Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–43.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Two Harbors, MN, to accommodate aircraft executing the proposed GPS Rwy 24 SIAP at Richard B. Helgeson Airport by increasing the radius of, and adding a northeast extension to, the existing controlled for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Two Harbors, MN [Revised]

Richard B. Helgeson Airport, MN
(Lat. 47°02′55″ N, long. 91°44′43″ W)
ANATE Waypoint
(Lat. 47°05′30″ N, long. 91°37′46″ W)

The airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Richard B. Helgeson Airport and within 2.7 miles each side of the 073° bearing from Richard B. Helgeson Airport, extending from the 6.4-mile radius to 7.4 miles northeast of the airport, and within 4.0 miles each side of the 042° bearing from ANATE Waypoint, extending from the waypoint to 6.4 miles northeast of the waypoint, excluding that airspace within the Silver Bay, MN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 6, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–19102 Filed 7–16–98; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 17, 18, and 150

Revision of Federal Speculative Position Limits and Associated Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has long established and enforced speculative position limits for futures contracts on various agricultural commodities. On April 7, 1993, the Commission promulgated interim final

rules amending Federal speculative position limits. The interim amendments generally maintained the existing speculative position limit levels for the delivery months and increased limit levels for the deferred months, at levels below those originally proposed. The Commission is proposing to raise the levels of speculative position limits for the deferred months to the levels originally proposed.

In addition, the Commission is proposing to codify various policies relating to the requirement that exchanges set speculative position limits as required by rule 1.61, 17 CFR 1.61. These relate to the levels which the Commission has approved for such rules, and to various exemptions from the general requirement that exchanges set speculative position limits which the Commission has approved over the years. Specifically, the Commission is proposing to codify an exemption permitting exchanges to substitute position accountability rules for position limits for high volume and liquid markets. The Commission is proposing elsewhere in this issue of the **Federal Register** to amend its guideline for application for contract market designation to conform it to the changes to the speculative position limit rules proposed herein that apply at initial contract designation. *See,* Guideline No. 1, 17 CFR Part 5, Appendix A.

The Commission is also proposing to amend the applicability of the limited exemption from non-spot month speculative position limits under Commission rule 150.3, 17 CFR 150.3, for entities that authorize independent account controllers to trade on their behalf. Specifically, the Commission is proposing to amend the definition of entities eligible for this relief under Commission rule 150.1(d), 17 CFR 150.1(d), to expand the categories of eligible entities and to extend it to the separately incorporated affiliates of an eligible entity.

Finally, the Commission is proposing to amend its rule on aggregation. In particular, the Commission is proposing to clarify the applicability of a limited partnership exemption to limited partners or shareholders with less than a 25% ownership interest, or to pooled trading accounts with ten or fewer account owners. The Commission is also proposing to amend its rules to clarify that a commodity pool operator's principals and its affiliates are treated the same as the commodity pool operator itself for purposes of the Commission's aggregation rule.

DATES: Comments must be received by September 15, 1998.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Speculative Position Limits.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Speculative position limits have been a tool for regulation of futures markets for over sixty years. Since the Commodity Exchange Act of 1936, Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations.[1] Section 4a(1) of the Commodity Exchange Act (Act), 7 U.S.C. 6a(1), provides the Commission with authority to:

> fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

The Commission directly administers speculative position limits on futures contracts for most of the domestic agricultural commodities enumerated in section 2(a)(1) of the Act. *See,* 17 CFR Part 150. Prior to the Act's amendment in 1974 which expanded its jurisdiction to all ''services, rights and interests'' in which futures contracts are traded, only these enumerated commodities were regulated. Both prior to and after the 1974 amendments to the Act, futures markets which traded commodities not so enumerated applied speculative position limits by exchange rule, if at all. In 1981, the Commission promulgated rule 1.61, requiring exchanges to adopt rules setting speculative position limits for all contract markets not subject to Commission-set speculative position limits. Since then, all contract markets have been subject to either Commission or exchange-set speculative position limits.[2] Responsibility for enforcement of speculative position limits is shared by the Commission and the exchanges.[3]

The Commission periodically has reviewed its policies and rules pertaining to each of the three elements of the regulatory framework for speculative position limits—the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts.[4] The Commission, in this notice of proposed rulemaking, is proposing to raise the levels of the Commission speculative position limits and to codify a number of broad exemptions from the requirement of rule 1.61 that exchanges establish speculative position limits for all contracts not subject to Commission

[1] *See,* H.R. Rep. No. 421, 74th Cong., lst Sess. 1 (1935); *See also,* H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986). Section 4a(1) of the Commodity Exchange Act, 7 U.S.C. 6a(1), makes the explicit finding that:

> [e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

[2] Commission rule 1.61, 17 CFR 1.61, requires that, absent an exemption, exchanges adopt and enforce speculative position limits for all contract markets which are not subject to the Commission-set limits. In addition, Commission rule 1.61 permits exchanges to adopt and enforce their own speculative position limits for those contracts which have Commission speculative position limits, as long as the exchange limits are not higher than the Commission's.

[3] Section 4a(e) provides that a violation of a speculative position limit established by a Commission-approved exchange rule is also a violation of the Act. Thus, the Commission can enforce directly violations of exchange-set speculative position limits as well as those provided under Commission rules.

[4] Initially, for example, the Commission redefined ''hedging'' (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and in 1979 issued its statement of policy on aggregation of accounts and adoption of related reporting rules (1979 Aggregation Policy), 44 FR 33839 (June 13, 1979).

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the ''temporary substitute'' and ''incidental'' tests (52 FR 27195 (July 20, 1987)) and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission rule 150.3(a)(4), an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities which use independent account controllers. The Commission subsequently amended Commission rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

In 1991, the Commission solicited public comment on, and subsequently approved, exchange requests for exemptions for futures and option contracts on certain financial instruments from the Commission rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

limits. These exemptions to rule 1.61 were established through a series of Commission interpretations. The Commission is also proposing to broaden its speculative position limit exemption under rule 150.3 for independent account controllers and to amend its aggregation policy.

II. Commission Speculative Position Limit Levels

In 1987, the Commission completely revised Commission speculative position limits. 52 FR 38914 (October 20, 1987). As part of these revisions, the Commission added Commission speculative position limits for soybean meal and soybean oil, which, because of an historical anomaly, previously were not included. The Commission also amended the structure and levels of the Commission speculative position limits. It restructured speculative position limits by establishing them by contract market, rather than generically by commodity. The Commission proposed generally to increase limit levels from the spot-month limits, which were not proposed to be increased, to progressively higher individual-month and all-futures-combined limits. However, the rules as promulgated generally did not provide for such stepped increases. Instead, the amended rules generally maintained the then existing structure of a uniform spot- and single-month level and only increased the all-months-combined level.[5]

In 1991, the Chicago Board of Trade (CBT), the New York Cotton Exchange (NYCE), the Kansas City Board of Trade (KCBT) and the Minneapolis Grain Exchange (MGE) petitioned the Commission to increase further the levels of Commission speculative position limits.[6] On August 2, 1991, the Commission published in the **Federal Register** notice of, and requested public comment on, these petitions for rulemaking. 56 FR 37049.

On April 13, 1992, the Commission proposed a number of revisions to the structure and levels of Commission speculative position limits. 57 FR 12766. The Commission proposed these revisions to the levels of the speculative position limits based upon two criteria: (1) the distribution of speculative traders in the markets; and (2) the size of open interest. Previously, the Commission had given little weight to the size of open interest in the contract in determining the appropriate speculative position limit level. The Commission noted, however, that the size of open interest and the distribution of speculative traders had not increased at the same rate over time. Accordingly, the Commission determined that, in proposing the new levels, both criteria should be taken into account. The Commission noted that:

> [t]his approach will permit speculative position limits to reflect better the changing needs and composition of the futures markets, while adhering to the policies of the Act and Commission Rule 1.61. Although the Commission in setting levels is proposing to place greater reliance on the criterion of percentage of open interest represented by a particular level than previously, it has always recognized that there is a range of acceptable limit levels [.] * * * even when relying on a single criterion * * *.

57 FR 12770.

In proposing these increases to the limit levels, the Commission reasoned that, as the total open interest of a futures market increased, speculative position limit levels could be raised. The Commission therefore applied the open interest criterion by using a formula that specified appropriate increases to the limit level as a percentage of open interest. Specifically, the Commission proposed combined futures and option speculative position limits for both a single month and for all months combined at the level of 10% of open interest up to an open interest of 25,000 contracts, with a marginal increase of 2.5% thereafter. It reasoned that such levels were ''not excessively large under the criteria of Commission rule 1.61.''[7] *Id.* The Commission also determined that this analysis did not apply to spot-month levels, which are ''based most appropriately on an analysis of current deliverable supplies and the history of various spot-month expirations.'' *Id.*

The Commission received 63 comments in response to the proposed rules.[8] Typically, commodity pool operators, commodity trading advisors and futures commission merchants strongly favored the amendments. Most agricultural producers and their representative organizations strongly opposed any increase to the speculative position limits. Others, however, recommended that the Commission proceed, but in a more cautious manner. In particular, they recommended that the Commission raise speculative position limits on a phased or test basis. These commenters advocated taking additional time to study the need for, and the possible effects of, further increasing speculative position limits, and in their view, the trial implementation of expanded speculative limits would provide such an additional opportunity.

Based on its consideration of the comments received and its favorable administrative experience with the rule's prior amendment, the Commission in April 1993 adopted interim final rules to Commission speculative position limits. These interim amendments increased the position limit levels by half of the increase originally proposed, in two steps. 58 FR 18057 (April 7, 1993). The first phase, which took effect on June 7, 1993, increased speculative position limits by combining the previously separate futures and option limits. The second phase, which took effect on March 31, 1994, increased the back-month speculative position limits halfway to the level originally proposed by the Commission.

When the Commission adopted the interim final rules, it provided notice that the comment period on the original proposed levels would be reopened in March 1994, coinciding with implementation of the second phase of the interim rules. The comment period

[5] However, the Commission did set stepped increases for the cotton contract. Those commenting on the grain and soybean complex limits opposed telescoping limits, in part, in an attempt to promote greater liquidity in the back months. In contrast, those commenting on the proposed speculative position limits in cotton did not object to the higher single-month limit level. 52 FR 38916.

In light of the strong preferences expressed by the commenters at that time, and the range of acceptable solutions which the data supported, the Commission acceded to the views of the commenters. Subsequently, as it expected, the Commission's experience monitoring both Commission and exchange-set limits with stepped increases was favorable. None of the adverse consequences hypothesized by the opposing commenters occurred.

[6] These petitions requested that the Commission amend its rules to increase Commission speculative position limits in the CBT corn, wheat, oats, soybeans, soybean oil, and soybean meal futures contracts, in the NYCE's cotton No. 2 futures contract, and in the KCBT's and MGE's wheat futures contracts. The CBT also requested that the Commission expand the current exemption for spread positions between months within the same crop year to an exemption for spread positions between any months, outside of the spot month, regardless of the crop year and to increase the overall level of this exemption. The CBT separately sought Commission approval for increases to the exchange-set speculative position limits on these commodities.

[7] Providing for a marginal increase to the speculative position limit of 2.5% was ''based upon the universal observation that the size of the largest individual positions in a market do not continue to grow in proportion with increases in the overall open interest of the market.'' *Id.* The Commission also proposed a minimum of 1,000 contracts.

[8] Those commenters included three futures exchanges; a broad-based futures industry association; four futures commission merchants; 26 commodity pool operators, commodity trading advisors or associations of such entities; 20 groups or firms representing agricultural interests; eight individual agricultural producers; and one exchange member. In addition, the proposed rules were a topic of discussion at the October 19, 1992, meeting of the Commission's Agricultural Advisory Committee.

was kept open for a year, closing on April 30, 1995. Anticipating that it would determine whether to adopt the levels originally proposed based upon trading experience under the interim rules, the Commission directed the Division of Economic Analysis (Division) to study the effects of the phased increases.

In April 1995, the Division reported to the Commission on the interim rule's effects. The report reviewed trading under both phases of the interim rules over a period of eighteen months and was based upon an analysis of extensive Commission and exchange data relating to individual and aggregate positions of reportable traders, as well as inter- and intra-day price series for the entire period of 1988 through 1994. The report concluded that overall the impact of the interim final rules on actual, observed large trader position was modest and that any changes in market performance were most likely attributable to factors other than changes in the rules.

Specifically, the report concluded that the phase 1 and phase 2 modifications of futures and option limits had little impact on the overall activities of large traders during the first 18 months of the interim final rules with relatively few speculative traders increasing the size of their positions above the previously permitted levels. The report further concluded that the periods of higher volatility and measurable changes in market liquidity observed in particular markets during the first 18 months of the interim rules appear to have been a result of rapidly-changing cash market conditions rather than the amended limits. Finally, the report concluded that there was no discernable negative impact on commercial use of the markets during the time period studied.

Only 13 comment letters were received during the post-phase 2 comment period, none from agricultural interests. Generally, all of the commenters supported increasing Commission speculative position limit levels as originally proposed. However, at that time concerns began to arise regarding the continued viability of the delivery provisions of the CBT's corn, soybean, and wheat futures contracts. The Commission directed its attention to resolving those surveillance-related concerns before further raising speculative position limit levels. Accordingly, the Commission took no further action on the proposed rules, and they remain pending.

The Commission recently reviewed open interest and trader position data to determine market changes since the Division's report to it following implementation of the phase 2 limits. With the exception of CBT oats, the markets' 1997 open interest substantially exceeded their 1994 open interest.[9] Although the Division's report concluded that the phase 1 increases to speculative position limits had little discernable impact on trader behavior, since then the number of large traders in these markets, the general size of their positions and the number of large traders holding positions above the phase 1 speculative position limits have increased. In addition, a number of traders now frequently hold positions greater than 80% of the current phase 2 all-months-combined level. These increases suggest that, under both of the criteria the Commission has applied in the past—size of traders' positions and open interest—expansion of the back month speculative position limits to the levels originally proposed is appropriate.

Accordingly, the Commission is reproposing to raise the back month speculative position limits to the levels it proposed initially. Consistent with its previous determination, the Commission is not proposing any change to spot-month limits.[10] The Commission has determined to seek public comment on the reproposed levels because commenters may have modified their views or additional persons may have formed an opinion during the extended period of time since the comment period closed. The following table compares the phase 2 speculative position limits now in effect for selected contracts to those that the Commission is reproposing.

SPECULATIVE POSITION LIMITS

[by contract][11]

Contract	Current levels (as of March 31, 1994)			Reproposed levels		
	Spot month	Single month	All months	Spot month	Single month	All months
CHICAGO BOARD OF TRADE						
Corn	600	3,400	6,000	600	5,500	9,000
Oats	400	900	1,200	400	1,000	1,500
Soybeans	600	2,400	4,300	600	3,500	5,500
Wheat	600	2,100	3,200	600	3,000	4,000
Soybean Oil	540	2,000	3,100	540	3,000	4,000
Soybean Meal	720	2,200	3,400	720	3,000	4,000
MIDAMERICA COMMODITY EXCHANGE						
Corn	600	1,200	1,200	600	1,200	1,200
Soybeans	600	1,200	1,200	600	1,200	1,200
Wheat	600	1,200	1,200	600	1,200	1,200
MINNEAPOLIS GRAIN EXCHANGE						
Hard Red Spring Wheat	600	2,100	3,200	600	3,000	4,000
White Wheat	600	1,200	1,200	600	1,200	1,200

[9] In its interim final rulemaking, the Commission determined to maintain a parity of limit levels for wheat traded on the CBT, KCBT, and MGE. 58 FR 17979–179080. Accordingly, only data from the larger CBT wheat market were analyzed.

[10] The Commission originally proposed to increase the spot month limit in oats based upon changes in the cash market. *See* 57 FR at 12770, n. 17. The increases noted at the time have since reversed. Accordingly, the Commission is not proposing any change to the current spot month limit for oats.

SPECULATIVE POSITION LIMITS—Continued

[by contract] [11]

Contract	Current levels (as of March 31, 1994)			Reproposed levels		
	Spot month	Single month	All months	Spot month	Single month	All months
NEW YORK COTTON EXCHANGE						
Cotton No. 2	300	1,600	2,500	300	2,500	3,500
KANSAS CITY BOARD OF TRADE						
Hard Winter Wheat	600	2,100	3,200	600	3,000	4,000

[11] The limits are shown here in terms of the contract size traded on each exchange. The size of the speculative position limit being proposed is based upon the current contract size. Any subsequent change in contract size would require a conforming adjustment to the limit. For comparative purposes, the MCE limits are expressed here as though its contracts were for 5,000 bushels, the contract size traded on the CBT. MCE contracts are actually for 1,000 bushels, and its limits therefore would be five times the size shown on the table.

III. Exemptions From Required Exchange-set Speculative Position Limits

Although Commission rule 1.61 generally requires that all contract markets not subject to Commission speculative position limits impose exchange-set speculative position limits, the Commission over the years has approved a number of significant exemptions from this requirement. These exemptions were approved by the Commission under Commission rule 1.61(e), a broad exemptive provision enabling the Commission to exempt contract markets ''consistent with the purposes of this section.'' In each case, the Commission considered and granted such an exemption by approving a proposed rule change of a contract market.

The first of these exchange rule changes was submitted for Commission approval by the Chicago Mercantile Exchange (CME). In requesting public comment on the proposed rule change, the Commission explained that it was considering granting exemptive relief based upon one of the factors included in rule 1.61 for setting speculative positions limit levels—the ''breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market in the commodity underlying the futures contract.'' *See,* 56 FR 51687, 51688 (October 15, 1991), citing Commission rule 1.61(a)(2). The Commission further explained that, ''(b)ased upon its over ten-years experience in administering rule 1.61, the Commission believes that exemptions for three classes of futures and option contacts with varying degrees of exchange supervision for each class could be appropriately considered * * *.''

These three classes were based upon the depth and liquidity of the underlying cash market and the ease of arbitrage between the futures and underlying cash market. The three classes were futures and option contracts on foreign currencies and futures and option contracts on two broad categories of financial instruments. The two categories for futures and option contracts on financial instruments were based upon the relative degree of liquidity in both the futures and option markets and in the cash market for the underlying instrument. The Commission subsequently added a fourth exemptive class, comprised of contracts for certain physical commodities. *See,* 57 FR 29064.

The Commission explained that it would exempt contracts in major foreign currencies from all of rule 1.61's requirements based upon their nearly inexhaustible deliverable supply, the very highly liquid underlying cash markets and the great ease of arbitrage between the cash and futures markets thereon. Contract markets which have been so exempted are the NYCE U.S. dollar index and NYFE foreign currencies.[12]

The second category of exempt contracts applies to futures and option contracts on financial instruments which exhibit the highest degree of liquidity in both the futures and cash markets, which are readily arbitraged. The Commission noted that for this class of contract the required speculative position limit could be replaced with a position accountability rule. Position accountability rules impose a level which triggers distinct reporting responsibilities by a trader at the request of the applicable exchange. The CME Eurodollar contracts and the CBT U.S. Treasury bond contracts were exempted under this category.[13]

The third class of exemptions was not contract markets on financial instruments having a highly liquid futures or cash market, but not of the same magnitude of liquidity as those in the highest class. For this class of contract, the position accountability rule should include, in addition to the specified reporting requirements, automatic consent of the trader not to increase further those positions which exceed the triggering level when so ordered by the exchange acting in its discretion.[14] *See,* 56 FR 51688–89. Examples of contract markets falling within this category include CBT U.S. Treasury notes and Eurodollars, NYCE 5-year U.S. Treasury notes, CME one-month LIBOR, and MCE U.S. Treasury bonds.

Finally, the Commission noted that certain contractors for tangible commodities such as precious metals and energy contracts are characterized by underlying cash markets with liquidity equivalent to or greater than certain of the financial futures and options which the Commission exempted. Because of the limitation on the delivery mechanisms of physically-delivered contracts, however, the Commission limited the exemption for such contracts on physical commodities to the deferred trading months, requiring retention of a spot-month speculative position limit. COMEX gold,

[12] THe CME and the Philadelphia Board of Trade (PBOT), as a matter of exchange choice, have not included their foreign currency contracts in this category, instead applying to them a position accountability rule.

[13] As noted above, the CME and the PBOT voluntarily apply a ''category 2'' position accountability rule to their foreign currency contracts.

[14] The Commission also noted that all such exemptions under rule 1.61(e) must include appropriate plans for the continued surveillance and exchange supervision of trading in these contract markets and for monitoring and review of the operation of the exemption.

silver, and copper contracts are examples of such contracts.[15]

These policies were first considered by the Commission in connection with specific exemptive requests by exchanges for existing contracts and, because they are based in part on the liquidity of the futures markets, are applicable only to existing markets. Except for several applications for designation of new foreign currency futures adoption contracts,[16] the Commission has approved few additional exemptions since granting the initial exemptive requests.[17] Moreover, the Commission has never formally promulgated these exceptions, nor has it incorporated these policies into Guideline No. 1, the Commission's guideline for exchange compliance with the requirements for contract market designation. As a consequence, the exemptions, which appear only in a number of **Federal Register** notices, are not readily accessible to those unfamiliar with Commission precedent.

Similarly, the open-interest criterion and numeric formula used by the Commission in its 1991 proposed amendment of Commission speculative position limits, which have provided the most definitive guidance by the Commission to date on acceptable levels for speculative position limits for tangible commodities, have not been promulgated as Commission rules.[18] Rather, the staff routinely has applied that formula (and its associated minimum levels) as a matter of administrative practice when reviewing proposed exchange speculative position limits under Commission rule 1.61. The staff examines exchange speculative position limit rules in connection with its review of applications for designation of futures and option contracts and of any subsequent proposed increases to those limits. Despite the formula's widespread use as a rule of thumb, it is not readily accessible in its present form.

The Commission is proposing to promulgate these informal policies as rules and, in a companion notice of proposed rulemaking located elsewhere in this edition of the **Federal Register**, is proposing conforming amendments to Guideline No. 1. Promulgating these policies within a single section of the Commission's rules will increase significantly their accessibility and clarify their terms.

As proposed by the Commission, the rules clarify several issues that the policies do not address. First, the proposed rules make clear that no speculative position limit or position accountability rule is required for designated contract markets in major foreign currencies. No such limitations are necessary because of the nearly inexhaustible deliverable supply of the major foreign currencies. Such foreign currencies are defined in the Commission's fast-track designation rule as a foreign currency ''for which there is no legal impediment to delivery and for which there exists a liquid cash market.'' 17 CFR 5.1(a)(2)(i). The Commission is proposing that contract markets in other, less liquid foreign currencies be treated as a futures or option contract on any other financial instrument or product.[19]

The remaining position accountability categories are proposed to apply only to existing futures and option contracts.[20] Consistent with the policies, under the proposed rule, the type of position accountability rule that applies to a particular contract market is determined by the liquidity of the futures market, the liquidity of the cash market and the Commission's oversight experience. The Commission is proposing, however, to restate the criteria with greater clarity and precision, particularly in measuring the necessary levels of liquidity of the futures and option markets.[21]

The Commission is proposing to quantify the necessary levels of futures market liquidity similar to its use of a formula to set (and to increase) speculative position limits. The formula is based upon a market's open interest, a measure of its overall relative size.[22] When substituting position accountability rules for speculative position limits, however, the liquidity of the futures and option market—measured by volume of trading—is also particularly important.[23] Accordingly, the Commission is proposing to restate the futures market liquidity criterion as a required minimum level of open interest combined with specified, increasing levels of trading volume. As the level of open interest increases, the extent of the exemptive relief increases as well.

Specifically, the Commission is proposing that contract markets be eligible for position accountability rules in the non-spot months if they have a minimum month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts, both measured in terms of all months combined for the most recent calendar year. Financial futures contracts, as well

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[15] Although the Commission cited certain energy contracts as eligible for such treatment, the New York Mercantile Exchange (NYMEX) has not sought such treatment for its contract markets. COMEX was acquired by NYMEX and is now a division of NYMEX.

[16] Although the Commission exempted foreign currency contracts from the requirement for position accountability rules based upon the recognized liquidity of the underlying cash markets in the major foreign currencies, it has also approved, as a matter of exchange preference, ''category 2'' position accountability rules (a purely informational provision) for a number of such contracts. Futures and option contracts based on a non-major foreign currency, which are required to include position accountability rules, have been approved for ''category 4'' position accountability rules with spot-month speculative position limits.

[17] However, the Commission did approve for position accountability rules several newly designated contracts which are spreads between existing contracts on financial instruments that are the subject of contracts already having position accountability rules. These spread contracts, the CBT Yield Curve Spreads, were approved for the ''category 4'' position accountability exception.

[18] In addition, in reviewing applications for contract designation for tangible commodities, the staff has relied upon the Commission's formulation providing for a minimum level of 1,000 contracts for non-spot-month speculative position limits. Moreover, the Commission has routinely approved a level of 5,000 contracts for non-spot months in applications for designation of financial futures and energy contracts and that level has become a rule of thumb as a matter of administrative practice.

[19] Although the Commission approved an exchange proposal to apply ''category 2'' position accountability rules, which is a purely informational provision, to its futures and option contracts on major foreign currencies, the Commission does not require any position accountability rule for such contracts. Futures and option contracts on non-major foreign currencies are required to include a position accountability rule. Accordingly, the Commission approved a ''category 4'' position accountability exception (spot month limit and a provision enabling the exchange to order a trader not to increase further a position) for such a non-major foreign currency.

[20] As explained above, the only instances where position accountability rules were permitted in the absence of prior trading history was where the contracts were closely related to existing contracts for which position accountability rules had already been approved.

[21] The policy provided that position accountability could be based on either a liquid futures or cash market. The Commission is proposing to require that both the cash and futures markets be liquid. Accordingly, no futures contract can meet the proposed rule's requirement at the time of its initial designation and must first establish a trading history. The Commission will apply the rule prospectively, and any designated contracts or pending designation applications that have position accountability rules in place in reliance on the liquidity of the cash market alone may continue to rely on the policy. The Commission is seeking comment specifically on this proposed change, its proposed application only to designation applications filed after the effective date of the rule and whether the proposed rule would entail any adverse consequences.

[22] The rationale for this criterion is that, as a market's overall size grows, the size of the individual speculative positions that it can absorb and carry without adverse impact increases.

[23] A liquid market is one which has sufficient trading activity to enable individual trades coming to a market to be transacted without significantly affecting the price. A high degree of liquidity in the futures and option market better enables traders to arbitrage these markets with the underlying cash markets. Where the underlying cash markets in turn are very liquid and have extremely large deliverable supplies, the threat of market manipulation or distortions caused by large speculative positions is lessened. *See*, 56 FR at 51689.

as contracts on tangible commodities having the requisite cash market liquidity, are eligible for this proposed exemptive treatment. Financial futures contracts having a minimum month-end open interest of 50,000 contracts and an average daily trading volume of 25,000 contracts need not impose a spot month limit, but must have a position accountability rule that enables the exchange to order traders not to increase further their positions. Financial futures contracts having a minimum month-end open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts may have a position accountability rule which only requires that traders provide specified information to the exchange if so ordered.

In addition to a liquid futures market, the Commission has looked to the liquidity in the underlying cash market and to its administrative experience in approving position accountability rules for particular contract markets. The Commission is not proposing to quantify an acceptable measure of cash market liquidity. Cash markets differ greatly, and many are decentralized, making it difficult to propose a uniform means of measuring their liquidity. Generally, however, in assessing the liquidity of cash markets, the Commission looks to the depth of the market and the tightness of bids and offers. The final criterion—administrative experience—is based upon a contract market's surveillance history, whether it has been subject to problem expirations or liquidations and whether its terms or conditions are consistent with current cash market conditions.

IV. Issues Relating to Aggregation and Exemptions for Independently Controlled Accounts

Section 4a of the Act provides that, in determining whether a position exceeds the speculative position limits,

> the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.

The Commission and its predecessor agency have interpreted the ''held or controlled'' standard as applying both to ownership of positions or to control of trading decisions. Each aggregation criterion is applied separately.[24] However, beginning in 1979, the Commission has recognized a number of exceptions from the general principle. In its ''Statement of Policy on Aggregation of Accounts,'' 44 FR 83839 (June 13, 1979) (1979 Aggregation Policy), the Commission determined that a futures commission merchant (FCM) need not aggregate the discretionary trading accounts or customer trading programs through which a trader affiliated with, but independent of, the FCM directs trading of customer-owned positions or accounts. To demonstrate the trader's independence, the FCM must maintain only supervisory control over the trader, and trading decisions in the discretionary account or program must be made independently of trading decisions in all other accounts held by the FCM.[25] *Id.* at 33843

The 1979 Aggregation Policy was based in part on structural changes made by the futures industry to respond to the increased acceptance of professional management of trading accounts and the use of trading programs. *Id.* at 83840. Further responding to this continuing trend, the Commission in 1988 promulgated rule 150.3, 17 CFR 150.3, an exemption from speculative position limits for commodity pools or similar entities which use independent account controllers. 53 FR 41563 (October 24, 1988). Commodity pools, pension funds, and other similar entities are required to aggregate their positions as the owner of the trading accounts, even if those accounts are traded independently by multiple independent account controllers. Commission rule 150.3 exempted such entities which use independent account controllers from speculative position limits outside of the spot-month. The exemption permits the total positions of the trading entity or vehicle to exceed speculative limits during non-spot months, but requires that each independent account controller trading on the entity's behalf comply with the applicable limits. During the spot month, all positions of the entity are required to be aggregated and are subject to the spot-month speculative position limit level. Under the exemption as originally promulgated, those seeking exemptive treatment were required to file an application with the Commission and to document the independence of their account controllers.

In 1991, the Commission extended eligibility for this exemption to commodity trading advisors and greatly streamlined the application procedure. Subsequently, in 1992 the Commission made the exemption self-executing. 57 FR 44492 (September 28, 1992). Commenters on both the 1991 and 1992 amendments suggested that, in addition to commodity trading advisors, the exemption should be extended to others, including investment banks, other financial intermediaries, parent/affiliate firms, corporate divisions, commercial banks, merchant banks, and insurance companies. The Commission declined to do so, saying that it:

> is aware of no adverse market effects resulting from the exemptions granted so far.
>
> Nevertheless, * * * [t]he current exemption and the proposed expansion are limited to those who trade professionally for others. * * * The classes of trader suggested by commenters for inclusion in the exemption differ from this pattern. The Commission will undertake further expansion of the exemption after it has had an opportunity to assess the impact of the current expansion and has gained a better understanding of the characteristics of the market user who might benefit from, and their need for, such an exemption.

56 FR 14308, 14312 (April 9, 1991).

Commission rule 150.3 generally has worked well. It has provided flexibility to the markets, accommodating the continuing trend toward professional management of speculative trading accounts, while at the same time protecting the markets from the undue accumulation of large speculative positions owned by a single person or entity in the spot month. Since its amendment in 1991, most questions concerning rule 150.3 have related to its application to integrated financial services companies. The number and complexity of these companies has grown in the intervening years, a consequence of mergers and consolidation in the financial services sector. Such companies generally may include affiliated futures commission

[24] *See, e.g.,* Commission rule 18.01 (''holds, has a financial interest in or controls''). Using two independent criteria may lead to positions being aggregated in more than one manner. Although the Commission's large trader reporting system routinely aggregates positions reported by FCMs on the basis of the control criterion, Commission staff may direct FCMs to report particular accounts on the basis of ownership, as well. In addition, the Commission may require by special call that individual traders file large-trader reports for all positions which they own or control.

[25] The 1979 Aggregation Policy offered guidance on the criteria considered in determining whether the FCM exercises control over the trading decisions of the customer discretionary accounts or trading programs. These included the customer account agreement, advertising, the agreements between the FCM and its employee or other trader, the degree of supervision, the confidentiality of the program's trading decisions, reliance on the FCM for market information, and financial investment by the FCM in the program greater than 10% and common trading patterns. *Id.* at 33844.

merchants (FCMs), commodity pool operators, and non-Commission registrants which may also trade futures and option contracts for their own accounts. They may grant their affiliates or subsidiaries independent trading authority with appropriate safeguards to maintain the affiliates' independence and the confidentiality of the affiliates' trading decisions. However, presently only affiliated commodity pool operators and commodity trading advisors meet the rule's eligibility requirement.[26]

The Commission is proposing to amend rule 150.3 better to reflect the continuing trend to greater complexity in the structure of financial services companies. Such companies, as a matter of business preference, may provide their affiliates with independent trading authority and are structured in a manner which meets the policies of rule 150.3. The Commission is proposing to include the separately incorporated affiliates of commodity pool operator, commodity trading advisor or futures commission merchant as eligible entities for the exemptive relief of rule 150.3.[27]

The Commission is also proposing to expand the classes of entities which are eligible for the exemption in response to the continuing trend toward greater professional management of trading funds. Single-investor commodity pools or commodity pools having a very limited number of participants have been created as part of this trend. Often these pools are organized as limited partnerships, and in many cases, the limited partner or partners, who may also trade professionally, provide almost all of the trading capital. The operators of such commodity pools generally, by virtue of having fewer than fifteen participants in the pools and less than $200,000 in capital contributions, would be exempt from registration under Commission rule 4.13. As discussed in greater detail below, the Commission is of the view that the trading of these limited partnerships should not be disaggregated from trading by such a limited partner. However, because these commodity pools may provide for the pool's trading by an independent account controller, the Commission believes that they appropriately can be included within the exemption from speculative position limits for the non-spot month limits under Commission rule 150.3.

The Commission is also proposing to include with the exemption banks, trust companies, savings and loan associations, insurance companies and the separately incorporated affiliates of any of the above entities. These additional classes of eligible entity were suggested for inclusion by some commenters when the Commission last proposed to revise the rule 150.3 exemption. In light of the successful operation of the exemption during the intervening years, the Commission believes that it should now consider extending the exemption to these entities. Accordingly, the Commission is proposing that any of the above entities that grants its affiliates or subsidiaries independent trading authority, maintains only the supervisory authority over their trading activity consistent with its fiduciary, statutory and regulatory responsibilities[28] and creates a system of controls to ensure that it or its affiliates have no knowledge of the trading decisions of other of its affiliates can exceed speculative position limits outside of the spot month. During the spot month, all of the affiliates' accounts, except for those of an affiliated FCM qualifying under the 1979 Aggregation Policy, must be aggregated for speculative position purposes as positions belonging to a single owner.

The Commission is proposing to codify in rule 150.4 the substance of its policies on aggregation, particularly its 1979 Aggregation Policy. The substance of its aggregation policies currently is contained in rules 17.00 and 18.01, 17 CFR 17.00 and 18.01, which specify the manner of identifying accounts for reporting purposes. The Commission is of the view that its rules on aggregating positions for speculative limit compliance should be codified as such, rather than be drawn by inference from the Commission's large-trader reporting requirements.

In codifying these policies, the Commission also is proposing to amend the limited partner exception of Commission rule 18.01.[29] Commission rule 18.01 governs the Commission's reporting requirements and parallels the 1979 Aggregation standard. It defines an account owner as a person or entity having a 10% or greater financial interest in the account, except for limited partners. Limited partners had been exempt from definitions of ownership beginning with the Commission's predecessor agency, the Commodity Exchange Authority, based upon the assumption that limited partners by definition were required to be passive investors and were prohibited from exercising control over the trading activities of the partnership. However, the degree to which limited partners can be involved in the operation of a partnership varies under state law. Although limited partners generally are precluded from ''controlling'' the business of the partnership, they may not be precluded from being involved to some degree in the partnership's trading decisions.[30]

The Commission has become aware of, and concerned of, trading by single-investor commodity pools. In these commodity pools, a single limited partner may contribute virtually all of the pool's trading capital, relying upon the general partner to control trading in the account. Previously, persons with this type of ownership interest may not have aggregated the pool's positions with their own in reliance of the exception under Commission rule 18.01 for limited partners in a commodity pool.[31]

In light of the possibility that limited partners may be less than wholly passive investors, the likelihood that limited partners may be involved to some degree in the trading decisions of the partnership's trading activity rises as the overall number of limited partners in a commodity pool decreases, such as in the single or limited-number investor pool or when a small number of limited partners have a relatively dominant ownership interest. Accordingly, the Commission is proposing to require a limited partner, shareholder or other type of pool participant (such as a member of a limited liability company), to aggregate the pool's positions with the trader's other positions if the trader has as an ownership interest of 25% or

[26] FCMs have similar but not identical relief under the 1979 Aggregation Policy discussed above.

[27] Affiliated companies are generally understood to include one company that owns, or is owned by, another or companies that share a common owner.

[28] *See e.g.,* sections 2(a)(1)(A)(iii) and 4f(c) of the Act and Commission rule 166.3.

[29] As discussed above, the Commission is proposing to include within the exemption from speculative position limits under Commission rule 150.3 the operators of commodity pools which are exempt from registration under Commission rule 4.13.

[30] Section 303(b) of the Revised Uniform Limited Partnership Act provides in part that:

A limited partner does not participate in the control of the business * * * solely by * * * (2) consulting with and advising a general partner with respect to the business of the limited partnership. * * *

[31] Commission rule 18.01 provides, in part, that:

If any trader holds, has a financial interest in or controls more than one account, * * * all such accounts shall be considered as a single account for * * * the purpose of reporting. For the purpose of § 18.01, except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term ''financial interest'' shall mean an interest of 10 percent or more in ownership or equity of an account.

greater in the pooled account or if the pool has ten or fewer participants.[32]

The Commission does not intend by this proposal to modify the general treatment of limited partners or shareholders in commodity pools, but rather intends to require aggregation by limited partners or shareholders in unusual or atypical arrangements.[33] The Commission requests comments specifically to address the typical organization for pools and whether levels proposed are appropriate for reaching only unusual ownership forms.

The Commission is proposing an additional revision to the existing limited partnership exemption to clarify its application to commodity pool operators. Currently, commodity pools are excluded from the limited partnership exemption. Accordingly, commodity pool operators which are also a limited partner have a financial interest which causes them to aggregate their positions if their ownership interest is ten percent or greater. This is apart from the requirement that they aggregate positions based upon trading control. The question has arisen whether the commodity pool operator's principals or affiliates, if investing as limited partners, are covered by the ten percent interest requirement. The Commission is of the view that principles and affiliates of the commodity pool operator were intended to be treated under the rule the same as the commodity pool operator itself. This would be consistent with the explicit treatment of FCMs investing in customer trading programs or pools under the 1979 Aggregation Policy. The Commission is proposing to amend the limited partner exception to make explicit its understanding of the rule's application to the principals and affiliates of the pool operator.

III. Other Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comment 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 of the information on those who are to respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted the proposed rule and its associated information collection requirements to the Office of Management and Budget. The proposed rules are part of two approved information collections. The burdens associated with these rules are as follows:

COLLECTION NUMBER
[3038–0013]

Average burden hours per response.	6
Number of respondents	12
Frequency of response	On occasion

COLLECTION NUMBER
[3038–0009]

Average burden hours per response.	4.74
Number of respondents	3709
Frequency of response	On occasion

Persons wishing to comment on the information which would be required by this proposed/amended rule 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 St N.W., Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that large traders are not small entities for purposes of the RFA.[34] The Commission believes that the proposed rule amendments to raise Commission speculative position limits would only impact large traders. In addition, the Commission is of the opinion that the proposed amendments to Commission rule 150.3, under which certain eligible entities will be exempted from speculative limits (except in the spot-month) would apply exclusively to large traders, as would the proposal to codify in rule 150.4 its policies on aggregation. Similarly, the Commission's proposal to aggregate the positions of participants in pooled accounts with a greater than 25 percent ownership interest in the accounts is not expected to impact a significant number of small entities. The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The certification is based on the fact that the proposed rules will lift speculative limits levels, extend exemptive relief from speculative limits (except in the spot-month) to certain eligible entities and codify the Commission policies on aggregation, including its rules on aggregating positions for speculative limit compliance. The proposed rules permitting such transactions subject to the specified conditions, therefore, remove a burden for all entities, regardless of size.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Brokers, Commodity futures, Reporting and recordkeeping requirements.

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[32] It should be noted that, while such positions must be aggregated, the Commission has also proposed to include such entities within the exemption of rule 150.3. Accordingly, where the limited partners in fact treat the partnership as an independent trader, they qualify for an exemption from speculative position limits for non-spot months. During the spot month, however, the limited partners or shareholders would be required to aggregate the partnership positions.

[33] The Commission is proposing to clarify that participants in additional categories of limited-liability business organizations, such as members of limited liability companies, for the purpose of these rules, are treated the same as limited partners or shareholders.

[34] 47 FR 18618 (April 30, 1982).

17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Position limits, Spread exemptions.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 4f, 4g, 4i, 4n, 5, 5a, 6b, 6c, 8a, and 15, 7 U.S.C. 2, 6a, 6c, 6f, 6g, 6i, 6n, 7, 7a, 12a, 13a, 13a–1, and 19, the Commission hereby proposes to amend parts 1, 17, 18, and 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–l, 16, 16a, 19, 21, 23, and 24.

2. Section 1.61 is proposed to be removed and reserved.

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

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

Authority: 7 U.S.C. 6a, 6d, 6f, 6g, 6i, 7, and 12a.

4. Section 17.00 is proposed to be amended by renumbering paragraph (b)(1) as (b) and revising it, by removing paragraphs (b)(2) and (c), by renumbering paragraphs (b)(1)(i) and (b)(1)(ii) as (b)(1) and (b)(2), respectively, and by adding paragraph (b)(3), to read as follows:

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

* * * * *

(b) *Interest in or control of several accounts.* Except as otherwise instructed by the Commission or its designee and as specifically provided in § 150.4 of this chapter, if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member or foreign broker as a single account for the purpose of determining special account status and for reporting purposes. For purposes of this section, the following shall apply:

(1) * * *

(3) *Account ownership*—Multiple accounts owned by a trader shall be considered a single account as provided under § § 150.4(b), (c) and (d) of this chapter.

PART 18—REPORTS BY TRADERS

5. 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:

6. Section 18.01 is proposed to be revised to read as follows:

§ 18.01 Interest in or control of several accounts.

If any traders holds, has a financial interest in or controls positions in more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such positions and accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and, unless instructed otherwise in the special call to report under § 18.00 of this part, for the purpose of reporting.

PART 150—LIMITS ON POSITIONS

6. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5).

7. In § 150.1 the introductory text of paragraph (d), and paragraphs (d)(2), (e)(2) and (e)(5) are proposed to be revised to read as follows:

§ 150.1 Definitions.

* * * * *

(d) *Eligible entity* means—

A commodity pool operator, the operator of a trading vehicle which is excluded or who itself has qualified for exclusion from the definition of the term ‘‘pool’’ or commodity pool operator,’’ respectively, under § 4.5 of this chapter; the limited partner or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings and loan association; an insurance company; or the separately incorporated affiliates of a futures commission merchant or of any of the above entities:

(1) * * *

(2) Which maintains: (i) only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf; or (ii) if a limited partner or shareholder of a commodity pool exempt from registration under § 4.13 of this chapter, only such limited control as is consistent with its status.

(e) *Independent account controller* means a person—

(1) * * *

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to fulfill its duty to supervise diligently the trading done on its behalf or as is consistent with such other legal rights or obligations which may be incumbent upon the eligible entity to fulfill;

(3) * * *

(5) Who is registered as a futures commission merchant, introducing broker, commodity trading advisor or an associated person of any such registrant or a commodity pool operator that is exempt from registration under § 4.13 of this chapter.

8. Section 150.2 is proposed to be revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

SPECULATIVE POSITION LIMITS

[By contract]

Contract	Limits by number of contracts		
	Spot month	Single month	All months
CHICAGO BOARD OF TRADE			
Corn	600	5,500	9,000
Oats	600	1,000	1,500

SPECULATIVE POSITION LIMITS—Continued

[By contract]

Contract	Limits by number of contracts		
	Spot month	Single month	All months
Soybeans	600	3,500	5,500
Wheat	600	3,000	4,000
Soybean Oil	540	3,000	4,000
Soybean Meal	720	3,000	4,000
MIDAMERICA COMMODITY EXCHANGE			
Corn	3000	6000	6000
Oats	2000	2000	2000
Soybeans	3000	6000	6000
Wheat	3000	6000	6000
Soybean Meal	800	800	800
MINNEAPOLIS GRAIN EXCHANGE			
Hard Red Spring Wheat	600	3,000	4,000
White Wheat	600	1,200	1,200
NEW YORK COTTON EXCHANGE			
Cotton No. 2	300	2,500	3,500
KANSAS CITY BOARD OF TRADE			
Hard Winter Wheat	600	3,000	4,000

9. Section 150.4 is proposed to be revised to read as follows:

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 150.2 of this part shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading or to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts.* For the purpose of applying the position limits set forth in § 150.2, except for the ownership interest of limited partners or shareholders as set forth in paragraph (c) of this section, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.* For the purpose of applying the position limits set forth in § 150.2, any trader having a 25 percent or greater ownership or equity interest in an account or positions as a limited partner, shareholder or other category of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the trader; *Provided however,* that:

(1) A limited partner, shareholder or other pool participant that is also a principal or affiliate of the commodity pool operator must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader if the trader's ownership or equity interest in the pooled accounts or positions is 10 percent or greater; or

(2) Each limited partner, shareholder or other pool participant having an ownership interest in a pooled account or positions with ten or fewer partners or shareholders must aggregate the pooled account or positions with all other accounts or positions owned or controlled by the trader if the trader's ownership or equity interest in the pooled accounts or positions is 10 percent or greater.

(d) *Trading Control by Futures Commission Merchants.* The position limits set forth in § 150.2 of this part shall be construed to apply to all positions held by a futures commission merchant in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant, or any of the officers, partners, or employees of such futures commission merchant, unless:

(1) A trader other than the futures commission merchant directs trading in such an account;

(2) The futures commission merchant maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant holds, has a financial interest of 10 percent or more in, or controls.

10. New § 150.5 is proposed to be added to read as follows:

§ 150.5 Exchange-set speculative position limits.

(a) *Exchange limits.* Each contract market, as a condition of designation under part 5, appendix A of this chapter, shall by bylaw, rule, regulation, or resolution limit the maximum number of contracts a person may hold or control, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures equivalent basis, options thereon. This section shall not apply to a contract market for which position limits are set forth in § 150.2 of this part or for a futures or option contract market on a major foreign currency for which there is no legal impediment to delivery and for which there exists a highly liquid cash market. Nothing in this section shall be construed to prohibit a contract market from fixing different and separate position limits for different types of futures contracts based on the same commodity, different position limits for different futures or for different delivery months, or from exempting positions which are normally known in the trade as ''spreads, straddles, or arbitrage,'' or from fixing limits which apply to such positions which are different from limits fixed for other positions.

(b) *Levels at designation.* At the time of its initial designation, a contract market must provide for speculative position limit levels as follows:

(1) The spot month limit level for physical delivery contracts must be no greater than one-quarter of the estimated spot month deliverable supply calculated separately for each month to be listed and for cash-settled contracts based on a small or not highly liquid underlying cash market must be at a level that will tend to prevent or diminish price manipulation;

(2) Individual non-spot month or all-months-combined levels must be no greater than 1,000 contracts for tangible commodities other than energy products;

(3) individual non-spot month or all-months-combined levels must be no greater than 5,000 contracts for energy products and non-tangible commodities, including contracts on financial products.

(c) *Adjustments to levels.* Twelve months after a contract market's initial listing for trading, or an any time thereafter, contract markets may adjust their speculative limit levels as follows:

(1) The spot month limit level for physical delivery contracts must be no greater than one-quarter of the estimated spot month deliverable supply calculated separately for each month to be listed and for cash-settled contracts based on a small or not highly liquid underlying cash market must be at a level that will tend to prevent or diminish price manipulation; and

(2) Individual non-spot month or all-months-combined levels must be no greater than 10 percent of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year up to 25,000 contracts with a marginal increase of 2.5 percent thereafter, or be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract, the breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market in the commodity underlying the futures contract.

(d) *Hedge exemption.* (1) No exchange by law, rule regulation, or resolution adopted pursuant to this section shall apply to bona fide hedging positions as defined by a contract market in accordance with § 1.3(z)(1) of this chapter. *Provided,* that the contract market may limit bona fide hedging positions or any other positions which have been exempted pursuant to paragraph (e) of this section which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(2) Traders must apply to the contract market for exemption from its speculative position limit rules. In considering whether to grant such an application for exemption, contract markets must take into account the factors contained in paragraph (d)(1) of this section.

(e) *Trader accountability exemption.* Twelve months after a contract market's initial listing for trading, or at any time thereafter, contract markets may submit for Commission approval under section 5a(a)(12) of the Act and § 1.41(b) of this chapter, a bylaw, rule, regulation, or resolution, substituting for the position limits required under paragraphs (a), (b) and (c) of this section, an exchange rule requiring traders to be accountable for large positions as follows:

(1) For futures and option contracts on a financial instrument or product having an average month-end open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts and a very highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange;

(2) For futures and option contracts on a financial instrument or product or on an intangible commodity having an average month-end open interest of 50,000 and an average daily volume of 25,000 contracts and a highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further the trader's positions if so ordered by the exchange;

(3) For futures and option contracts on a tangible commodity, including but not limited to metals, energy products, or international soft agricultural products, having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further the trader's positions if so ordered by the exchange, *provided, however,* such contract markets are not exempt from the requirement of paragraphs (b) or (c) that they adopt an exchange bylaw, regulation or resolution setting a spot month speculative position limit with a level no greater than one-quarter of the estimated spot month deliverable supply;

(4) For purposes of this paragraph, trading volume and month-end open interest shall be calculated based upon the futures contract and its related option contract, on a delta-adjusted basis, for all trading months listed during the most recent twelve month period.

(f) *Other exemptions.* Exchange speculative position limits adopted pursuant to this section shall not apply to any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit or to a person that is registered as a futures commission merchant or as a floor broker under authority of the Act except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. In addition to the express exemptions specified in this section, a contract market may propose such other exemptions from its position limits consistent with the purposes of this section and shall submit such rules for Commission review under section 5a(a)(12) of the Act and § 1.41(b) of this chapter.

(g) *Aggregation.* In determining whether any person has exceeded the limits established under this section, all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by a single person.

Issued by the Commission this 13th day of July, 1998, in Washington, D.C.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–19114 Filed 7–16–98; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: Commodity Futures Trading Commission (''Commission'') is proposing revisions to its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR Part 5, Appendix A (''Guideline No. 1''). Guideline No. 1 details the information that an application for contract market designation should include in order to demonstrate that the contract market meets the economic requirements for designation. The Commission recently promulgated fast-track review procedures to reduce the time for Commission review of such applications. In furtherance of these streamlining efforts, the Commission is proposing that Guideline No. 1 itself be revised to reduce any unnecessary burdens associated with the designation application.

Specifically, the Commission is proposing to reorganize Guideline No. 1 into several specific application forms, making use to the extent possible of a checklist or chart format. Moreover, the Commission is clarifying that a portion of the application may make use of third-party generated materials. In addition, the Commission is clarifying the review standards for several of the designation requirements. The Commission is also proposing that a new appendix be added to Part 5 that would specify the information that should be included by a foreign board of trade seeking no-action relief to offer and to sell in the United States a futures contract on a securities index traded on that exchange.

DATES: Comments must be received by September 15, 1998.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to ''Revisions to Guideline No. 1.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Richard A. Shilts, Director, Market Analysis Section or Kimberly A. Browning, Attorney/Advisor, Division of Economic analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5260. E-mail: [PArchitzel@cftc.gov], [RShilts@cftc,gov] or [KBrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The requirement that boards of trade demonstrate that they meet specified conditions in order to be designated as a contract market has been a fundamental tool of federal regulation of commodity futures exchanges since the Futures Trading Act of 1921, Pub. L. No. 67–66, 42 Stat. 187 (1921).[1] Currently, the statutory requirements for designation are found in Sections 5 and 5a of the Commodity Exchange Act (Act) and, additionally, for indexes of securities, in Section 2(a)(1)(B) of the Act. Designated contract markets must provide for the prevention of dissemination of false information (Section 5(3) of the Act); must provide for the prevention of price manipulation (Section 5(4) of the Act); must provide for delivery periods which will prevent market congestion (Section 5A(a)(4) of the Act); and must permit delivery on the contract of such grades, at such points and at such quality and locational differentials as will tend to prevent or to diminish market manipulation (Section 5a(a)(10) of the Act).[2] Included among these provisions is the general requirement of Section 5(7) of the Act that trading in a proposed contract not be contrary to the public interest. The contract market must meet these requirements both initially and on a continuing basis.[3]

The Commission, as an aid to the exchanges, has provided guidance in meeting these statutory requirements. In 1975 the newly formed Commission, in one of its earliest actions, issued its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975) (''Guideline No. 1'').

Subsequently, the Commission revised this guideline, publishing it as Appendix A to Part 5 of the Code of Federal Regulations. 47 FR 49832 (November 3, 1982). As revised in 1982, Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including in particular, futures contracts on financial instruments and on various indexes and cash-settled futures contracts. Experience has demonstrated that the guideline has been adaptable and flexible, facilitating the designation of a wide range of innovative products.

Guideline No. 1 was again revised in 1992. 57 FR 3518 (January 30, 1992). The 1992 revisions streamlined the designation application for both futures and option contract markets. Under the 1992 revisions, the standard of review for specified terms and conditions of proposed contract market designations under Sections 5 and 5a of the Act was clarified. Moreover, the 1992 revisions eliminated unnecessary and redundant materials by requiring that an application for designation of a futures contract include a cash-market description only when the proposed contract differs from a currently designated contract and that it need justify only individual contract terms that are different from terms which

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[1] Designation as a contract market under the 1921 Act was contingent upon a board of trade's providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping and for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. *See,* §§ 5(a), (b), (c), (d) and (e) of the Futures Trading Act of 1921. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace,* 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry was patterned after this statutory scheme.

[2] The Act further requires, as a condition for contract market designation that the contract market, *inter alia:* be located at a terminal cash market or provide for terms and conditions as approved by the Commission (Section 5(1) of the Act); provide for various forms of recordkeeping (Sections 5(2) and 5a(a)(2) of the Act); permit the membership of cooperative associations (Section 5(5) of the Act); provide for compliance with Commission orders (Section 5(6) of the Act); submit its rules to the Commission (Sections 5a(a)(1) and 5a(a)(12) of the Act); provide that the terms of the contracts conform to United States commodity standards or those adopted by the Commission (Section 5a(a)(6) of the Act); accept warehouse receipts issued under United States law (Section 5a(a)(3) of the Act); and enforce exchange rules (Section 5a(a)(8) of the Act).

[3] Generally, the burden of demonstrating compliance rests with the contract market. Section 6 of the Act provides, in part, that:

> Any board of trade desiring to be designated a ''contract market'' shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.