for the purpose of determing whether such trader has a reportable position and, unless instructed otherwise in the special call to report under § 18.00 of this part, for the purpose of reporting.

PART 150—LIMITS ON POSITIONS

7. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5).

8. In § 150.1 the introductory text of paragraph (d), and paragraph (d)(2), (e)(2) and (e)(5) are revised to read as follows:

§ 150.1 Definitions.

* * * * *

(d) *Eligible entity* means—

A commodity pool operator, the operator of a trading vehicle which is excluded or who itself has qualified for exclusion from the definition of the term ''pool'' or commodity pool operator,'' respectively, under § 4.5 of this chapter; the limited partner or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

(1) * * *

(2) Which maintains:

(i) Only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf; or

(ii) If a limited partner or shareholder of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter, only such limited control as is consistent with its status.

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[31] 47 FR 18618 (April 30, 1982).

(e) *Independent account controller* means a person—

* * * * *

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to fulfill its duty to supervise diligently the trading done on its behalf or as is consistent with such other legal rights or obligations which may be incumbent upon the eligible entity to fulfill;

* * * * *

(5) Who is registered as a futures commission merchant, an introducing broker, a commodity trading advisor, an associated person or any such registrant, or is a general partner of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter.

* * * * *

9. Section 150.2 is revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

SPECULATIVE POSITION LIMITS
[By contract]

Contract	Limits by number of contracts		
	Spot month	Single month	All months
Chicago Board of Trade			
Corn	600	5,500	9,000
Oats	600	1,000	1,500
Soybeans	600	3,500	5,500
Wheat	600	3,000	4,000
Soybean Oil	540	3,000	4,000
Soybean Meal	720	3,000	4,000
MidAmerica Commodity Exchange			
Corn	3,000	6,000	6,000
Oats	2,000	2,000	2,000
Soybeans	3,000	6,000	6,000
Wheat	3,000	6,000	6,000
Soybean Meal	800	800	800
Minneapolis Grain Exchange			
Hard Red Spring Wheat	600	3,000	4,000
White Wheat	600	1,200	1,200
New York Cotton Exchange			
Cotton No. 2	300	2,500	3,500
Kansas City Board of Trade			
Hard Winter Wheat	600	3,000	4,000

10. Section 150.4 is revised to read as follows:

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 510.2 of this part shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading or to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts.* For the purpose of applying the position limits set forth in § 510.2, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10% or greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.* For the purpose of applying the position limits set forth in § 150.2:

(1) A commodity pool operator having ownership or equity interest of 10% or greater in an account or positions as a limited partner, shareholder or other similar type of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the commodity pool operator;

(2) A trader that is a limited partner, shareholder or other similar type of pool participant with an ownership or equity interest of 10% or greater in a pooled account or positions who is also a principal or affiliate of the operator of the pooled account must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader, *provided, however,* that the trader need not aggregate such pooled positions or accounts if:

(i) The pool operator has, and enforces, written procedures to preclude the trader from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(ii) The trader does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and

(iii) The trader, if a principal of the commodity pool operator, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool;

(3) Each limited partner, shareholder, or other similar type of pool participant having an ownership or equity interest of 25% or greater in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader.

(d) *Trading control by futures commission merchants.* The position limits set forth in § 150.2 of this part shall be construed to apply to all positions held by a futures commission merchant or its separately organized affiliates in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or its separately organized affiliates, unless:

(1) A trader other than the futures commission merchant or the afffilate directs trading in such an account;

(2) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10% or more in, or controls.

(e) *Call for information.* Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegatee, any person claiming an exemption under paragraphs (c) or (d) of this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, or the relevant business relationships supporting a claim of exemption.

11. New § 150.5 is added to read as follows:

§ 150.5 Exchange-set speculative position limits.

(a) *Exchange limits.* Each contract market as a condition of designation under part 5, appendix A, of this chapter shall be bylaw, rule, regulation, or resolution limit the maximum number of contracts a person may hold or control, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon. This section shall not apply to a contract market for which position limits are set forth in § 150.2 of this part or for a futures or option contract market on a major foreign currency, for which there is no legal impediment to delivery and for which there exists a highly liquid cash market. Nothing in this section shall be construed to prohibit a contract market from fixing different and separate position limits for different types of futures contracts based on the same commodity, or from fixing different position limits for different futures or for different delivery months, or from exempting positions which are normally known in the trade as ''spreads, straddles, or arbitrage,'' of from fixing limits which apply to such positions which are different from limits fixed for other positions.

(b) *Levels at designation.* At the time of its initial designation, a contract market must provide for speculative position limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price;

(2) Individual nonspot or all-months-combined levels must be no greater than 1,000 contracts for tangible commodities other than energy products;

(3) Individual nonspot or all-months-combined levels must be no greater than 5,000 contracts for energy products and nontangible commodities, including contracts on financial products.

(c) *Adjustments to levels.* Contract markets may adjust their speculative limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price; and

(2) Individual nonspot or all-months-combined levels must be no greater than 10% of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year up to 25,000 contracts with a marginal increase of 2.5% thereafter or be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract, the breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and the cash market in the commodity underlying the futures contract.

(d) *Hedge exemption.* (1) No exchange bylaw, rule, regulation, or resolution adopted pursuant to this section shall apply to bona fide hedging positions as defined by a contract market in accordance with § 1.3(z)(1) of this chapter. *Provided, however,* that the contract market may limit bona fide hedging positions or any other positions which have been exempted pursuant to paragraph (e) of this section which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(2) Traders must apply to the contract market for exemption from its speculative position limit rules. In considering whether to grant such an application for exemption, contract markets must take into account the factors contained in paragraph (d)(1) of this section.

(e) *Trader accountability exemption.* Twelve months after a contract market's initial listing for trading or at any time thereafter, contract markets may submit for Commission approval under section 5a(a)(12) of the Act and § 1.41(b) of this chapter a bylaw, rule, regulation, or resolution, substituting for the position limits required under paragraphs (a), (b) and (c) of this section an exchange rule requiring traders to be accountable for large positions as follows:

(1) For futures and option contracts on a financial instrument or product having an average open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts and

a very highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange;

(2) For futures and option contracts on a financial instrument or product or on an intangible commodity having an average moth-end open interest of 50,000 and an average daily volume of 25,000 contracts and a highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange;

(3) For futures and option contracts on a tangible commodity, including but not limited to metals, energy products, or international soft agricultural products, having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange, *provided, however,* such contract markets are not exempt from the requirement of paragraphs (b) or (c) that they adopt an exchange bylaw, regulation or resolution setting a spot month speculative position limit with a level no grater than one quarter of the estimated spot month deliverable supply;

(4) For purposes of this paragraph, trading volume and open interest shall be calculated by combining the month-end futures and its related option contract, on a delta-adjusted basis, for all months listed during the most recent calendar year.

(f) *Other exemptions.* Exchange speculative position limits adopted pursuant to this section shall not apply to any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit or to a person that is registered as a futures commission merchant or as a floor broker under authority of the Act except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. In addition to the express exemptions specified in this section, a contract market may propose such other exemptions from the requirements of this section consistent with the purposes of this section and shall submit such rules Commission review under section 5a(1)(12) of the Act and § 1.41(b) of this chapter.

(g) *Aggregation.* In determining whether any person has exceeded the limits established under this section, all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.

Issued by the Commission this 27th day of April, 1999, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In Title 40 of the Code of Federal Regulations, part 60, revised as of July 1, 1998, § 60.41c is corrected by adding the following definitions:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388–77, ''Standard Specification for Classification of Coals by Rank'' (incorporated by reference—see § 60.17); coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

Cogeneration steam generating unit means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined cycle system means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971029257–9101–02; I.D. 101097A]

RIN 0648–AG56

Designated Critical Habitat; Central California Coast and Southern Oregon/Northern California Coasts Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule and correction.

SUMMARY: NMFS is designating critical habitat for two Evolutionarily Significant Units (ESUs) of coho salmon (*Oncorhynchus kisutch*) pursuant to the Endangered Species Act of 1973 (ESA). Critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California, including two streams entering San Francisco Bay: Arroyo Corte Madera Del Presidio and Corte Madera Creek. Critical habitat for the Southern Oregon/Northern California Coasts ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in this final rule represent the current freshwater and estuarine range of the listed species. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). After considering public comments and reviewing additional scientific information, NMFS is modifying various aspects of the proposed designation, including a revised description of adjacent riparian zones and the exclusion of tribal lands from critical habitat. NMFS has identified several dams in the range of these ESUs that currently block access to habitats