



# Federal Register

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**Monday,  
December 9, 2002**

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**Part XLVIII**

## **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:** Ms. Barbara Webster Black, Special Assistant to the Executive Director, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418-5130, [bblack@cftc.gov](mailto:bblack@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:

(a) 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 2002 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on September 18, 2002 by the Commission.

**Jean A. Webb,**  
*Secretary of the Commission.*

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

Sequence Number	Title	Regulation Identification Number
3921	Denomination of Customer Funds and Location of Depositories .....	3038-AB31
3922	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers .....	3038-AB64
3923	Regulation of Hybrid Instruments .....	3038-AB69
3924	Use of Broker-Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities .....	3038-AB70
3925	Compliance Date for Security Futures Products To Be Cleared by a Clearing Agency That Has Linked and Coordinated Clearing With Other Clearing Agencies .....	3038-AB74
3926	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons .....	3038-AB75
3927	Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices .....	3038-AB78
3928	Allocation of Bunched Orders .....	3038-AB93
3929	Treatment of Foreign Futures or Foreign Options Secured Amount .....	3038-AB96

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

Sequence Number	Title	Regulation Identification Number
3930	Performance Disclosures for Commodity Trading Advisors and Commodity Pool Operators .....	3038-AB39
3931	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States .....	3038-AB45

<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 which 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 (Continued)

Sequence Number	Title	Regulation Identification Number
3932	Customer Identification Program for Futures Commission Merchants and Introducing Brokers .....	3038-AB90
3933	Reporting Levels for Large Trader Reports; TRAKRS .....	3038-AB91

## Commodity Futures Trading Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3934	Public Reporting by Operators of Certain Large Commodity Pools—Regulations 4.7, 4.12, and 4.27 .....	3038-AB40
3935	Trade Options on Enumerated Agricultural Commodities .....	3038-AB61
3936	Exemption From Compliance With the Criterion for Linked and Coordinated Clearing .....	3038-AB72

## Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3937	Margin Requirements for Security Futures Products .....	3038-AB71
3938	Avoidance of Duplicative or Conflicting Regulations Applicable to Dual Registrants .....	3038-AB76
3939	Cash Settlement and Regulatory Halts Required for Security Futures Products .....	3038-AB86

## Commodity Futures Trading Commission—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3038-AB73	Authority To Modify Security Futures Product Listing Standards	06/25/2002	Withdrawn

## Commodity Futures Trading Commission (CFTC)

## Proposed Rule Stage

**3921. DENOMINATION OF CUSTOMER FUNDS AND LOCATION OF DEPOSITORIES****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 1a; 7 USC 2; 7 USC 5; 7 USC 6a to 6d; 7 USC 6f to 6g; 7 USC 12a; 7 USC 19**CFR Citation:** 17 CFR 1.32; 17 CFR 1.49**Legal Deadline:** None

**Abstract:** The Commission is requesting public comment on proposed rules that would permit futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States dollars. The Commission is also requesting public comment on

a proposed amendment to appendix B of its bankruptcy rules that would govern the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency.

**Timetable:**

Action	Date	FR Cite
Concept Release	12/30/97	62 FR 67841
NPRM	08/13/02	67 FR 52641
NPRM Comment Period End	10/15/02	
Final Action	02/00/03	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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**RIN:** 3038-AB31**3922. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS****Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 6f**CFR Citation:** 17 CFR 1.17**Legal Deadline:** None

## CFTC

## Proposed Rule Stage

**Abstract:** The Commission intends to propose amendments to Rule 1.17 that would adopt a risk-based capital requirement for futures commission merchants.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AB64

**3923. REGULATION OF HYBRID INSTRUMENTS**

**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:** None

**Abstract:** The Commission is required, after consulting with and obtaining the concurrence of the Board of Governors of the Federal Reserve System, to prescribe regulations to govern hybrid instruments if it determines that it is in the public interest and consistent with the Commodity Exchange Act, and the product is not predominantly a banking product under the test enumerated in title IV of the Commodity Futures Modernization Act of 2000.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/03	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AB69

**3924. USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES**

**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:** None

**Abstract:** The Commission is required to coordinate with the Securities and Exchange Commission, the Secretary of the Treasury and Federal banking regulators (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to implement the provisions of the Commodity Futures Modernization Act of 2000 relating to the use of broker-dealers, depository institutions, and farm credit system institutions as intermediaries on derivatives transaction execution facilities.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/03	

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

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**RIN:** 3038-AB70

**3925. COMPLIANCE DATE FOR SECURITY FUTURES PRODUCTS TO BE CLEARED BY A CLEARING AGENCY THAT HAS LINKED AND COORDINATED CLEARING WITH OTHER CLEARING AGENCIES**

**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:** None

**Abstract:** The Commission and the Securities and Exchange Commission are required to jointly publish in the Federal Register a notice of the compliance date for requiring security futures products to be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products to be purchased on one market and offset on another market that trades such product within 165 days of the compliance date.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/03	

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

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**RIN:** 3038-AB74

**3926. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS**

**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:** None

**Abstract:** The Commission and the Securities and Exchange Commission are required to jointly issue 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.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/03	

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

## CFTC

## Proposed Rule Stage

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**RIN:** 3038-AB75

### 3927. 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, Prior to 12/21/2001.  
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 adopt 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	01/00/03	

#### Regulatory Flexibility Analysis Required: No

**Government Levels Affected:** None

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**RIN:** 3038-AB78

### 3928. • ALLOCATION OF BUNCHED ORDERS

**Priority:** Substantive, Nonsignificant  
**Legal Authority:** 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763  
**CFR Citation:** 17 CFR 1.35  
**Legal Deadline:** None

**Abstract:** The Commission intends to propose procedures for streamlining the allocation of bunched orders for futures and commodity option trades, as well as the associated recordkeeping requirements. The proposal was referred to in the Commission's intermediaries study, and it addresses concerns regarding the possibility of fraud and money-laundering activities.

#### Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	03/00/03	

#### Regulatory Flexibility Analysis Required: No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 3038-AB93

### 3929. • TREATMENT OF FOREIGN FUTURES OR FOREIGN OPTIONS SECURED AMOUNT

**Priority:** Substantive, Nonsignificant  
**Legal Authority:** 7 USC 6  
**CFR Citation:** 17 CFR 30.7

**Legal Deadline:** None

**Abstract:** The Commission intends to propose an amendment to Rule 30.7 to provide that a futures commission merchant that holds funds on behalf of customers for trading futures and options on foreign markets may invest such funds in certain permitted investments. The proposal would establish investments that are comparable to the investments that a futures commission merchant may make with customer funds deposited for trading on United States markets pursuant to Rule 1.25.

#### Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	06/00/03	

#### Regulatory Flexibility Analysis Required: No

**Government Levels Affected:** None

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**RIN:** 3038-AB96

## Commodity Futures Trading Commission (CFTC)

## Final Rule Stage

### 3930. PERFORMANCE DISCLOSURES FOR COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS

**Priority:** Substantive, Nonsignificant  
**Legal Authority:** 7 USC 6n; 7 USC 6o; 7 USC 12a  
**CFR Citation:** 17 CFR 4.25; 17 CFR 4.35

**Legal Deadline:** None

**Abstract:** The Commodity Futures Trading Commission is proposing amendments to the requirements concerning the presentation of rate of return data by commodity trading advisors and commodity pool operators. The Commission's proposed rules address computational and disclosure matters relating to

participating in commodity trading advisor programs on a partially funded basis.

#### Timetable:

Action	Date	FR Cite
ANPRM	06/18/98	63 FR 33297
ANPRM Comment Period End	09/16/98	
NPRM	08/02/99	64 FR 41843

## CFTC

Final Rule Stage

Action	Date	FR Cite
NPRM Comment Period End	10/01/99	
Final Action	11/00/02	

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 3038-AB39

### 3931. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES

**Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c**CFR Citation:** 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10**Legal Deadline:** None

**Abstract:** The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to customers located in the United States. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: (1) those that carry customer omnibus accounts for U.S. FCMs; (2) those that carry U.S. affiliate accounts that are proprietary to the foreign futures and options broker; and (3) those that carry U.S. accounts

that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

**Timetable:**

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46613
NPRM Comment Period End	10/25/99	
Final Action	12/00/02	
Final Action Effective	02/00/03	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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**RIN:** 3038-AB45

### 3932. • CUSTOMER IDENTIFICATION PROGRAM FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

**Priority:** Substantive, Nonsignificant**Legal Authority:** PL 107-56, sec 326, codified at 31 USC 5318(l)**CFR Citation:** 31 CFR 103; 31 CFR 123; 17 CFR 1**Legal Deadline:** NPRM, Statutory, October 25, 2002.

**Abstract:** The Department of the Treasury and the Commodity Futures Trading Commission are required to jointly prescribe regulations relating to customer identification programs for futures commission merchants and introducing brokers.

**Timetable:**

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48328
Comment Period End	09/06/02	
Final Action	12/00/02	

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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**RIN:** 3038-AB90

### 3933. • REPORTING LEVELS FOR LARGE TRADER REPORTS; TRAKRS

**Priority:** Substantive, Nonsignificant**Legal Authority:** 7 USC 6g; 7 USC 6i; 7 USC 7; 7 USC 7a; 7 USC 12a**CFR Citation:** 17 CFR 15.03**Legal Deadline:** None

**Abstract:** The Commission is proposing to amend part 15 of its rules, 17 CFR part 15, to establish a reporting level for TRAKRS futures contracts to be traded on the Chicago Mercantile Exchange.

**Timetable:**

Action	Date	FR Cite
NPRM	08/05/02	67 FR 50608
NPRM Comment Period End	09/04/02	
Final Action	11/00/02	

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 3038-AB91

## Commodity Futures Trading Commission (CFTC)

## Long-Term Actions

**3934. PUBLIC REPORTING BY OPERATORS OF CERTAIN LARGE COMMODITY POOLS—REGULATIONS 4.7, 4.12, AND 4.27**

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 4.7; 17 CFR 4.12; 17 CFR 4.27 (Proposed)

**Timetable:**

Action	Date	FR Cite
NPRM	04/17/00	65 FR 20395
NPRM Comment Period End	06/16/00	

Next Action Undetermined

**Regulatory Flexibility Analysis**

Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038-AB40

**3935. TRADE OPTIONS ON ENUMERATED AGRICULTURAL COMMODITIES**

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 32.13

**Timetable:**

Action	Date	FR Cite
NPRM	12/13/00	65 FR 77838
NPRM Comment Period End	12/28/00	

Next Action Undetermined

**Regulatory Flexibility Analysis**

Required: No

Government Levels Affected: None

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RIN: 3038-AB61

**3936. EXEMPTION FROM COMPLIANCE WITH THE CRITERION FOR LINKED AND COORDINATED CLEARING**

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/03	

**Regulatory Flexibility Analysis**

Required: No

Government Levels Affected: None

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RIN: 3038-AB72

## Commodity Futures Trading Commission (CFTC)

## Completed Actions

**3937. MARGIN REQUIREMENTS FOR SECURITY FUTURES PRODUCTS**

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 41.43 to 41.48

**Completed:**

Reason	Date	FR Cite
Final Action	08/14/02	67 FR 53145
Final Action Effective	09/13/02	

**Regulatory Flexibility Analysis**

Required: No

Government Levels Affected: None

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RIN: 3038-AB71

**3938. AVOIDANCE OF DUPLICATIVE OR CONFLICTING REGULATIONS APPLICABLE TO DUAL REGISTRANTS**

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 1.3; 17 CFR 1.55; 17 CFR 41.41; 17 CFR 190

**Completed:**

Reason	Date	FR Cite
Final Action	09/13/02	67 FR 58284
Final Action Effective	09/13/02	

**Regulatory Flexibility Analysis**

Required: No

Government Levels Affected: None

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RIN: 3038-AB76

**3939. CASH SETTLEMENT AND REGULATORY HALTS REQUIRED FOR SECURITY FUTURES PRODUCTS**

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 41.25; 17 CFR 41.1

**Completed:**

Reason	Date	FR Cite
Final Action	05/24/02	67 FR 36739
Final Action Effective	06/24/02	

**Regulatory Flexibility Analysis**

Required: No

Government Levels Affected: None

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RIN: 3038-AB86

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