

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA-2005-23313; Directorate Identifier 2005-NM-111-AD.

##### Comments Due Date

(a) The FAA must receive comments on this AD action by January 30, 2006.

##### Affected ADs

(b) This AD is related to AD 98-11-03, amendment 39-10530, as corrected by AD 98-11-03 R1, amendment 39-10983.

##### Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727-100 and 727-100C series airplanes, certificated in any category.

##### Unsafe Condition

(d) This AD results from reports of skin and bear strap cracking at the upper and lower hinge cutout and along the upper fastener row of the stringer 14R lap splice, and cracking in the doorstop fitting adjacent to the upper hinge cutout. There are also reports of cracking on airplanes previously modified to prevent such cracking. We are issuing this AD to find and fix fatigue cracking of the fuselage, which could result in reduced structural integrity and consequent rapid decompression of the airplane.

##### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

##### Service Bulletin Reference

(f) The term "alert service bulletin," as used in this AD, means Boeing Alert Service

Bulletin 727-53A0228, dated March 24, 2005.

##### Repetitive Inspections

(g) Accomplish the applicable inspections for any cracks (including stop-drilled, trimmed-out, or repaired cracks) in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway, along the upper fastener row of the stringer 14R lap splice, and in the doorstop fitting adjacent to the upper hinge cutout, as specified in Table 1 of paragraph 1.E. "Compliance" of the alert service bulletin. Accomplish the inspections at the applicable compliance time specified in Table 1 of paragraph 1.E.; except, where Table 1 specifies a compliance time relative to the date of the release of the alert service bulletin, this AD requires compliance relative to the effective date of this AD. Accomplish the inspections by doing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin. Inspections of door stop fittings made of 7075 material having part number (P/N) 65-23674-7 are not required. Repeat the applicable inspection at the applicable repeat interval specified in Table 1 of paragraph 1.E. of the alert service bulletin.

##### Corrective Action

(h) If any cracking is found during any inspection required by paragraph (g) of this AD, repair the cracking and repeat the inspection at the applicable compliance time specified in Table 1 of paragraph 1.E. "Compliance" of the alert service bulletin. Do the repair by doing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin. Where the alert service bulletin specifies to report cracking to Boeing for repair instructions: Before further flight, repair any cracking according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (j)(3) of this AD.

##### Optional Terminating Action

(i) Replacement of the doorstop fitting with a fitting made of 7075 material having P/N 65-23674-7, in accordance with the Accomplishment Instructions of the alert service bulletin, terminates the repetitive inspections of that fitting, as required by paragraph (g) of this AD.

##### Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) The inspection methods specified in Figures 9 through 12 of the alert service bulletin, as required by paragraph (g) of this AD, at the thresholds and intervals specified in paragraph (g), are approved as a method of compliance (MOC) to paragraph (b) of AD 98-11-03 and 98-11-03 R1, for the inspections of Structurally Significant Item F-16A, Supplemental Structural Inspection Document D6-48040-1, affected by the repair or modification. The MOC applies only to the areas inspected in accordance with Boeing

Alert Service Bulletin 727-53A0228, dated March 24, 2005. All provisions of AD 98-11-03 R1 that are not specifically referenced in this paragraph remain fully applicable and must be complied with.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on December 8, 2005.

**Michael Zielinski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-24052 Filed 12-14-05; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

### RIN 3038-AC25

#### Commodity Pool Operator Electronic Filing of Annual Reports

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Commission regulations to require that commodity pool annual financial reports submitted by commodity pool operators ("CPOs") to the National Futures Association ("NFA") be filed electronically.

Commodity pool annual reports filed with a registered futures association (currently, the NFA is the sole registered futures association) must contain a manually signed oath or affirmation under Commission regulations and no provision exists for electronic filing of annual reports with NFA. The NFA has recently petitioned the Commission to amend its regulations to require mandatory electronic filing of commodity pool annual reports. The Commission has considered the NFA petition and is hereby proposing to amend Commission regulations: (i) To require CPOs to file a commodity pool annual report with NFA electronically,

with the required oath or affirmation to be made through compliance with NFA's electronic filing procedures; (ii) to require CPOs to maintain for five years a manually signed copy of each annual report and to maintain records of how certain key financial balances submitted to NFA were compiled from the annual report; (iii) to eliminate the requirement that the annual report filed with NFA be manually signed.

Further, the Commission is proposing additional amendments to clarify certain aspects of the Commission's regulations applicable to CPOs with respect to financial reporting. Specifically, the Commission is proposing amendments that would: explicitly state that commodity pool monthly and/or quarterly account statements distributed to participants must be prepared in accordance with generally accepted accounting principles; clarify that COPs must file a notification of a change in a public accountant for a commodity pool with the Commission and with NFA; clarify that a reference to "segregation" with respect to a statement required to be made in an accountant's letter refers to the prohibition on commingling of funds of a commodity pool with the assets of any other person; and require that notifications concerning CPOs' election of fiscal years for commodity pools other than the calendar year or changes in fiscal year be filed solely with NFA and not the Commission.

Annual reports to pool participants may continue to be provided as they have been previously, either through hard-copy distribution via postal mail or electronically if the pool participant consents thereto.

**DATES:** Comments must be received on or before January 17, 2005.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AC25, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Following the instructions for submitting comments.

- E-mail: [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "Proposed Amendment to Rule 4.22" in the subject line of the message.

- Fax: (202) 418-5521.

- Mail: Sent to Jean A Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- Courier: Same as Mail above.

All comments received will be posted without change to <http://www.cftc.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Smith, Deputy Director and

Chief Accountant, at (202) 418-5430 or Jennifer C.P. Bauer, Special Counsel, at (202) 418-5472, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: ([tsmith@cftc.gov](mailto:tsmith@cftc.gov)) or ([jbauer@cftc.gov](mailto:jbauer@cftc.gov)).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Regulation 4.22(c) requires a CPO to file with NFA and to provide to each participant an annual financial report, certified by an independent public accountant, for each commodity pool that it operates within 90 days of the end of the pool's fiscal year to the permanent cessation of trading.<sup>1</sup> Also, Regulation 4.7(b)(3) requires a COP that has claimed an exemption from certain regulatory requirements pursuant to Rule 4.7 to file with NFA and to distribute to commodity pool participants an unaudited annual financial report in lieu of an audited annual financial report.<sup>2</sup> Currently a CPO files such annual reports with NFA in paper form, unless the CPO has voluntarily elected to file the annual reports electronically pursuant to NFA's pilot program for electronic filing, which is discussed herein.

Under Commission Rule 4.22(h), each annual financial report filed with NFA must contain a manually signed oath or affirmation that, to the best of the knowledge or belief of the individual making the oath or affirmation, the information contained in the annual report is accurate and complete. A facsimile of a manual signature is permitted for annual reports<sup>3</sup> delivered to participants, and therefore CPOs, absent the participants' objection, may deliver annual reports to pool participants by means of electronic media.<sup>4</sup> However, no regulatory

<sup>1</sup> The regulations of the Commission cited in this release may be found at 17 CFR Ch. I (2005).

<sup>2</sup> CPOs operating pools offered solely to qualified eligible participants ("QEPs") pursuant to Regulation 4.7 may claim relief from the certification requirement of Regulation 4.22(d) with respect to the exempt pools' financial statements. See Regulation 4.7(b)(3).

<sup>3</sup> In addition to annual reports, Commission Regulation 4.22 addresses account statements provided to participants by CPOs. However, the amendments proposed herein do not substantively change requirements for delivery to participants of account statements. Therefore, throughout this release, references will only be made to annual reports despite the applicability of certain regulations to account statements as well.

<sup>4</sup> Under the current rule, if the CPO maintains the annual report with the manually signed oath or affirmation and the oath or affirmation on the annual report filed with NFA is manually signed, the oath or affirmation on an annual report distributed to participants may contain a facsimile

provision currently permits the electronic filing of the annual report with NFA.

##### II. NFA Pilot Program for CPO Electronic Filing

Beginning with reports filed for the year ended December 31, 2004, the NFA implemented a pilot program permitting CPOs to voluntarily elect to file commodity pool annual reports through the use of an electronic filing system, the "EasyFile" system, accessed from the NFA's Web site.<sup>5</sup> The NFA pilot program required that the complete annual report for commodity pools, including the public accountant's opinion contained in certified statements, be submitted to NFA in the Portable Document Format ("PDF") file format. In addition to the electronic submission of the document in a PDF file format, participating CPOs were required to directly enter certain key financial statement balances or aggregated balances from the commodity pools' annual reports into the NFA's EasyFile system. NFA requested that the Commission provide CPOs participating in the pilot program with relief from the requirement of Regulation 4.22(h) that the annual report filed with NFA include a manually signed oath or affirmation, as NFA implemented an electronic version of the oath or affirmation applicable to both the document submitted in PDF file format and the key financial statement balances directly entered into the EasyFile system. The Commission's Division of Clearing and Intermediary Oversight issued exemptive relief in January 2005 to CPOs participating in the pilot program from the requirement that their pools' annual reports submitted to NFA be manually signed under Rule 4.22(j).<sup>6</sup> On August 26, 2005, the NFA petitioned the Commission to formally amend Regulations 4.22 and 4.7 to eliminate the requirement that CPOs file manually signed pool annual reports with NFA, and to further require CPOs to file such annual reports with NFA electronically using the EasyFile system implemented in the pilot program.

of the manual signature thereby permitting electronic distribution.

<sup>5</sup> NFA initially adopted the EasyFile electronic filing system for financial reporting by introducing brokers ("IBs") in 2004. The Commission approved NFA's rules adopting EasyFile for IBs on June 28, 2004.

<sup>6</sup> CFTC Letter No. 05-01 may be accessed at <http://www.cftc.gov/tm/letters/05letters/tm05-01.htm>.

### III. NFA's "EasyFile" Electronic Filing System

NFA's electronic filing system for commodity pool annual reports has three components. First, the CPO must submit a PDF file version of the full annual report, including the balance sheet, income statement, schedule of investments, and the independent auditor's opinion, if applicable. Second, the CPO must directly enter approximately 30 key financial balances into a standardized form accessed through the NFA's Web site. These balances are obtained directly or aggregated from the commodity pool's balance sheet, income statement and statement of changes in net asset value included in the commodity pool's annual report. NFA's Web site includes on-line instructions for the amounts to include in the individual fields in the electronic schedule, and the system also enforces certain edit and validations checks to ensure data quality.<sup>7</sup>

Third, when the CPO submits the electronic filing, NFA's system prompts the submitter to read and to indicate agreement to an electronic oath or affirmation. The submitter will have already securely accessed NFA's system through the input of a personal identification number ("PIN").<sup>8</sup> This oath or affirmation is made with respect to the PDF file of the annual report and the financial data entered into the NFA's database of key financial statement balances through the NFA Web site. The user interface and system security for NFA's CPO electronic filing system are patterned after NFA's existing EasyFile system for IBs' unaudited financial reports. Similar to EasyFile for IBs, the CPO's Security Manager can establish users and assign them abilities to enter data and/or submit the report and data in the NFA electronic filing system.<sup>9</sup> A user such as the CPO's certified public accountant ("CPA") may be provided with the ability to *enter* the key financial statement balances into NFA's database and save the form and report for later submission. However, only persons

duly authorized to bind the pool operator in accordance with Rule 4.22(h)(3) may *submit* the data by entering a PIN and making the required oath or affirmation. The CPO is responsible for ensuring that only persons who are duly authorized to bind the CPO, in accordance with Rule 4.22(h)(3), are granted the ability to submit the financial statements and key financial statement balances to NFA. The electronic version of the oath or affirmation will appear in dialog boxes when reports or data are submitted, and completion of the submission will require an affirmative acceptance of the oath or affirmation by a user who has accessed the system with a secure PIN number and has been granted permission to submit reports. The Security Manager for each CPO will have the ability to access the firm's "Security" tab within the electronic filing system to administer users and permissions. The Security Manager will be the person at the CPO responsible for ensuring that only duly authorized persons who may bind the CPO have system permissions to submit the annual reports and data.

CPOs who distribute reports to participants through electronic media are required to maintain a manually signed copy of the oath or affirmation in their records, as specified currently in Rule 4.22(j)(2), and to provide such oath or affirmation to NFA upon request. In the amendments as proposed, CPOs will be required to maintain the manually signed oath or affirmation for all reports regardless of whether the CPOs use electronic media for distribution to participants. In addition, CPOs will be required to maintain records indicating where the key financial statement balances directly entered into NFA's database appear in the commodity pool's annual report or how such balances are aggregated from amounts appearing in the pool's annual report.

The key financial statement balances field electronically through the pilot program include all the data elements that NFA staff currently manually enter into the FACTS 2000 database from the information contained in hard copy annual reports, as well as several data elements that NFA staff added after consultation with members of the commodity pool industry, CPAs that serve the commodity pool industry, and Commission staff. NFA's FACTS 2000 database serves as the primary means by which NFA and Commission staff access commodity pool financial information.

### IV. Benefits of Electronic Filing of Pool Annual Reports

Mandatory electronic filing of commodity pool annual reports is anticipated to benefit both the Commission and NFA by increasing the quality of the financial data from commodity pool annual reports that will be collected in FACTS 2000 and be available to the Commission. Direct data entry by the CPO or its CPA, who are most familiar with the information being submitted, and the system-enforced edit and validation checks, should enhance the integrity and quality of data collected. Also, the prepared guidance for CPO members and their CPAs will promote more uniformity in the classification of the key data elements. Further, NFA reported that approximately 15 percent of the filed commodity pool annual reports for the year ended December 31, 2004 were filed electronically through participation in the pilot program and that the electronic filing process is anticipated to be relatively simple and cost effective for CPOs, requiring only Internet access and a PDF file of the annual report.

### V. Proposed Amendment

Regulation 4.22(c) requires that a registered CPO file with NFA an annual report for each pool that it operates within 90 days of the end of the pool's fiscal year or the permanent cessation of trading. The Commission is proposing to amend Regulation 4.22(c) and Regulation 4.7(b)(3) to specifically require that the commodity pool annual reports be submitted to NFA electronically through NFA's established electronic filing procedures. Further, the Commission is proposing to amend Regulation 4.22(h), pursuant to which each such report, including those provided under Rule 4.7 and Rule 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the person making the oath or affirmation, the information contained in the document is accurate and complete. The amendment will require the oath or affirmation on annual reports filed with NFA to be made through the use of electronic filing procedures and will continue to permit the oath or affirmation on copies distributed to participants to contain facsimile signatures so long as a manually signed copy is maintained by the CPO. The Commission is also proposing to delete Rule 4.22(j) and add a provision to Rule 4.23(a) to require CPOs to maintain in their books and records a manually signed oath or affirmation for all annual

<sup>7</sup> For example, the system will prompt the user for a correction if the components listed as assets do not total to the amount entered for total assets, or if certain types of trading assets and liabilities are reported in the balance sheet but there are no gains or losses reported in the income statement with respect to such assets.

<sup>8</sup> The CPO has responsibility for establishing users and their on-line capabilities through a person designated as its Security Manager with NFA.

<sup>9</sup> The Security Manager procedure is part of NFA's existing electronic system for registration processing. The Commission adopted regulation amendments in 2002 to enable NFA to utilize an online system for registration functions. See 67 FR 38,869 (June 6, 2002).

reports and account statements, and to maintain records of the key financial balances submitted to NFA that clearly demonstrate how such balances were derived. The Commission hereby requests comment on the foregoing amendments proposed to implement electronic filing of commodity pool annual reports with NFA.

The Commission also requests comment on the following proposed amendments intended to clarify certain aspects of the Commission's regulations applicable to CPOs with respect to financial reporting. Regulation 4.7(b)(2) requires that an account statement signed and affirmed by the CPO be prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. The account statement must indicate: (1) The net asset value of the exempt pool as of the end of the reporting period; (2) the change in net asset value from the end of the previous reporting period; and (3) the net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

The Commission proposed to amend Rule 4.7(b)(2) to clarify that the account statement provided to participants must be prepared in accordance with generally accepted accounting principles as are other financial reports required in Part 4 of the Commission's Regulations. By requiring that the financial information contained in the account statement is computed and presented in accordance with generally accepted accounting principles, the Commission is assuring that participants receive information that is computed and presented in compliance with established professional standards.

Regulation 4.22(d) requires that the certification of commodity pool annual reports by independent accountants be made in accordance with the certification requirements of Regulation 1.16 that are applicable to the financial statements of FCMs and IBs, with specific exceptions. Rule 4.22(d) does not exempt CPOs from Regulation 1.16(g), which requires written notification to be given to the NFA and to the Commission of changes in the entity's independent accountant. In order to make clear that this requirement applies to CPOs, the Commission hereby proposes to amend Regulation 4.22(d) to specifically state that Rule 1.16(g) is also applicable to CPOs with respect to notifications of changes in the independent accountants engaged for the certification of commodity pool financial statements. By clarifying this responsibility for

compliance, the Commission will be assured of receiving proper notice of important circumstances with regards to changes of independent accountants, which changes may be indicative of disagreements with auditors or other matters of interest to the Commission concerning the commodity pool.

Regulation 4.22(f)(1) provides a mechanism for CPOs that cannot distribute annual reports for pools within the required timeframe without substantial undue hardship to file applications of extensions of time with NFA. In the context of requesting such an extension, the application to NFA must be accompanied by a letter from the pool's independent public accountant. One of the items that must be addressed in the letter is whether the independent accountant has any indication from the audit work in process to indicate that the CPO is not meeting "segregation" requirements. The Commission hereby proposes to amend Regulation 4.22(f)(1)(ii)(B) to clarify that this does not refer to the segregation requirements of Regulation 1.20 applicable to FCMs, but instead refers to the prohibition on commingling of funds of a commodity pool with the assets of any other person contained in Regulation 4.20(c).<sup>10</sup>

Regulations 4.22(g)(2) and (3) require notifications to be made to the Commission concerning CPOs' election of fiscal years for commodity pools other than the calendar year or subsequent changes in fiscal year-ends. The Commission hereby proposes to amend these Regulations so that such notifications are solely required to be filed with NFA and not the Commission, consistent with other financial reporting filings that are now made to NFA directly as a result of functions the Commission has authorized NFA to preform.<sup>11</sup> The

<sup>10</sup> The language originally proposed was "the segregation requirements of § 4.20(c)" showing the intent of the reference to reflect Regulation 4.20 and not FCM segregation requirements contained in Commission Regulation 1.20. 45 FR 51,600 at 51,610 (August 4, 1980).

<sup>11</sup> By order dated December 11, 2002, the Commission authorized NFA to: (1) Receive and review annual financial reports required to be filed by CPOs pursuant to Regulations 4.7(b)(3) and 4.22(c), including annual financial reports required to be filed by CPOs that have claimed relief pursuant to Regulation 4.12(b) with respect to qualifying pools, and to review such reports for compliance with the Act and the Commission regulations thereunder and to provide notice of deficiencies; (2) receive and grant or deny applications filed pursuant to Regulation 4.22(f)(1) for extensions of time to distribute annual financial reports; and (3) process notices of claims of extension of time to distribute and file annual financial reports filed pursuant to Regulation 4.22(f)(2). In addition, the Commission authorized NFA to maintain and to serve as the official

Commission has determined this function to be sufficiently related to other functions delegated to NFA with respect to the review of commodity pool financial reporting that it would be beneficial for this notice also to be made directly by CPOs to NFA and for NFA to process and maintain the records of these notices. As a result, the Commission believes the receiving and processing of CPOs' election of fiscal years and subsequent changes in fiscal years for commodity pools should similarly be delegated to NFA by rule amendment.

## VI. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.<sup>12</sup> The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.<sup>13</sup> The proposed amendments to Regulation 4.7 and Regulation 4.22 would apply only to registered CPOs. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>14</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The amendment being proposed would, if approved, alter the method of collection of information required under Regulation 4.22. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget ("OMB") for its review.

*Collection of Information.* (Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures

custodian of such records. 67 FR 77,470 (December 18, 2002).

<sup>12</sup> 47 FR 18618 (April 30, 1982).

<sup>13</sup> 47 FR at 18619.

<sup>14</sup> 44 U.S.C. 3507(d).

Commission Merchants, OMB Control Number 3038-0005.)

The expected effect of the proposed amended regulations will be to slightly increase the burden for this collection of information due to an estimated increase by one quarter hour of the filing of annual reports electronically. However, the burden most recently approved by OMB for this collection was submitted in 2002 based on estimates of anticipated changes resulting from significant amendments to Part 4 requirements. Although this proposed amendment will slightly impact the estimated average hours per response for annual report filings, the other assumptions concerning average hours per response have not changed. However, the burden is being recalculated and submitted in its entirety for this collection due to availability of updated information on annual responses and respondents since the Part 4 regulation amendments went into effect, which updated information does not reflect the realization of the decrease in burden that was previously estimated to occur. The Commission estimates the burden of this collection of information as follows:

#### Estimated Annual Reporting Burden

*Number of Respondents:* 8,500.

*Total Annual Responses:* 27,575.

*Total Annual Hours:* 166,360.

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. 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, utility, and clarity of the information to be collected; and

Minimizing the burden of the 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.

Organizations and individuals desiring to submit comments on the

information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. 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**. Therefore, 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.

#### C. Cost-Benefit Analysis

Section 15(a) 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. By its terms, Section 15(a) 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 Regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act 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 and could in its discretion determine that, notwithstanding its costs, a particular regulation 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.

The proposed amendments to Regulation 4.7 and 4.22 would require CPOs to electronically file commodity pool annual reports with NFA with an oath or affirmation submitted electronically instead of with a manual signature.

The Commission is considering the costs and benefits of this proposed regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendment should not affect the

protection of market participants and the public as it provides an alternate method of delivery of information contained in commodity pool annual reports but does not substantively alter the character of such information or the nature of the oath or affirmation that must accompany the submission or distribution of such information.

2. *Efficiency and competition.* The Commission anticipates that the proposed amendment will benefit efficiency by permitting NFA to streamline its process for receiving annual report submissions from CPOs. The proposed amendment is considered by the Commission as benefiting efficiency and not impacting competition.

3. *Financial integrity of futures markets and price discovery.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. *Sound risk management practices.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. *Other public interest considerations.* The Commission believes that the proposed regulation requiring electronic filing for the submission by CPOs of annual reports to NFA is beneficial in that it should streamline the timeliness of delivery and electronic accessibility of such reports, and permit NFA to retain such reports in a more streamlined and accessible manner.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

#### List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Consumer Protection, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Chapter I is proposed to be amended as follows:

#### PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.7 is amended by revising paragraphs (b)(2) and (b)(3)(i) introductory text to read as follows:

**§ 4.7 Exemption from certain Part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.**

\* \* \* \* \*

(b) \* \* \*

(2) *Periodic reporting relief.*

Exemption from the specific requirements of §§ 4.22(a) and (b); *Provided*, That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must be prepared in accordance with generally accepted accounting principles and indicate:

(i) The net asset value of the exempt pool as of the end of the reporting period;

(ii) The change in net asset value from the end of the previous reporting period; and

(iii) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(3) *Annual report relief.* (i) Exemption from the specific requirements in §§ 4.22(c) and (d); *Provided*, That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

\* \* \* \* \*

3. Section 4.22 is amended by:

a. revising paragraph (c) introductory text;

b. revising paragraph (d) introductory text;

c. revising paragraph (f)(1)(ii)(B);

d. revising paragraphs (g)(2) and (3);

e. revising paragraph (h); and

f. removing paragraph (j), to read as follows:

**§ 4.22 Reporting to pool participants.**

\* \* \* \* \*

(c) Except as provided in paragraph (c)(6) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must electronically submit a copy

of the Report and key financial balances from the Report to the National Futures Association pursuant to the electronic filing procedures of the National Futures Association, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided, however*, That if during an calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be affirmed pursuant to paragraph (h) of this section and must contain the following:

\* \* \* \* \*

(d) The financial statement in the Annual Report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants and the certification must be in accordance with § 1.16 of this chapter, except that the following requirements of that section shall not apply:

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Do you have any indication from the part of your audit completed to date that would lead you to believe that the commodity pool operator was or is not meeting the recordkeeping requirements of this part 4 or was or is not complying with the § 4.20(c) prohibition on commingling of property of any pool with the property of any other person?

\* \* \* \* \*

(g)(1) \* \* \*

(2) If a commodity pool operator elects a fiscal year other than the calendar year, it must give written notice of the election to all participants and must file the notice with the National Futures Association within 90 calendar days after the date of the pool's formation. If this notice is not given, the pool operator will be deemed to have elected the calendar year as the pool's fiscal year.

(3) The commodity pool operator must continue to use the elected fiscal year for the pool unless it provides written notice of any proposed change to all participants and files such notice with the National Futures Association at least 90 days before the change and the National Futures Association does not

disapprove the change within 30 days after the filing of the notice.

(h)(1) Each Account Statement and Annual Report, including an Account Statement or Annual Report provided pursuant to § 4.7(b) or 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; *Provided, however*, That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete.

(2) Each oath or affirmation must be made by a representative duly authorized to bind the pool operator, and

(i) For the copy of a commodity pool's Annual Report submitted to the National Futures Association, such representative shall satisfy the required oath or affirmation through compliance with the National Futures Association's electronic filing procedures, and

(ii) for a commodity pool Account Statement or Annual Report distributed to participants, a facsimile of the manually signed oath or affirmation of such representative may be used so long as the manually signed original is retained in accordance with § 4.23.

(3) For each manually signed oath or affirmation, there must be typed beneath the signed oath or affirmation:

(i) The name of the individual signing the document;

(ii) The capacity in which he is signing;

(iii) The name of the commodity pool operator for whom he is signing; and

(iv) The name of the commodity pool for which the document is being distributed.

\* \* \* \* \*

4. Section 4.23 is amended by adding a new paragraph (a)(12) to read as follows:

**§ 4.23 Recordkeeping.**

\* \* \* \* \*

(a) \* \* \*

(12) A manually signed copy of each Account Statement and Annual Report provided pursuant to § 4.22, § 4.7(b) or 4.12(b), and records of the key financial balances submitted to the National Futures Association for each commodity pool Annual Report, which records must clearly demonstrate how the key financial balances were compiled from the Annual Report.

\* \* \* \* \*

Issued in Washington, DC, on December 7, 2005 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05-23965 Filed 12-14-05; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18, 19 and 21

RIN 3038-AC22

### Market and Large Trader Reporting

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing several amendments to its market and large trader reporting rules. First, the Commission is proposing to establish a new reporting level for futures and option contracts based on 3-Year U.S. Treasury Notes. Second, the Commission is proposing to clarify the application of the reporting rules to registered derivatives transaction execution facilities (DTEFs). Third, the Commission is proposing to require designated contract markets to publicly disseminate integrated volume data that separately identifies the volume generated from block trades. Fourth, the Commission is proposing to adopt a reporting framework for contracts that are exclusively self-cleared. Finally, the Commission is proposing a number of conforming, clarifying, and technical amendments.

**DATES:** Comments must be received by February 13, 2006.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to 202.418.5521, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to the "Market and Large Trader Reporting." Comments may also be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section (telephone 202.418.5209, e-mail [gmartinaitis@cftc.gov](mailto:gmartinaitis@cftc.gov)), or Bruce Fekrat, Special Counsel, Office of the Director (telephone 202.418.5578, e-mail [bfekrat@cftc.gov](mailto:bfekrat@cftc.gov)), Division of Market Oversight, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

### SUPPLEMENTARY INFORMATION:

#### I. The Commission's Authority To Implement the Reporting Rules

The market and large trader reporting rules (reporting rules) are contained in parts 15 through 21 of the Commission's regulations.<sup>1</sup> Together, the reporting rules are structured to ensure that the Commission receives adequate information to carry out its market and financial surveillance programs.<sup>2</sup> The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (CEA or Act).<sup>3</sup> Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits.<sup>4</sup> Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options.<sup>5</sup> Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities, and requires each registrant, whether a futures commission merchant (FCM), introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere.<sup>6</sup> Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on contract markets or DTEFs equal or exceed Commission-set levels.<sup>7</sup>

<sup>1</sup> 17 CFR parts 15 to 21.

<sup>2</sup> The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations. See 69 FR 76392 (December 21, 2004).

<sup>3</sup> 7 U.S.C. 1 *et seq.*

<sup>4</sup> 7 U.S.C. 6a.

<sup>5</sup> 7 U.S.C. 6c(b).

<sup>6</sup> 7 U.S.C. 6g.

<sup>7</sup> 7 U.S.C. 6i. In addition, CEA section 8a(5) is an enabling provision that grants to the Commission the authority to adopt rules that in its judgment are reasonably necessary to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Pursuant to CEA section 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b). Collectively, these purposes warrant the maintenance of an effective and vigorous system of market and financial surveillance.

#### II. Establishing a Reporting Level for Contracts Based on 3-Year U.S. Treasury Notes

The Commission's reporting rules, among other things, require FCMs, foreign brokers, and clearing members (collectively reporting firms) to report position and identifying information of the largest futures and option traders to the Commission.<sup>8</sup> Upon special call, traders must separately provide position and identifying information to the Commission.<sup>9</sup> For both reporting firms and traders, the obligation to report under parts 17 and 18 of the Commission's regulations is triggered when traders hold or control reportable positions.<sup>10</sup>

Commission rule 15.03(b) delineates contract reporting levels for commodity futures and option contracts.<sup>11</sup> Rule 15.03(b) applies a default reporting level of 25 contracts to contracts not specifically itemized by the rule. Notably, rule 15.03 does not specify a reporting level for futures or option contracts based on 3-Year U.S. Treasury Notes (3-Year T-Notes).

At the present time, 3-Year T-Notes are listed solely by the U.S. Futures Exchange, LLC (Eurex US). On January 26, 2005, the Division of Market Oversight (staff) issued no-action relief to Eurex US, FCMs, foreign brokers, clearing members, and traders that complied with all regulatory obligations arising from a contract reporting level of 750 contracts instead of the otherwise applicable default reporting level of 25 contracts.<sup>12</sup> The staff based its grant of relief primarily on the conclusion that historical trading in 2-Year T-Notes served as precedent for trading in 3-Year

<sup>8</sup> See 17 CFR part 17.

<sup>9</sup> See 17 CFR part 18.

<sup>10</sup> A reportable position is any open contract position, as further defined in the rules, that at the close of the market equals or exceeds the quantity specified in Commission rule 15.03. See 17 CFR 15.00 and 15.03. The firms that carry accounts for traders holding reportable positions are required to identify those accounts on Form 102 and to report positions in the accounts to the Commission. See 17 CFR 17.00 and 17.01. The individual traders who hold or control reportable positions are required to report position and identifying information to the Commission only in response to a special call. See 17 CFR part 18.

<sup>11</sup> The Commission typically calibrates contract reporting levels to ensure that the aggregate of all positions reported to the Commission represents approximately 70 to 90 percent of the open interest in any given contract. The Commission periodically analyzes contract terms, trading volume, open interest, the number and position sizes of individual traders, and its surveillance experience with specific contracts, to determine if coverage of open interest is adequate for effective market surveillance. 69 FR 76392, 76393 (December 21, 2004).

<sup>12</sup> CFTC Staff Letter 05-03 Comm. Fut. L. Rep. (CCH) ¶ 30,024 (January 26, 2005).