



# Federal Register

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**Monday,  
December 11, 2006**

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**Part XLV**

## **Commodity Futures Trading Commission**

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**Semiannual Regulatory Agenda**

**COMMODITY FUTURES TRADING COMMISSION (CFTC)**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Ch. I**

**Regulatory Flexibility Agenda**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Semiannual regulatory agenda.

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

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

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

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

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

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

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

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

The Commission’s fall 2006 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on September 25, 2006, by the Commission.

**Eileen A. Donovan,**  
*Acting Secretary of the Commission.*

**Commodity Futures Trading Commission—Prerule Stage**

Sequence Number	Title	Regulation Identifier Number
3726	Exemption from Federal Speculative Position Limits .....	3038-AC36

**Commodity Futures Trading Commission—Proposed Rule Stage**

Sequence Number	Title	Regulation Identifier Number
3727	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons; Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices .....	3038-AB75
3728	Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act .....	3038-AC04
3729	Execution of Off-Centralized Market Transactions: Regulation 1.38 and Guidance on Core Principle 9 .....	3038-AC07
3730	Exemption From Registration for Certain Foreign Persons .....	3038-AC26
3731	Debt Securities Conforming Amendments .....	3038-AC31

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

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

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

**CFTC**

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
3732	Limitations on Withdrawals of Equity Capital .....	3038-AC27
3733	Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations .....	3038-AC28
3734	Electronic Filing of Notices of Exemption or Exclusion Under Part 4 of the Commission's Regulations .....	3038-AC33
3735	Introducing Broker Electronic Filing of Annual Reports .....	3038-AC34
3736	Advertising by Commodity Pool Operators, Commodity Trading Advisors, and the Principals Thereof .....	3038-AC35

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identifier Number
3737	Eligible Commercial Entities Authorized To Trade on Exempt Commercial Markets .....	3038-AC21
3738	Market and Large Trader Reporting .....	3038-AC22
3739	Joint Final Rules: Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes and Security Futures on Debt Securities .....	3038-AC32

**Commodity Futures Trading Commission (CFTC)**

**Prerule Stage**

**3726. • EXEMPTION FROM FEDERAL SPECULATIVE POSITION LIMITS**

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

**Legal Authority:** 7 USC 6a

**CFR Citation:** 17 CFR 150

**Legal Deadline:** None

**Abstract:** In recent years, the Commission has received requests for exemption or relief from Federal speculative position limits, as various entities seek to gain commodity price

exposure by tracking an index that contains, among other things, futures contracts that are subject to such limits. Commission staff is considering different approaches for providing relief or exemption to commodity-index-related futures positions from Federal speculative position limits.

**Timetable:**

Action	Date	FR Cite
ANPRM	06/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC36

**Commodity Futures Trading Commission (CFTC)**

**Proposed Rule Stage**

**3727. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS; REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON-NARROW-BASED INDICES**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

**CFR Citation:** Not Yet Determined

**Legal Deadline:** Other, Statutory, December 21, 2001, Within one year after the date of enactment of the

Commodity Futures Modernization Act of 2000.

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

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/06	

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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## CFTC

## Proposed Rule Stage

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**Related RIN:** Related to 3038-AB78

**RIN:** 3038-AB75

**3728. INTERAGENCY PROPOSAL TO CONSIDER ALTERNATIVE FORMS OF PRIVACY NOTICES UNDER THE GRAMM-LEACH-BLILEY ACT**

**Priority:** Substantive, Nonsignificant

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

**CFR Citation:** 17 CFR 160

**Legal Deadline:** None

**Abstract:** Subtitle A of the Gramm-Leach-Bliley Act (GLB Act), captioned Disclosure of Nonpublic Personal Information (15 U.S.C. 6801 et seq.), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties, and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The GLB Act agencies, including CFTC, have published substantially identical regulations to implement GLB title V, known collectively as the "privacy rule." Many notices issued under the privacy rule were long and complex, and difficult to compare with each other. Consequently, GLB Act agencies are considering whether to amend the privacy rule to provide for simpler, more useful notices. The GLB Act agencies intend to issue an advance notice of proposed rulemaking to determine whether to propose changes to the privacy rule, and if so, will seek further public comment on specific programs. Six of the eight GLB Act agencies have entered into a memorandum of understanding through

which they intend to contract with a consumer testing firm. CFTC is not a party to the MOU. Consumer testing is ongoing.

**Timetable:**

Action	Date	FR Cite
ANPRM	12/30/03	68 FR 75164
ANPRM Comment Period End	03/29/04	
NPRM	12/00/06	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** Federal

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**RIN:** 3038-AC04

**3729. EXECUTION OF OFF-CENTRALIZED MARKET TRANSACTIONS: REGULATION 1.38 AND GUIDANCE ON CORE PRINCIPLE 9**

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

**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

**CFR Citation:** 17 CFR 1; 17 CFR 38

**Legal Deadline:** None

**Abstract:** Since the Commission originally promulgated Regulation 1.38, the Commodity Futures Modernization Act of 2000 (CFMA) was signed into law. The CFMA, among other things, specifically expanded the allowable transactions that could be executed off the centralized market. The Commission has proposed amendments to its rules concerning trading off the centralized market, including the addition of guidance on contract market block trading rules, in light of further administrative experience with, and consideration of, the implications of the CFMA.

**Timetable:**

Action	Date	FR Cite
NPRM	07/01/04	69 FR 39880
NPRM Comment Period End	08/30/04	

Action	Date	FR Cite
Second NPRM	02/00/07	
Second NPRM Comment Period End	04/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC07

**3730. EXEMPTION FROM REGISTRATION FOR CERTAIN FOREIGN PERSONS**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 6d ; 7 USC 6m

**CFR Citation:** 17 CFR 3.10(c)

**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend its regulations regarding registration to permit: (1) Certain foreign firms otherwise exempt from registration as futures commission merchants pursuant to Commission Regulation 30.10 to advise or introduce to registered futures commission merchants certain U.S. customers for purposes of trading U.S. exchange-traded futures and options without having to register in the appropriate capacity pursuant to sections 4d and 4m, respectively, of the Commodity Exchange Act; and (2) certain foreign firms located outside the U.S. that limit their customers to foreign customers to clear their U.S. contract market business on an omnibus basis through a registered futures commission merchant without having to register as a futures commission merchant

## CFTC

## Proposed Rule Stage

pursuant to section 4d of the Commodity Exchange Act.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/06	
NPRM Comment Period End	02/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC26

**3731. • DEBT SECURITIES CONFORMING AMENDMENTS**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

**CFR Citation:** 17 CFR 41

**Legal Deadline:** None

**Abstract:** On July 13, 2006, the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") issued joint final rules to permit the trading of futures contracts based on individual debt securities and indexes comprised of individual debt securities. The effective date for the joint rules is August 14, 2006. The present language of several CFTC rules is not fully consistent with the offer and trading of futures contracts based on debt securities. Therefore the CFTC is proposing to adopt several conforming amendments that clarify the

applicability of the rules to futures contracts based on debt.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/07	
NPRM Comment Period End	05/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC31

## Commodity Futures Trading Commission (CFTC)

## Final Rule Stage

**3732. LIMITATIONS ON WITHDRAWALS OF EQUITY CAPITAL**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 6f

**CFR Citation:** 17 CFR 1.12; 17 CFR 1.17

**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend its regulations to provide that the Commission may, by written order, temporarily prohibit an FCM from carrying out planned equity withdrawal transactions that would reduce excess adjusted net capital by 30 percent or more. The proposed orders would be based on the Commission's determination that such withdrawals could be detrimental to the financial condition of the FCM or could affect its ability to meet customer obligations. The proposed regulation would be similar to SEC regulation 17 CFR 240.15c3-1(e)(3)(i).

**Timetable:**

Action	Date	FR Cite
NPRM	09/29/06	71 FR 57451
NPRM Comment Period End	11/28/06	
Final Action	01/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AC27

**3733. • CONFLICTS OF INTEREST IN SELF-REGULATION AND SELF-REGULATORY ORGANIZATIONS**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat 2763

**CFR Citation:** 17 CFR part 38

**Legal Deadline:** None

**Abstract:** The Commission is proposing Acceptable Practices for Core Principle 15 to offer designated contract markets ("DCMs") a safe-harbor for compliance with section 5(d)(15) of the Commodity Exchange Act. That section requires

DCMs to minimize conflicts of interest in their decisionmaking processes. The Acceptable Practices propose that DCMs minimize potential conflicts of interest by maintaining governing boards composed of at least fifty percent public directors. They also address the composition of DCMs' disciplinary panels; propose board-level Regulatory Oversight Committees, consisting solely of public directors, to oversee DCMs' regulatory functions; and define "public" for persons serving on DCMs' boards and disciplinary panels.

**Timetable:**

Action	Date	FR Cite
NPRM	07/07/06	71 FR 38740
NPRM Comment Period Extended	08/02/06	71 FR 43681
NPRM Comment Period End	09/07/06	
Final Action	02/00/07	

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Rachel F. Berdansky, Acting Deputy Director for Market Compliance, Division of Market Oversight, Commodity Futures Trading

## CFTC

## Final Rule Stage

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RIN: 3038-AC28

### 3734. • ELECTRONIC FILING OF NOTICES OF EXEMPTION OR EXCLUSION UNDER PART 4 OF THE COMMISSION'S REGULATIONS

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 1a; 7 USC 2; 7 USC 6b to 6c; 7 USC 6l to 6o; 7 USC 12a; 7 USC 23

**CFR Citation:** 17 CFR 4.5, 4.7, 4.12, 4.13, 4.14

**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend its regulations to require that notices of exemption or exclusion under part 4 of the Commission's regulations submitted to National Futures Association ("NFA") be filed electronically.

The Commission previously has authorized NFA to receive and to process: (1) Notices of eligibility for exclusion for certain otherwise regulated persons from the definition of commodity pool operator ("CPO"), pursuant to Commission Regulation 4.5; (2) notices of claim for exemption from certain part 4 requirements with respect to commodity pools and commodity trading advisors ("CTAs") whose participants or clients are qualified eligible persons, pursuant to Commission Regulation 4.7; (3) claims of exemption from certain part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Commission Regulation 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Commission Regulation 4.13; and (5) notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Commission Regulation 4.14(a)(8). Currently, these notices are filed in paper form with NFA.

The Commission is proposing that Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) be amended to require that the notice required by each section be filed electronically with NFA. The Commission is further proposing that the submission of a notice through NFA's electronic exemption filing system by a person duly authorized to

bind the submitter be accepted in lieu of the manual signature required by each of these regulations.

#### Timetable:

Action	Date	FR Cite
NPRM	10/13/06	71 FR 60454
NPRM Comment Period End	11/13/06	
Final Action	01/00/07	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC33

### 3735. • INTRODUCING BROKER ELECTRONIC FILING OF ANNUAL REPORTS

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

**Legal Authority:** 7 USC 1a; 7 USC 6d; 7 USC 6f to 6g; 7 USC 12a; 7 USC 21

**CFR Citation:** 17 CFR 1.10; 17 CFR 1.31

**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend its regulations to require that certified annual reports on Form 1-FR-IB filed with NFA by introducing brokers be filed electronically in accordance with NFA's electronic filing system, and that certified annual reports filed by introducing brokers also registered as securities broker-dealers, who file FOCUS reports in lieu of Form 1-FR-IB as permitted under the regulations, file either in hard copy or electronically according to the instructions of NFA. The Commission is also proposing to amend its regulations to require the retention by introducing brokers of hard copies of such certified annual reports containing the original, manually signed certification.

#### Timetable:

Action	Date	FR Cite
NPRM	09/19/06	71 FR 54789
NPRM Comment Period End	10/19/06	
Final Action	01/00/07	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC34

### 3736. • ADVERTISING BY COMMODITY POOL OPERATORS, COMMODITY TRADING ADVISORS, AND THE PRINCIPALS THEREOF

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 7 USC 6b; 7 USC 6o

**CFR Citation:** 17 CFR 4.41

**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend Regulation 4.41 to: (1) Restrict the use of testimonials; (2) clarify the required placement of the prescribed disclaimer concerning simulated or hypothetical performance; and (3) include within the regulation's coverage advertising through electronic media.

#### Timetable:

Action	Date	FR Cite
NPRM	08/23/06	71 FR 49387
NPRM Comment Period End	09/22/06	
Final Action	01/00/07	

#### Regulatory Flexibility Analysis

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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## CFTC

Final Rule Stage

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RIN: 3038-AC35

## Commodity Futures Trading Commission (CFTC)

Completed Actions

### 3737. ELIGIBLE COMMERCIAL ENTITIES AUTHORIZED TO TRADE ON EXEMPT COMMERCIAL MARKETS

**Priority:** Substantive, Nonsignificant

**CFR Citation:** 17 CFR 36

**Completed:**

Reason	Date	FR Cite
Withdrawn	07/20/06	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC21

### 3738. MARKET AND LARGE TRADER REPORTING

**Priority:** Substantive, Nonsignificant

**CFR Citation:** 17 CFR 15 to 21

**Completed:**

Reason	Date	FR Cite
Final Action	07/03/06	71 FR 37809

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC22

### 3739. • JOINT FINAL RULES: APPLICATION OF THE DEFINITION OF NARROW-BASED SECURITY INDEX TO DEBT SECURITIES INDEXES AND SECURITY FUTURES ON DEBT SECURITIES

**Priority:** Substantive, Nonsignificant

**Legal Authority:** sec 206, 251, and 252, PL. 106-55, 114 Stat. 2763; 7 USC 1a; 7 USC 2; 7 USC 6f; 7 USC 6j; 7 USC 7a-2; 7 USC 12a; 15 USC 77c to 77d; 15 USC 77g; 15 USC 77j; 15 USC 77s; 15 USC 77z-2 to 77z-3; 15 USC 77eee; 15 USC 77ggg; 15 USC 77sss to 77ttt; 15 USC 78c to 78g; 15 USC 78g(c)(2); 15 USC 78i; 15 USC 78w to 78x; 15 USC 78ll to 78mm; 15 USC 79q; 15 USC 80a-20; 15 USC 80a-23; 15 USC 80a-29; 15 USC 80a-37; 15 USC 80b-3; 15 USC 80b-11; 15 USC 7201 et. seq

**CFR Citation:** 17 CFR 41.15; 17 CFR 41.21; 17 CFR 240.3a55-4; 17 CFR 240.6h-2

**Legal Deadline:** None

**Abstract:** The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") are adopting a new rule and amending an existing rule under the Commodity Exchange Act and adopting two new rules under the Securities Exchange Act of 1934. These rules will

modify the applicable statutory listing standards requirements to permit security futures to be based on individual debt securities or a narrow-based security index composed of debt securities. In addition these rules and rule amendments exclude from the definition of "narrow-based security index" debt securities indexes that satisfy specified criteria. A future on a debt securities index that is excluded from the definition of "narrow-based security index" will not be a security future and may trade subject to the exclusive jurisdiction of the CFTC.

**Timetable:**

Action	Date	FR Cite
Final Action	07/13/06	71 FR 39534
Final Action Effective	08/14/06	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 3038-AC32

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