

between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

#### **BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Docket 2004–NM–46–AD.

**Applicability:** All Model Jetstream 4101 airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) to extend fully, which could result in reduced controllability of the airplane during landing, accomplish the following:

#### **Service Bulletin Reference and Clarifications**

(a) The term "service bulletin," as used in this AD, means BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, dated February 20, 2004.

(1) The term "flow chart," as used in this AD, means the flow chart following paragraph 1.M. of BAE Systems Alert Service Bulletin J41–A32–082, Revision 1.

(2) BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, refers to APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, as an additional source of service information for accomplishing the actions in the BAE Systems service bulletin.

(3) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of BAE Systems Alert Service Bulletin J41–A32–082, dated February 11, 2004, are considered acceptable for the corresponding actions required by this AD. (The original issue of BAE Systems Alert Service Bulletin J41–A32–082 refers to the original issue of APPH Service Bulletin AIR83586–32–22, dated February 2004, as an additional source of service information for accomplishing the actions in the BAE Systems service bulletin.)

(4) Where BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, and APPH Service Bulletin AIR83586–32–22, Revision 1, specify to contact BAE Systems or APPH for repair instructions, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Civil Aviation Authority (CAA) (or its delegated agent).

(5) Where the flow chart in BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, specifies "flying hours," for the purposes of this AD, this means "flight hours."

(6) Where BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, specifies to complete a reporting form and return it to the manufacturer, this AD does not require that action.

#### **Initial Test**

(b) Within 300 flight cycles or 30 days after the effective date of this AD, whichever occurs first: Perform a test for free movement of the NLG capsule/bearing, as specified in the flow chart of the service bulletin. Do all of the actions per the Accomplishment Instructions of the service bulletin.

**Note 1:** As specified in the flow chart in the service bulletin, only the actions in paragraph 2.A. (Part 1) of the Accomplishment Instructions of APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, are required by paragraph (a) of this AD.

#### **Related Investigative, Significant, and Corrective Actions**

(c) Perform related investigative, significant, and corrective actions as specified in the flow chart of the service bulletin, at the compliance times specified in the flow chart of the service bulletin. Do all of the actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (a)(4) of this AD. During any test, if the movement of the capsule/bearing is restricted, the applicable corrective actions must be accomplished before further flight.

#### **Parts Installation**

(d) As of the effective date of this AD, no person may install an NLG on any airplane unless it is inspected per the requirements of this AD.

#### **Alternative Methods of Compliance**

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in British emergency airworthiness directive G–2004–0003, dated February 24, 2004.

Issued in Renton, Washington, on May 5, 2004.

**Ali Bahrami,**

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

[FR Doc. 04–10742 Filed 5–11–04; 8:45 am]

**BILLING CODE 4910–13–P**

#### **COMMODITY FUTURES TRADING COMMISSION**

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

**RIN 3038–AC08**

#### **Reporting Levels and Recordkeeping**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing several amendments to its large trader reporting rules. First, the Commission is proposing to amend part 15 of its rules to introduce additional contracts and to raise the reporting levels at which futures commission merchants, clearing members and foreign brokers must file large trader reports in certain commodities. Second, the Commission is proposing to amend its rules to address the manner in which certain new products, such as exchanges of futures for swaps, should be reported under the Commission's rules. Third, the Commission is proposing to amend its rules to address current data transmission practices, to foster innovative means of filing Forms 102 by reporting firms, and to eliminate Form 103 for the submission of special call data by large traders. Finally, the Commission is proposing a number of other technical and clarifying amendments to the large trader reporting rules.

**DATES:** Comments must be received by June 11, 2004.

**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 "Large Trader Reporting

Rules.” Comments may also be submitted by connecting to the Federal eRulemaking Portal at <http://www.regulations.gov> and following comment submission instructions.

**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)), Bruce Fekrat, Attorney, 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. Reporting Levels**

The Commission’s large-trader reporting system is an important Commission oversight tool. The rules governing this system require futures commission merchants, clearing members and foreign brokers (collectively referred to as reporting firms) to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Commodity Exchange Act (CEA or Act) to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent price manipulation and market congestion and to enforce speculative position limits pursuant to section 4a of the Act. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest.

Generally, the firm carrying a trader’s reportable position files large trader reports.<sup>1</sup> The Commission periodically reviews information concerning trading volume, open interest, and the number

and position sizes of individual traders relative to the reporting levels for each market to determine if coverage of open interest is adequate for effective market surveillance. In this regard, the Commission also is mindful of the paperwork burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the futures and option markets. The Commission’s most recent review of reporting levels indicates that the relative size of trading volume, open interest, and position sizes of individual traders would enable the Commission to raise reporting levels as follows: (1) Milk, Class III from 25 to 50 contracts; (2) Soybeans from 100 to 150 contracts; (3) Wheat from 100 to 150 contracts; (4) Corn from 150 to 250 contracts; (5) Sugar No. 11 from 400 to 500 contracts; (6) Cotton from 50 to 100 contracts; (7) Natural Gas from 175 to 200 contracts; (8) Crude Oil, Sweet—No. 2 Heating Oil Crack Spread from 25 to 250 contracts; (9) Crude Oil, Sweet—Unleaded Gasoline Crack Spread from 25 to 150 contracts; (10) Unleaded Gasoline—No. 2 Heating Oil Spread from 25 to 150 contracts; (11) 1-Month LIBOR from 300 to 600 contracts; (12) 30-Day Fed Funds from 300 to 600 contracts; (13) 3-Month Eurodollar Time Deposit Rates from 1000 to 3000 contracts; (14) 2-Year U.S. Treasury Notes from 500 to 1000 contracts; (15) 5-Year U.S. Treasury Notes from 800 to 2000 contracts; (16) 10-Year U.S. Treasury Notes from 1000 to 2000 contracts; (17) 30-Year U.S. Treasury Bonds from 1000 to 1500 contracts; (18) E-Mini S&P 500 Stock Price Index from 300 to 1000 contracts;<sup>2</sup> and (19) TRAKRS from 25,000 to 50,000.

The general default reporting level for all positions, including positions in broad-based security indices, is currently 25 contracts. The Commission is proposing to enumerate a new default reporting level of 200 contracts specifically for broad-based security

indices. Under this proposal, the following enumerated commodities would no longer be individually itemized in Rule 15.03 and therefore would be subject to the proposed default reporting level of 200 contracts: (1) S&P 400 Midcap Stock Index—currently 100 contracts; (2) Dow Jones Industrial Average Index—currently 100 contracts; (3) New York Stock Exchange Composite Index—currently 50 contracts; (4) Amex Major Market Index, Maxi—currently 100 contracts; (5) NASDAQ 100 Stock Index—currently 100 contracts; (6) Russell 2000 Stock Index—currently 100 contracts; (7) Value Line Average Index—currently 50 contracts; and (8) NIKKEI Stock Index—currently 100 contracts. The S&P 500 Stock Price Index and the Municipal Bond Index would remain at 1000 and 300 contracts, respectively.

Concurrently, the Commission is proposing to establish enumerated reporting levels for three German federal government debt instruments. These proposed reporting levels are as follows: (1) 10-Year German Federal Government Debt—1,000 contracts; (2) 5-Year German Federal Government Debt—800 contracts; (3) 2-Year German Federal Government Debt—500 contracts.

The Commission is also proposing a reporting level for a category of contracts that a new exchange, HedgeStreet, Inc. (HedgeStreet), intends to offer. HedgeStreet has represented that it intends to offer European-style binary options that are based on economic indexes<sup>3</sup> and that pay a fixed \$10.00 if in the money upon expiration. The put and call options that together would form a contract bundle are separate contracts and thus the average value of each contract (put or call) would be \$5. In light of the relatively low value of these products, the Commission is proposing a reporting level of 125,000 contracts. This reporting level would be limited to economic indices offered by HedgeStreet in the manner and size described. Absent further Commission rulemaking, any other product offered by HedgeStreet would be subject to the default reporting level of 25 contracts.<sup>4</sup>

<sup>1</sup> Specifically, parts 17 and 18 of the Commission’s regulations require reports from firms and traders, respectively, when a trader holds a “reportable position.” See 17 CFR parts 17 and 18. A reportable position is any open contract position, as further defined in the rules, that at the close of the market on any business day equals or exceeds the quantity specified in Commission Rule 15.03. See 17 CFR 15.00 and part 150. 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. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

<sup>2</sup> Currently, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract are different (1000 and 300, respectively). As amended, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract would be the same. Accordingly, the Commission is proposing to delete the separate reference to the E-Mini S&P 500 Stock Price Index in § 15.03. In this regard, subject to this one exception for the E-Mini S&P 500 Stock Price Index contract, the Commission’s practice has been to apply the same reporting level to an e-mini contract as applies to the related full size contract. Accordingly, if this proposed amendment to the reporting level for the E-Mini S&P 500 Stock Price Index is adopted, all e-mini contracts will be subject to that reporting convention.

<sup>3</sup> The Commission understands that HedgeStreet products could be based on either macroeconomic or microeconomic indexes.

<sup>4</sup> The low value of these HedgeStreet products could result in the reporting of positions that numerically are very large. Due to current limitations in the Commission’s large trader record format (see 17 CFR 17.00(g)(1)), the proposed rulemaking provides for these HedgeStreet positions to be reported under 17 CFR part 17 by rounding down to the nearest 1000 and then dividing by 1000. For example, a position of 177,955 contracts would be rounded down to 177,000, divided by 1000 and reported as 177.

The referenced HedgeStreet and German federal government debt contracts are likely to be traded prior to the adoption of final reporting levels. In the absence of the adoption of final reporting levels, the Commission's default reporting level of 25 contracts would apply. To relieve market participants from compliance with the default reporting level, the Commission hereby is granting no-action relief to futures commission merchants, members of contract markets and foreign brokers that comply with the large trader reporting requirements based upon proposed reporting levels for the referenced HedgeStreet and German federal government debt contracts.

Accordingly, the Commission will not bring any enforcement action against any such futures commission merchant, member of a contract market or foreign broker. Such persons, however, must bring their conduct into compliance with final reporting levels to the extent that final reporting levels differ from those proposed herein.

The proposed amendments to adjust reporting levels would decrease the number of daily position reports, such as Series '01 Reports and Forms 102, that reporting firms are currently required to file. The number of Forms 40 filed by large traders would also decrease. However, the percent of total market open interest reported through the large trader system would remain at the level deemed sufficient for rigorous market surveillance based upon the Commission's administrative experience.

Not all reporting firms may elect to report under the proposed higher, and therefore potentially less burdensome, reporting levels. This is due to the fact that exchanges also maintain large trader reporting systems that are similar in most respects to the Commission's system. The exchanges set their own reporting levels, which for particular contracts may vary from Commission set levels. When exchange reporting levels are set lower than those set by the Commission, firms may report to the Commission at the lower exchange set level, thereby saving any cost associated with reprogramming their reporting systems to reflect the proposed increases. The Commission, however, only requires information on Forms 40 and 102 for positions that exceed its levels.

## II. Trades Involving the Exchange of Futures

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA),

extensively revising the CEA.<sup>5</sup> The CFMA facilitated the introduction of certain new products by the exchanges, including certain off-centralized-market trades such as exchanges of futures for swaps (EFS).<sup>6</sup> As of now, three exchanges have rules permitting EFSs and three have rules permitting other types of off-centralized-market trades referred to as exchanges of futures for risk (EFR) and exchanges of futures for options (EFO).<sup>7</sup>

The Commission's rules do not address how contract markets should report these types of off-centralized-market transactions to the Commission and to the public, or how reporting firms should report them to the Commission. Accordingly, the Commission is proposing to amend its rules to address these issues. Parts 16 and 17 of the Commission's regulations currently require contract markets and reporting firms to separately account for the volume that is attributable to EFPs. The Commission is proposing to require these entities to report other trades involving the exchange of futures for a commodity or transaction other than a futures product in the same manner as they currently report EFP transactions.

Thus, as proposed, contract markets and reporting firms would group together all EFPs, EFSs, EFRs, EFOs or other exchanges of futures for a commodity or transaction other than a futures product permitted by exchange rules, and report the sum under the same category. This is appropriate because all of these trades are similar in that they permit the exchange of a futures position for an off-exchange position. Block trades, however, would not be included in this total because they do not involve the exchange of a futures position for a commodity or transaction other than a futures product. Volume attributable to block trades would be reported with other volume. Although it may be desirable to have block trade volume separately identified

<sup>5</sup> Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

<sup>6</sup> For instance, section 5(b)(3)(B) of the Act provides that exchange rules may authorize "an exchange of—(i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps \* \* \*." 7 U.S.C. 7(b)(3)(B).

<sup>7</sup> An EFS, EFR, and EFO works similarly to a transaction involving the exchange of futures for physicals (EFP). EFPs allow market participants to exchange a position in a futures contract with a similar cash market position. EFSs allow market participants to exchange a position in a futures contract for a cash-settled swap position. EFRs allow market participants to exchange a position in a futures contract for an over-the-counter derivative position. EFOs allow market participants to exchange a position in a futures contract for an off-exchange options position.

and reported, the Commission does not currently believe that the effort required to update its information systems or the effort required by contract markets and reporting firms to update their systems would justify the benefit.

## III. Modernization of Rules Covering Data and Hard Copy Submissions

The Commission's rules currently have requirements for hard copy submission of data and dial-up transmission of data. The rules are being changed to reflect the existing industry practice of using Internet data transmissions in place of dial-up transmissions and the use of exchange websites as a store of daily data in place of hard copy reports. Also, the Commission is proposing to amend its rules to foster innovative means of filing Forms 102 by reporting firms and to eliminate Form 103 for the submission of special call data by large traders.

Part 16 of the Commission's regulations requires reports from contract markets. The Commission is now proposing to eliminate the requirements for daily hard copy clearing member reports to the Commission and daily hard copy submissions of trading volume, exchange of futures, open contracts, delivery notices, option deltas, prices, and critical dates to the Commission or its staff. These hard copy reports would only be required upon request of the Commission or its staff. Also, the Commission is proposing to replace the requirement of providing printed forms of trading volume, exchange of futures, open contracts, delivery notices, and option deltas to the news media and members of the public with a general requirement that such information be made readily available to such persons. The Commission is also proposing to replace explicit requirements for a dial-up form of data transmission with more general requirements for data transmission. Finally, in light of advances in technology, the Commission is proposing to require the submission of clearing member reports and certain data regarding trading volume, open interest, prices and critical dates by 12 p.m. on the business day following the day to which the information pertains. Currently, such information is required to be submitted by 3 p.m. on that day. The Commission believes that the information is currently being submitted within the proposed noon deadline.

In part 17, which governs reports by reporting firms, the Commission is proposing to replace specific requirements pertaining to use of dial-up transmissions, '01 forms and

computer printouts with more general data transmission requirements. Furthermore, the Commission is proposing to allow reporting firms to authenticate that a Form 102 is being filed by an authorized individual of a reporting firm on behalf of the reporting firm by a means other than manually signing the form. This signature requirement necessitates the manual filing of Form 102s, and the manual filing of these forms remains one of the costlier aspects of large trader reporting in the industry. In order to foster more innovative and cost efficient means of fulfilling this reporting requirement, including the possibility of electronic filing, the Commission is proposing to permit alternative means of authentication. While a signature will remain the default method of authentication, the Commission will retain the authority to approve other means of authentication as new filing solutions become available and accepted in the industry.

In part 18, which governs reports by traders, the Commission is proposing to eliminate the use of a Form 103 for data requested by the Commission via special calls. The form of the data would now be per instructions contained in the call. This matches current practice.<sup>8</sup> In addition, consistent with the current requirements for daily submission of large trader data, the Commission is proposing to require traders to identify exchanges of futures for a commodity or transaction other than a futures product in response to such a call. The Commission is also proposing to delete Rule 18.02 which provides for the use of code numbers. Such a request has not been made in many years and, if such a request is made in the future, it could be accommodated informally. Finally, the Commission is proposing to delete Rule 18.06 as the referenced technology is no longer in use.

In part 21, which governs special calls, the requirement for machine-readable information adhering to a specific record layout as contained in the rules would be eliminated. The requirement for the information to be prepared in accordance with instructions in the call would remain. This matches current practice.

#### IV. Clarifying and Technical Amendments

The Commission has identified a number of other provisions of the large trader rules that either do not reflect

<sup>8</sup> The Commission is also proposing a conforming change to Rule 15.02 to remove Form 103 from the list of forms to be used in filing reports.

current practice or otherwise should be corrected or updated. First, the Commission is proposing to amend Rule 15.00(b)(1)(ii) to clarify that options on physicals are included in the definition of reportable position.<sup>9</sup> Second, the Commission is proposing to amend Rule 17.00(a) to clarify that a reportable position in a commodity in a special account requires that all positions in that same commodity on the same contract market in the special account be reported.<sup>10</sup> Third, the Commission is proposing to amend Rule 17.04 to clarify that options positions are to be included in reports of omnibus accounts. Each of these clarifications reflects current Commission and industry practice.

The Commission is also proposing to amend Rules 16.00(b)(2) and 16.01(d)(2) to provide that the time by which the reports required by those rules must be filed is governed by a particular time zone, unless otherwise specified by the Commission or its designee. The Commission is also proposing certain technical amendments to Rule 17.00(g). Specifically, it is proposing to remove the references to particular exchanges in subsection (2)(v) and to make certain editorial changes in subsections (2)(vi) and (2)(xi). The Commission is also proposing to change the requirement in Rule 17.01 regarding identification of special accounts to contract markets on Form 102.<sup>11</sup> Finally, the Commission is also proposing to correct certain outdated references to the provisions of part 15 that appear in part 19.

<sup>9</sup> Prior to 1997, the definition of a reportable position explicitly referenced options on physicals. 17 CFR 15.00(b)(2) (1996). When the Commission amended that definition in 1997, that reference was deleted. 62 FR 24026 (May 2, 1997). The Commission believes that this deletion was unintentional as no explanation was provided at the time. *Id.* See also 61 FR 37409 (July 18, 1996). Furthermore, both the Commission and the industry have continued to include options on physicals in the large trader and other reports filed under parts 15 through 21. See 17 CFR 16.00(a), 16.01(a), 21.02a(b)(4)(vii). Accordingly, the Commission believes that it is appropriate at this time to amend the definition of reportable position to clarify that it includes options on physicals, both to correct what appears to have been an unintentional limitation of the definition in 1997 and to align the definition with current Commission and industry reporting practices.

<sup>10</sup> The part 17 rules were changed in 1997 to reflect this requirement. See 62 FR 24026, 24028 n. 7 (May 2, 1997). In practice, however, it appears that further clarification would be helpful.

<sup>11</sup> This change is consistent with earlier changes made to the Commission's rules (see 62 FR 24026 (May 2, 1997)) and does not relieve reporting firms of their obligations to comply with any applicable exchange requirements regarding the submission of Form 102s to the exchanges.

#### V. Related Matters

##### A. Cost Benefit Analysis

Section 15(a) of the Act 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) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) requires the Commission to "consider the cost and benefits" of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is 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 rules impose limited costs in terms of reporting requirements, particularly since most entities that trade on U.S. futures markets already file large trader reports with the Commission. To reduce the cost of reporting for contract markets and reporting firms, the Commission is deleting the requirement of certain routine hard copy reports, updating its submission requirements to reflect current industry practice and fostering innovative means of filing Forms 102. Moreover, to further reduce the cost of reporting, the Commission periodically reviews all reporting levels for all commodities.<sup>12</sup> The countervailing benefits of these costs are that the Commission will have the necessary information to perform its market surveillance function and thus carry out its mandate of ensuring the continued existence of competitive and efficient markets, protecting their price discovery function and protecting market participants and the public interest therein.

After considering these factors, the Commission has determined to propose the revisions to parts 15 through 19, and part 21, as set forth below.

<sup>12</sup> See, e.g., 65 FR 14452 (Mar. 17, 2000).

The Commission specifically invites public comment on its application of the criteria contained in section 15(a) of the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule with their comment letters.

**B. The Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that contract markets, futures commission merchants and large traders are not "small entities" for purposes of the RFA.<sup>13</sup> The requirements of the proposed amendments fall mainly on contract markets and FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large, positions. In addition, these proposed amendments relieve a regulatory burden. Accordingly, 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.

**C. The Paperwork Reduction Act**

When publicizing proposed rules, the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104-13 (May 13, 1995)) 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. In compliance with the PRA, the Commission through these proposed rules solicits 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 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 responses.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burdens associated with this entire collection (3038-0009), including these proposed rules, is as follows:

Average Burden Hours Per Response: .29.  
 Number of Respondents: 2,950.  
 Frequency of Response: Daily.

Persons wishing to comment on the information which would be required by these proposed 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 Street, NW., Washington, DC 20581, 202-418-5160.

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

**List of Subjects**

*17 CFR Part 15*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 16*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 17*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 18*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 19*

Commodity futures, Cotton, Grains, Reporting and recordkeeping requirements.

*17 CFR Part 21*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

**PART 15—REPORTS—GENERAL PROVISIONS**

1. The authority citation for part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

2. In § 15.00, revise paragraph (b)(1)(ii) to read as follows:

**§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(ii) Long or short put or call options that exercise into the same future of any commodity, or for options on physicals that have identical expirations and exercise into the same physical, on any one contract market.

\* \* \* \* \*

3. Revise § 15.02 to read as follows:

**§ 15.02 Reporting forms.**

Forms on which to report may be obtained from any office of the Commission or via the Internet (<http://www.cftc.gov>). Forms to be used for the filing of reports follow, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40 .....	Statement of Reporting Trader .....	18.04
'01 .....	Positions of Special Accounts .....	17.00
102 .....	Identification of Special Accounts .....	17.01
204 .....	Cash Positions of Grain Traders (including Oilseeds and Products) .....	19.00
304 .....	Cash Positions of Cotton Traders .....	19.00

<sup>13</sup> 47 FR 18618-18621 (April 30, 1982).

4. Revise § 15.03 to read as follows:

**§ 15.03 Reporting levels.**

(a) *Definitions.* For purposes of this section:

*Broad-based security index* is a group or index of securities that does not constitute a narrow-based security index.

*HedgeStreet economic index products* mean European-style binary options that are based on economic indexes, that pay a fixed \$10.00 if in the money upon expiration and that are offered by HedgeStreet, Inc., a designated contract market.

*Major foreign currency* means the currencies and cross-rates between the currencies of Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union.

*Narrow-based security index* has the same meaning as in section 1a(25) of the Commodity Exchange Act.

*Security futures product* has the same meaning as in section 1a(32) of the Commodity Exchange Act.

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
<b>Agricultural:</b>	
Wheat .....	150
Corn .....	250
Oats .....	60
Soybeans .....	150
Soybean Oil .....	200
Soybean Meal .....	200
Cotton .....	100
Frozen Concentrated Orange Juice .....	50
Milk, Class III .....	50
Rough Rice .....	50
Live Cattle .....	100
Feeder Cattle .....	50
Lean Hogs .....	100
Sugar No. 11 .....	500
Sugar No. 14 .....	100
Cocoa .....	100
Coffee .....	50
<b>Natural Resources:</b>	
Copper .....	100
Gold .....	200
Silver Bullion .....	150
Platinum .....	50
No. 2 Heating Oil .....	250
Crude Oil, Sweet .....	350
Unleaded Gasoline .....	150
Natural Gas .....	200
Crude Oil, Sweet—No. 2 Heating Oil Crack Spread .....	250
Crude Oil, Sweet—Unleaded Gasoline Crack Spread .....	150
Unleaded Gasoline—No. 2 Heating Oil Spread Swap .....	150
<b>Financial:</b>	

Commodity	Number of contracts
3-month (13-Week) U.S. Treasury Bills .....	150
30-Year U.S. Treasury Bonds .....	1,500
10-Year U.S. Treasury Notes .....	2,000
5-Year U.S. Treasury Notes .....	2,000
2-Year U.S. Treasury Notes .....	1,000
10-Year German Federal Government Debt .....	1,000
5-Year German Federal Government Debt .....	800
2-Year German Federal Government Debt .....	500
3-Month Eurodollar Time Deposit Rates .....	3,000
30-Day Fed Funds .....	600
1-month LIBOR Rates .....	600
3-month Euroyen .....	100
Major-Foreign Currencies ..	400
Other Foreign Currencies ..	100
U.S. Dollar Index .....	50
Goldman Sachs Commodity Index .....	100
<b>Broad-Based Security Indices:</b>	
S&P 500 Stock Price Index	1,000
Municipal Bond Index .....	300
Other Broad-Based Security Indices .....	200
<b>Security Futures Products:</b>	
Individual Equity Security ..	1,000
Narrow-Based Security Index .....	200
TRAKRS .....	150,000
HedgeStreet Economic Index Products .....	1125,000
All Other Commodities .....	25

<sup>1</sup>For purposes of part 17, positions in TRAKRS and HedgeStreet Economic Index Products should both be reported by rounding down to the nearest 1000 and dividing by 1000.

**PART 16—REPORTS BY CONTRACT MARKETS**

5. The authority citation for part 16 continues to read as follows:

**Authority:** 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12a, unless otherwise noted.

6. In § 16.00, revise paragraphs (a)(4) and (b) to read as follows:

**§ 16.00 Clearing member reports.**

(a) \* \* \*

(4) The quantity of purchases of futures in connection with a commodity or transaction other than a futures product and the quantity of sales of futures in connection with a commodity or transaction other than a futures product which are included in the total quantity of contracts bought and sold during the day covered by the report, and the names of the clearing members who made the purchases or sales;

\* \* \* \* \*

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) as follows:

(1) Using a format, coding structure, and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however*, the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When such data is first available but not later than 12 p.m. on the business day following the day to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

7. In § 16.01, delete the phrase “, in printed form at the office of the contract market,” from paragraph (b)(3), and revise paragraph (a)(2), the concluding text of paragraph (a), and paragraph (d) to read as follows:

**§ 16.01 Trading volume, open contracts, prices, and critical dates.**

\* \* \* \* \*

(a) \* \* \*

(2) The total quantity of futures for a commodity or transaction other than a futures product which are included in the total volume of trading;

(5) \* \* \*

This information shall be made readily available to the news media and the general public without charge no later than the business day following the day for which publication is made.

(b) \* \* \*

\* \* \* \* \*

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit to the Commission the information specified in paragraphs (a), (b) and (c) of this section as follows:

(1) Using a format, coding structure and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however*, the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When each such form of the data is first available but not later than 7 a.m. on the business day following the day to which the information pertains for the delta factor and settlement price and not later than 12 p.m. for the remainder of the information. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets

located in that time zone, and central time for information concerning all other markets.

\* \* \* \* \*

8. Revise § 16.06 to read as follows:

**§ 16.06 Errors or omissions.**

Unless otherwise approved by the Commission or its designee, contract markets shall file corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01 in the format and using the coding structure and electronic data submission procedures approved in writing by the Commission or its designee.

9. In § 16.07, revise paragraphs (a) and (b) to read as follows:

**§ 16.07 Delegation of authority to the Director of the Division of Market Oversight and the Executive Director.**

\* \* \* \* \*

(a) Pursuant to §§ 16.00(b) and 16.01(d), the authority to determine whether contract markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a contract market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.00(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by contract markets.

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

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

**Authority:** 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a, unless otherwise noted.

11. In § 17.00, revise paragraph (a), add paragraph (a)(1), and revise paragraphs (g)(2)(i), (g)(2)(v), (g)(2)(vi), (g)(2)(xi), and (h) to read as follows:

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

(a) *Special Accounts—Reportable futures and options positions, delivery notices, and exchanges of futures.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise

authorized by the Commission or its designee, such report shall be made in accordance with the format, coding and data transmission procedures set forth in paragraph (g) of this section. The report shall show each futures position, separately for each contract market and for each future, and each put and call options position separately for each contract market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for a commodity or transaction other than a futures product and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account. The report shall also show all positions in all futures months and option expirations of that same commodity on the same contract market for which the special account is reportable.

\* \* \* \* \*

(g) \* \* \*  
(2) \* \* \*

(i) *Report Type.* This report format will be used to report three types of data: long and short futures and options positions, futures delivery notices issued and stopped, and exchanges of futures for a commodity or transaction other than a futures product bought and sold. Valid values for the report type are “RP” for reporting positions, “DN” for reporting notices, and “EP” for reporting exchanges of futures for a commodity or transaction other than a futures product.

\* \* \* \* \*

(v) *Exchange.* This is a two-character field approved by the Commission to identify the exchange on which a position is held.

(vi) *Put or Call.* Valid values for this field are “C” for a call option and “P” for a put option. For futures, the field is blank.

\* \* \* \* \*

(xi) *Long-Buy-Stopped (Short-Sell-Issued).* When report type is “RP”, report long (short) positions open at the end of a trading day. When report is “DN”, report delivery notices stopped (issued) on behalf of the account. When report type is “EP”, report purchases (sales) of futures for a commodity or product other than a futures product for the account. Report all information in contracts. Position data are reported on a net or gross basis in accordance with paragraphs (d) and (e) of this section.

\* \* \* \* \*

(h) *Correction of errors and omissions.* Unless otherwise approved by the Commission or its designee, corrections

to errors and omissions in data provided pursuant to § 17.00(a) shall be filed on series ‘01 forms or in the format, coding structure and data transmission procedures approved in writing by the Commission or its designee.

\* \* \* \* \*

12. In § 17.01, revise the introductory text and paragraph (f) to read as follows:

**§ 17.01 Special account designation and identification.**

When a special account is reported for the first time, the FCM, clearing member, or foreign broker shall identify the account to the Commission on form 102, in the form and manner specified in § 17.02, showing the information in paragraphs (a) through (f) of this section.

\* \* \* \* \*

(f) *Reporting firms.* The name and address of the FCM, clearing member, or foreign broker carrying the account, the name, title and business phone of the authorized representative of the firm filing the form 102 and the date of the form 102. The authorized representative shall sign the report or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.

\* \* \* \* \*

13. Revise § 17.02 to read as follows:

**§ 17.02 Form, manner and time of filing reports.**

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by FCMs, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) and (b) of this section.

(a) *Section 17.00(a) reports.* Reports filed under § 17.00(a) shall be submitted through electronic data transmission procedures approved in writing by the Commission or its designee not later than 9 a.m. on the business day following that to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(b) *Section 17.01 reports.* For data submitted pursuant to § 17.01 on form 102:

(1) On call by the Commission or its designee, identify the type of special account specified by items 1(a), 1(b), or 1(c) of form 102, and the name and location of the person to be identified in item 1(d) on the form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its



designee, on the same day that the special account in question is first reported to the Commission; and

(2) Submit a completed form 102 within three business days of the first day that the special account in question is reported to the Commission in accordance with instructions by the Commission or its designee.

14. In § 17.03, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 17.03 Delegation of authority to the Director of the Division of Market Oversight and to the Executive Director.**

\* \* \* \* \*

(a) Pursuant to § 17.00(a) and (h), the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under Rule 17.00(a) and Rule 17.00(h) on series '01 forms or using some other format upon a determination that such person is unable to report the information using the format, coding structure or electronic data transmission procedures otherwise required.

(b) Pursuant to § 17.02, the authority to instruct and/or approve the time at which the information required under Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in § 17.01.

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the form 102 to use a means of authenticating the report other than by signing the form 102 and, if so, to determine the alternative means of authentication that shall be used.

\* \* \* \* \*

15. In § 17.04, revise the second sentence of paragraph (b) and paragraphs (b)(1)(i) and (b)(2) to read as follows:

**§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.**

\* \* \* \* \*

(b) \* \* \* The futures commission merchant, clearing members or foreign broker shall, if both open long and short positions in the same future or option are carried for the same trader, compute open long or open short positions as instructed in this paragraph.

(1) \* \* \*

(i) The positions represent transactions on a contract market which requires long and short positions in the same future or option held in accounts

for the same trader to be recorded and reported on a gross basis; or

\* \* \* \* \*

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a contract market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

\* \* \* \* \*

**PART 18—REPORTS BY TRADERS**

16. 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.

17. Revise § 18.00 to read as follows:

**§ 18.00 Information to be furnished by traders.**

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for a period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each contract market:

- (a) Open contracts;
- (b) Purchases and sales;
- (c) Delivery notices issued and stopped;
- (d) Exchanges of futures for a commodity or transaction other than a futures product bought and sold; and
- (e) Options exercised.

**§ 18.02 [Removed and Reserved]**

18. Remove and reserve § 18.02.

**§ 18.06 [Removed and Reserved]**

19. Remove and reserve § 18.06.

**PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON**

20. The authority citation for part 19 continues to read as follows:

**Authority:** 7 U.S.C. 6(g)(a), 6(i) and 12a(5), unless otherwise noted.

21. In § 19.00, revise paragraph (a)(1) and the first sentence of paragraph (a)(3) to read as follows:

**§ 19.00 General provisions.**

(a) \* \* \*

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(b)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

\* \* \* \* \*

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(b)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. \* \* \*

\* \* \* \* \*

**PART 21—SPECIAL CALLS**

22. The authority citation for part 21 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

**§ 21.02a [Removed]**

23. Remove § 21.02a.

Issued in Washington, DC, on May 5, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

**[WV-102-FOR]**

**West Virginia Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposes revisions to the Code of State Regulations (CSR) as authorized by Committee Substitute for House Bill 4193. The State is revising its program to be consistent with certain corresponding Federal requirements, and to include other amendments at its own initiative. The amendments include, among other things, new