

current Commission regulations and guides.

**DATES:** Written comments will be accepted until June 21, 1999.

**ADDRESSES:** Mailed comments should be directed to: Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Mailed comments should be identified as "Fuel Guide, 16 CFR Part 256—Comment." E-Mail comments will be accepted at [FuelGuide@ftc.gov]. Those who comment by e-mail should give a mailing address to which an acknowledgment can be sent.

**FOR FURTHER INFORMATION CONTACT:** Willie L. Greene, Investigator, Federal Trade Commission, Cleveland Regional Office, Cleveland, OH 44114, telephone number (216) 236-3406.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Commission adopted the Guide Concerning Fuel Economy Advertising for New Automobiles in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy in advertising. Since its enactment, the Guide has advised marketers to disclose the established fuel economy of the vehicle as determined by EPA's Automobile Information Disclosure Act (15 U.S.C. 2206) in advertisements that make representations regarding the fuel economy of a new vehicle. These EPA fuel economy numbers also appear on window labels attached to new automobiles.

In 1978 and 1995, the Commission amended the Guide to make it consistent with EPA Information Disclosure Act changes regarding fuel economy disclosures. 43 FR 55757 (November 29, 1978); 60 FR 56230 (Nov. 8, 1995).

**II. Regulatory Review Program**

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the cost and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Guide concerning Fuel Economy Advertising for New Automobiles; possible conflict between the Guide and state, local or other federal laws; and the effect on the Guide of any technological, economic, or other industry changes.

**III. Request for Comment**

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Guide Concerning Fuel Economy Advertising for New Automobiles?

(a) What benefits has the Guide provided to purchasers of the product affected by the Guide?

(b) Has the Guide imposed costs on purchasers?

(2) What changes, if any, should be made to the Guide to increase the benefits of the Guide to purchasers? How would these changes affect the costs the Guide imposes on firms who conform to its advice? How would these changes affect the benefits to purchasers?

(3) What significant burdens or costs, including costs of compliance, has the Guide imposed on firms who conform to its advice? Has the Guide provided benefits to such firms? If so, what benefits?

(4) What changes, if any, should be made to the Guide to reduce the burdens or costs imposed on firms who conform to its advice? How would these changes affect the benefits provided by the Guide?

(5) Does the Guide overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Guide was issued, what effects have changes in relevant technology or economic conditions had on the Guide? Do sellers of automobiles use E-mail or the Internet to promote or sell by using fuel economy advertisements? Does the use of this new technology affect consumers' rights or advertisers' responsibilities under the Guide?

(7) Are there any abuses occurring in the promotion or advertising of fuel economy that are not covered by the Guide? If so, what mechanisms should be explored to address such abuses (*e.g.*, consumer education, industry self-regulation, revisions to the Guide)?

**List of Subjects in 16 CFR Part 259**

Advertising, Fuel economy, Trade practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 99-9842 Filed 4-21-99; 8:45 am]

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**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 5**

**Fees for Applications for Contract Market Designation**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed reduction of schedule of fees.

**SUMMARY:** The staff reviews periodically the Commission's actual costs of processing applications for contract market designation (17 CFR Part 5, Appendix B) and adjusts its schedule of fees accordingly. As a result of the most recent review, the Commission is proposing to establish reduced fees for a limited class of simultaneously submitted multiple contract designation application filings.

**DATES:** Comments must be received by May 24, 1999.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to Designation Fee Proposal.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, (201) 418-5275, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

**SUPPLEMENTARY INFORMATION:**

**I. History**

On August 23, 1983, the Commission established a fee for contract market designation (48 FR 38214). The fee was based upon a three-year moving average of the actual costs and the number of contracts reviewed by the Commission during that period of time. The formula for determining the fee was revised in 1985. At that time, most of the designation applications were for futures contracts rather than option contracts, and the same fee was applied to both futures and option designation applications.

In 1992, the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract designation. It also determined that, when designation

applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for reviewing both together was lower than for reviewing the contracts separately. Based on that finding, three separate fees were established—one for futures alone, one for options alone, and one for combined futures and option contract applications (57 FR 1372). The combined futures/option designation application fee is set at a level that is less than the aggregate fee for separate futures and option applications to reflect the fact that the cost for review of an option is lower when submitted simultaneously with the underlying future and to create an incentive for contract markets to submit simultaneously applications for futures and options on that future.

## II. Proposed Further Modifications to Fee Structure

The Commission is proposing to further modify its fees structure for a limited class of multiple designation applications submitted simultaneously relating to contracts: (i) which are cash settled based on an index representing measurements to physical properties or financial characteristics which are not traded per se in the cash market; (ii) which use the same procedures for determining the cash-settlement values for all contracts in the filing; (iii) as to which the procedure for determining the values which vary for the individual cash settlement prices is objective and the individual contract values represent a spatial or other variant of that procedure or a larger of smaller multiplier; and (iv) as to which all other terms and conditions are the same.<sup>1</sup> Commission fees for simultaneous submission of such multiple cash-

settled contracts would be equal to the prevailing fee for the the first contract plus 10 percent of that fee for each additional contract in the filing. This fee structure represents an extension of the policy adopted by the Commission in 1992 when it established reduced fees for option applications and for combined futures and option applications and would be consistent with the Commission's responsibility under the Independent Offices Appropriations Act (31 U.S.C. 9107 (1982)) to base fees on the costs to the Government.

The Commission believes that a 10 percent marginal fee for additional contracts in a filing is appropriate for applications submitted simultaneously that are eligible for the proposed multiple-contract filing fee. Because the multiple-contract filing fee applies only to cash-settled contracts based on objectively determined index values such that each separate contract represents only a spatial or other variant of that process and because the index is a measurement of a physical property or a financial characteristic which is not traded per se in the cash market, the Commission's review likely will not require a separate detailed analysis of each of the contracts in the filing. Moreover, for contracts meeting the standard for the multiple contract filing fee, the Commission's review of the cash settlement mechanism would involve a single analysis of the nature of the index and the process by which the underlying index values are determined. Separate comprehensive evaluations for each individuals index would not be required since the same calculations apply to each. Since the underlying instruments are not traded in the cash market, the Commission need not conduct separate reviews of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Because each contract much use an identical case-settlement procedure and all other material terms and conditions must be the same (except for the differentiated term of the specified contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because each contract in a filing must be differentiated only with respect to a single term or contract size feature that is not likely to affect the integrity of the cash settlement mechanism, each separate contract would not require a separate comprehensive analysis to ascertain its compliance with requirements for designation.

The Commission notes that, regardless of the fee assessed for designation applications, the Commission will continue to conduct the same comprehensive review to ensure that each proposed contract meets all requirements for designation set forth in Guideline No. 1. However, as explained above, for the types of applications covered by the multiple contract filing fee, the Commission's analysis of the cash settlement procedure in general and its review of the other material terms and conditions likely would be applicable to each contract in the filing. Only a limited incremental analysis would be required to assess whether each additional contract in such a filing meets the designation requirements of Guideline No. 1, resulting in a much higher degree of efficiency in reviewing the applications and substantially reducing the marginal cost for reviewing and processing the additional contracts. The Commission's extensive experience in reviewing new contract designation applications indicates that, for simultaneously submitted multiple contract filings meeting the specified standards, a fee for each additional contract equal to 10 percent of the single contract application fee would reflect the Commission's expected review costs for these types of applications. To the extent the Commission finds otherwise, this fee will be adjusted in subsequent years.

The Commission wishes to make clear that the reduced option fee for the limited class of multiple-designation applications applies only to options on futures applications and not to options on physicals applications.

Under the new procedures noted above, the Commission's proposed multiple contract designation application fees for filings meeting the standard discussed above would be as follows: For filings involving multiple cash-settled futures—\$6,800 for the first contract, plus \$680 for each additional contract; for filings involving multiple options on case-settled futures—\$1,200 for the first contract, plus \$120 for each additional contract; and for filings involving multiple combined cash-settled futures and options on those futures—\$7,500 for the first futures and option contract, plus \$750 for each additional futures and option contract. To be eligible for the reduced fees, contract markets must label the submission as a multiple contract filing and identify the cash settlement procedure to be used and the nature of the differentiated term or the different contract size specifications and justify why the application qualifies for this

<sup>1</sup> In this regard, contracts having differentiated spatial features include contracts that are identical in all respects including the cash settlement mechanism but which may be based on the application of differing objectively determined values for different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures such that the integrity of the cash settlement mechanism is not dependent on the individual contract specifications and that values which vary are derived objectively using the same source of type of data. Thus, for example, applications containing a number of similar cash-settled contracts based on indexes of government debt of different foreign countries would not be eligible for the reduced fee since the manipulation potential of each contract would be related to the liquidity of the underlying instruments and the individual trading practices and governmental oversight in each specific country, requiring separate analyses.

reduced fee. The Commission is seeking comment on this multi-contract designation application fee proposal.

### III. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies, in proposing rules, to consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and a registered futures association. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the Chairperson, on behalf of the Commission, certifies, pursuant to 5 U.S.C. 605(b), that the fees proposed herein will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, D.C. on April 15, 1999, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release Nos. 34-41288; FOIA-190; and PA-27; File No. S7-14-99]

RIN 3235-AH71

### Amendments to the Commission's Freedom of Information Act, Privacy Act, and Confidential Treatment Rules

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend its Freedom of Information Act, Privacy Act, and confidential treatment rules because they are outdated in many respects. The proposed amendments would conform these rules to current statutory and case law and administrative practice.

**DATES:** Comments must be received by June 21, 1999.

**ADDRESSES:** You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Stop 0609, Washington, DC 20549-0609. You may also submit your comments electronically to the following electronic address: rule-

comments@sec.gov. All comments letters should refer to File

No. S7-14-99; you should also include this file number in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We will post electronically-submitted comment letters on our Internet Web site (<http://www.sec.gov>).

**FOR FURTHER INFORMATION CONTACT:** Betty Lopez, FOIA/Privacy Act Officer (202) 942-4327; or Elizabeth T. Tsai, Staff Attorney, Office of Freedom of Information and Privacy Act Operations (202) 942-4326.

#### SUPPLEMENTARY INFORMATION:

#### I. Discussion of Rule Amendments

The Commission hereby proposes to amend its rules that allow persons to request records in its possession and request confidential treatment of records they submit to the Commission. The proposed amendments would make substantive and procedural changes to conform the rules to current statutory and case law and Commission practice. Other changes would correct clerical errors.

For example, under the proposed amendments, persons who voluntarily submit commercial or financial records to the Commission for which they are claiming confidentiality must stamp each page of the records "Voluntarily Submitted" in order to claim confidentiality under *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*.<sup>1</sup> Also, requests for confidential treatment and substantiations of such requests would be deemed confidential and effective for five years from the date of their last submission unless renewed by the requester.

Specifically, the Commission proposes to amend 17 CFR 200.80, 200.83, and 200.301 *et seq.* These rules lay down the procedures for requesting records under the Freedom of Information Act ("FOIA")<sup>2</sup> or the Privacy Act of 1974 ("Privacy Act")<sup>3</sup> and allow persons to request confidential treatment for records they submit to the Commission.<sup>4</sup>

#### A. Confidential Treatment Requests

##### 1. Background

The Commission has acquired, and will continue to acquire, a large number

of records from private parties. Some of these records are regarded as very sensitive by the persons providing them. Yet, members of the public often want access to those records in the Commission's possession. Under the FOIA, a request for agency records by any person must be honored unless they are exempt from disclosure.<sup>5</sup>

Thus, the Commission must carefully weigh competing interests in fulfilling its obligation to disclose non-exempt records to the public under the FOIA, while preserving the legitimate interest of the submitter in keeping sensitive records confidential. The Commission wants to assure submitters of records that it will preserve the confidentiality of such records to the extent permitted by law and consistent with the Commission's responsibilities.<sup>6</sup> The Commission believes that the submission of records will be encouraged if the Commission maintains procedures that promote the fair evaluation of claims of confidentiality and enable it to determine which records may be withheld from disclosure under the FOIA.

To that end, in 1980, the Commission adopted confidential treatment procedures which apply to documents for which there is no other specific procedure to obtain confidentiality and which, in the normal course of Commission business, would not be placed in a public file.<sup>7</sup> The Commission amended these rules in 1982 to provide that, by delegated authority from the Commission, the General Counsel would decide confidential treatment appeals.<sup>8</sup>

One of the proposed amendments would implement the opinion of the District of Columbia Circuit in *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*,<sup>9</sup> in which the Court held that commercial or financial information, which is voluntarily submitted to an agency and is of a kind that the submitter would not customarily disclose to the public, is deemed confidential and, thus, exempt from disclosure under Exemption 4 of

<sup>5</sup> See 5 U.S.C. 552(b) (FOIA exemptions).

<sup>6</sup> A grant of confidential treatment does not preclude appropriate disclosure of the information, such as to Congress or another governmental authority. Nor does it preclude disclosure under a court order or subpoena.

<sup>7</sup> See 45 FR 62418, Sept. 19, 1980. The rule requires persons wishing to make a request for confidential treatment to submit their request at the time the information is first provided to the Commission or as soon thereafter as possible.

<sup>8</sup> 47 FR 20287, May 12, 1982.

<sup>9</sup> 975 F.2d 871 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993).

<sup>1</sup> 975 F.2d 871, 880 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993).

<sup>2</sup> 5 U.S.C. 552.

<sup>3</sup> 5 U.S.C. 552a.

<sup>4</sup> 5 U.S.C. 552.