

requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

(iii) Procedure for Determination.

Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) gross positions held at that self-regulatory organization in the member's personal accounts or "controlled accounts," as defined in § 1.3(j);

(B) gross positions held at that self-regulatory organization in proprietary accounts, as defined in § 1.17(b)(3), at the member's affiliated firm;

(C) gross positions held at that self-regulatory organization in accounts in which the member is a principal, as defined in § 3.1(a);

(D) net positions held at that self-regulatory organization in "customer" accounts, as defined in § 1.17(b)(2), at the member's affiliated firm; and,

(E) any other types of positions, whether maintained at that self-regulatory organization or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) Bases for Determination. Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) the most recent large trader reports and clearing records available to the self-regulatory organization;

(B) information provided by the member with respect to positions pursuant to paragraph (b)(2)(ii) of this section; and,

(C) any other source of information that is held by and reasonably available to the self-regulatory organization.

(3) Participation in Deliberations. (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain, pursuant to paragraph (b)(2) of this section, if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she

otherwise would be required to abstain, the deliberating body shall consider the following factors:

(A) whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) Documentation of Determination. Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(iii) information on the position information that was reviewed for each member.

Issued in Washington, D.C. on December 23, 1998, by the Commission.

**Catherine D. Dixon,**

*Assistant Secretary of the Commission.*

[FR Doc. 98-34516 Filed 12-31-98; 8:45 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 145 and 147

#### Commission Records and Information; Open Commission Meetings

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") adopts final rules relating to Commission records and information. The rules update and streamline procedures in light of the Commission's experience in the past several years and

amend rules regarding open Commission meetings to conform to these modifications.

**EFFECTIVE DATE:** February 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Eileen Donovan, Attorney-Advisor, Office of the Secretariat, (202) 418-5096, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Facsimile: (202) 418-5543. Electronic mail: secretary@cftc.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

By notice published at 61 FR 66949 on December 19, 1996, the Commission requested comments from the public regarding its proposal to modify its rules relating to Commission records and information. The proposal was based on the Commission's experience since the rules implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552 (1997), had been revised October 5, 1989 and the Commission's desire to conform the rules to its practice and the Freedom of Information Reform Act of 1986 (Pub. L. 99-570, §§ 1801-1804). The Commission proposed modifying the terms of Section 145.5(g)(1) to conform to Exemption 7, 5 U.S.C. 552(b)(7), relating to requests for records compiled for law enforcement purposes, modifying the procedures regarding requests for confidential treatment and compilation of Commission records available to the public, increasing the schedule of fees, and changing the rule to reflect current addresses and telephone numbers. In response to its notice, the Commission received only one comment, which was submitted by the New York Mercantile Exchange ("NYMEX"). NYMEX expressed concern regarding one aspect of the proposed revision of 17 CFR 145.9(d)(7) and (e)(1).

Under the current scheme, when there is a FOIA request for materials for which confidential treatment has been sought under Section 145.9 by the submitter of the materials, the Assistant Secretary of the Commission for Freedom of Information, Privacy and Sunshine Acts Compliance, ("Assistant Secretary") seemingly *must* require the submitter to file a detailed written justification of the confidential treatment request within ten days. However, in some cases the submitter's initial petition for confidential treatment of the information or its response to a prior FOIA request is so complete that the Assistant Secretary does not need supplemental information. The proposed modifications to Sections 145.9(d)(7)

and 145.9(e)(1) address release of information for which confidential treatment has been requested but as to which the Assistant Secretary determines that it is necessary for the submitter of the material to provide supplemental information justifying confidential treatment. As proposed, the rule provides that the Assistant Secretary will notify the submitter of the material that the requested information will be released after ten business days unless the submitter objects by providing a detailed written justification and that, absent a timely detailed written justification, the submitter will not be given an opportunity to appeal an adverse determination. NYMEX contends that ten business days may not provide a submitter with sufficient time to prepare and file a detailed written justification and urges the Commission to revise its proposal to permit a submitter to request an extension of the response period.

The Commission has decided to amend the proposed language to accommodate NYMEX's concern. Accordingly, in the final rule the Commission has inserted in Section 145.9(d)(7) "Upon request and for good cause shown, the Assistant Secretary may grant an extension of such time," and in Section 145.9(e)(1) the Commission has inserted "(unless under § 145.9(d)(7) an extension of time has been granted)."

The Commission reviewed the proposed language in Sections 145.9(d)(4), 145.9(d)(6), 145.9(d)(7), and 145.9(d)(8) and determined that the language should be clarified. Therefore, the Commission redrafted those sections to make them clearer without changing the meaning of the proposed language substantially. Accordingly, the Commission determined that it was not necessary to request comment from the public regarding these modifications. The modifications are set forth below.

Section 145.9(d)(4) is modified by changing "possible" to "practicable" in the phrase "at the time the information is submitted or as soon thereafter as possible".

Section 145.9(d)(6) is redrafted as follows:

A request for confidential treatment (as distinguished from the material that is the subject of the request) shall be considered a public document. When a submitter deems it necessary to include, in its request for confidential treatment, information for which it seeks confidential treatment, the submitter shall place that information in an appendix to the request.

Section 145.9(d)(7) is modified by inserting "from the Assistant Secretary"

after "On ten business days notice" and before the comma.

Section 145.9(d)(8)(i) is redrafted as follows:

Requests for confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act, as implemented in § 145.5, shall be summarily rejected under § 145.9(d)(9). Requests for confidential treatment of public information contained in financial reports as specified in § 1.10 shall not be processed. A submitter has the burden of specifying clearly and precisely the material that is the subject of the confidential treatment request. A submitter may be able to meet this burden in various ways, including:

Additionally, the Commission has modified proposed Section 145.5(g)(1)(i) "Disclosure of nonpublic records." The proposed rule includes an exemption for records or information compiled for law enforcement purposes to the extent that the production of such information would interfere with enforcement activities undertaken by the listed entities. The list, as proposed, includes both "foreign governmental authority" and "foreign futures or securities authority." It is unnecessary to include both terms because the term "foreign governmental authority" includes law enforcement activities undertaken by a foreign futures authority as defined by the Commodity Exchange Act or a foreign securities authority.

Accordingly, the Commission is deleting the term "foreign futures or securities authority" from the final rule.

The Commission has also deleted Section 145.5(g)(2) which defines "investigatory records" from the final rule because Section 145.5(g)(1) renders it redundant and has renumbered Section 145.5(g) accordingly. Section 145.9(d)(10) is also deleted because it has been incorporated into Section 145.9(d)(4), and reference to it in Section 145.9(d)(1) has been revised accordingly.

## II. Related Matter

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined, pursuant to 5 U.S.C. 605(b), that Part 145 rules relating to Commission records and information do not have a significant economic impact on a substantial number of small business entities. Because they do not impose regulatory obligations on commodity professionals and small commodity firms and because, if instituted, the proposed

corrections and amendments will expedite and improve the FOIA process, the Commission does not expect the final rule to have a significant economic impact on a substantial number of small business entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Chairperson, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

## List of Subjects

### *17 CFR Part 145*

Confidential business information, Freedom of information.

### *17 CFR Part 17*

Sunshine Act.

For the reasons set forth in the preamble, title 17, parts 145 and 147 are amended as follows:

## PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority for Part 145 is revised to read:

**Authority:** Pub. L. 99-570, 100 Stat. 3207; Pub. L. 89-554, 80 Stat. 383; Pub. L. 90-23, 81 Stat. 54; Pub. L. 98-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

2. Section 145.5 is amended as set forth below:

a. In the introductory paragraph add a sentence to the end as set forth below.

b. Remove the introductory text of paragraph (d)(1).

c. In (d)(1)(i)(B) and (E) remove the following phrase: "Provided, The procedure set forth in 17 CFR 1.10(g) is followed".

d. In (d)(1)(i)(C) and (D) remove the following phrase: " , provided the procedure set forth in § 1.10(g) of this chapter is followed".

e. In (d)(1)(i)(F) remove the following phrase: " , if the procedure set forth in § 1.10(g) of this chapter is followed".

f. In (d)(1)(i)(H) remove the following phrase: " , provided the procedure set forth in § 31.13(m) of this chapter is followed".

g. Paragraph (g) is revised to read as set forth below.

### § 145.5 Disclosure of nonpublic records.

\* \* \* Requests for confidential treatment of segregable public information will not be processed.

\* \* \* \* \*

(g) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(1) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or any other authority including, but not limited to, the Department of Justice or any United States Attorney or any Federal, State, local, or foreign governmental authority or any futures or securities industry self-regulatory organization;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques or procedures or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

\* \* \* \* \*

**§ 145.6 [Amended]**

3. In § 145.6(a), remove the phrase “(816) 374-6602” and add in its place “(816) 931-7600”; remove the phrase “10880 Wilshire Blvd., suite 1005 Los Angeles, California 90024, Telephone: (310) 575-6783” and add in its place “10900 Wilshire Boulevard, Suite 400, Los Angeles, California 90024, Telephone: (310) 235-6783”.

4. Section 145.9 is amended as set forth below:

a. In (d)(1) remove the phrase “(d)(10)” and insert in its place “(d)(4)”.

b. Remove (d)(10) and redesignate (d)(11) as (d)(10).

c. Revise paragraphs (d)(4), (6), (7), and (8) and the first sentence of (e)(1) to read as follows:

**§ 145.9 Petition for confidential treatment of information submitted to the Commission.**

\* \* \* \* \*

(d) \* \* \*  
(4) A request for confidential treatment should accompany the material for which confidential treatment is being sought. If a request

for confidential treatment is filed after the filing of such material, the submitter shall have the burden of showing that it was not possible to request confidential treatment for that material at the time the material was filed. A request for confidential treatment of a future submission will not be processed. All records which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page stating “Confidential Treatment Requested by [name].” If such marking is impractical under the circumstances, a cover sheet prominently marked “Confidential Treatment Requested by [name]” should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this matter should be individually marked with an identifying number and code so that they are separately identifiable. In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing documents requested in the course of a Commission inspection, it may be impractical to submit a written request for confidential treatment at the time the information is first provided to the Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the person testifying or otherwise submitting information should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as practicable, that the person is requesting confidential treatment for the information. The person shall then submit a written request for confidential treatment within 30 days of the submission of the information. If access is requested under the Freedom of Information Act with respect to material for which no timely request for confidential treatment has been made, it may be presumed that the submitter of the information has waived any interest in asserting that the material is confidential.

\* \* \* \* \*

(6) A request for confidential treatment (as distinguishing from the material that is the subject of the request) shall be considered a public document. When a submitter deems it

necessary to include, in its request for confidential treatment, information for which it seeks confidential treatment, the submitter shall place that information in an appendix to the request.

(7) On ten business days notice from the Assistant Secretary, a submitter shall submit a detailed written justification of a request for confidential treatment, as specified in paragraph (e) of this section. Upon request and for good cause shown, the Assistant Secretary may grant an extension of such time. The Assistant Secretary will notify the submitter that failure to provide timely a detailed written justification will be deemed a waiver of the submitter’s opportunity to appeal an adverse determination.

(8)(i) Requests for confidential treatment for any reasonably segregable material that is not exempt from public disclosure under the Freedom of Information Act, as implemented in § 145.5, shall be summarily rejected under § 145.9(d)(9). Requests for confidential treatment of public information contained in financial reports as specified in § 1.10 shall not be processed. A submitter has the burden of specifying clearly and precisely the material that is the subject of the confidential treatment request. A submitter may be able to meet this burden in various ways, including:

- (A) Segregating material for which confidential treatment is being sought;
- (B) Submitting two copies of the submission: a copy from which material for which confidential treatment is being sought has been obliterated, deleted, or clearly marked and an unmarked copy; and
- (C) Clearly describing the material within a submission for which confidential treatment is being sought.

(ii) A submitter shall not employ a method of specifying the material for which confidential treatment is being sought if that method makes it unduly difficult for the Commission to read the full submission, including all portion claimed to be confidential, in its entirety.

\* \* \* \* \*

(e) \* \* \* (1) If the Assistant Secretary or his or her designee determines that a FOIA request seeks material for which confidential treatment has been requested pursuant to § 145.9, the Assistant Secretary or his or her designee shall require the submitter to file a detailed written justification of the confidential request within ten business days (unless under § 145.9(d)(7) an extension of time has been granted) of that determination

unless, pursuant to an earlier FOIA request, a prior determination to release or withhold the material has been made, the submitter has already provided sufficient information to grant the request for confidential treatment; or the material is otherwise in the public domain.\* \* \*

\* \* \* \* \*

#### Appendix A to Part 145—[Amended]

6. In Appendix A remove paragraph (b)(1) and redesignate paragraphs (b)(2) through (b)(13) as (b)(1) through (b)(12), respectively; and in paragraph (g) of Appendix A remove the phrase "from the Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606 or."

7. Amend Appendix B to Part 145 by revising paragraph (a)(3) to read as follows:

#### Appendix B to Part 145—Schedule of Fees

(a) \* \* \*

(3) The Commission uses a variety of computer systems to support its operations and store records. Older systems of records, particularly systems involving large numbers of records, are maintained on a mainframe computer. More recently, systems have been developed using small, inexpensive, shared computer systems to store records. Systems of use in particular programmatic and administrative operations may also store records on the workstation computers assigned to particular staff members. For searches of records stored on the Commission's mainframe computer, the use of computer processing time will be charged at \$456.47 for each hour, \$7.61 for each minute, and \$0.1268 for each second of computer processing time indicated by the job accounting log printed with each search. When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at \$32.00 per hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using that workstation as set forth in the other paragraphs under paragraph (a) of Appendix B.

\* \* \* \* \*

#### PART 147—OPEN COMMISSION MEETINGS

8. The authority for part 147 continues to read:

**Authority:** Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b), sec. 101(a)(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

##### § 147.3 [Amended]

9. In § 147.3 make the following changes:

- a. Remove the introductory text of paragraph (b)(4)(i).
- b. In paragraphs (b)(4)(i)(A)(2) and (5) remove the following phrase: "Provided, The procedure set forth in 17 CFR 1.10(g) is followed:".
- c. In paragraphs (b)(4)(i)(A)(3) and (4) remove the following phrase: " , provided, the procedure set forth in § 1.10(g) of this chapter is followed."
- d. In paragraph (b)(4)(i)(A)(6) remove the following phrase: " , if the procedure set forth in § 1.10(g) of this chapter is followed."
- e. In paragraph (b)(4)(i)(A)(8) remove the following phrase: "provided the procedure set forth in § 31.13(m) of this chapter is followed."

Issued by the Commission.

Dated: December 28, 1998.

**Jean A. Webb,**

*Secretary of the Commission, Commodity Futures Trading Commission.*

[FR Doc. 98-34732 Filed 12-31-98; 8:45 am]

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#### DEPARTMENT OF THE TREASURY

##### Customs Service

##### 19 CFR Parts 123, 142, and 178

[T.D. 99-2]

RIN 1515-AC16

##### Land Border Carrier Initiative Program

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to provide for the Land Border Carrier Initiative Program (LBCIP), a program designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program provides for agreements between carriers and Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs, and Customs agrees to apply, commensurate with the degree of carrier compliance with the terms of the agreement, special administrative

provisions pertaining to penalty amounts and expedited processing of penalty actions if illegal drugs are found on a conveyance belonging to the participating carrier. Further, at certain, high-risk locations along the land border, an importer's continued use of the Line Release method of processing entries of merchandise is conditioned on the use of carriers that participate in the LBCIP. These regulatory changes are designed to improve Customs enforcement of Federal drug laws along the land border by enhancing its ability to interdict illicit drug shipments through additional trade movement information provided by common carriers that voluntarily choose to participate in the LBCIP.

**EFFECTIVE DATE:** February 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jim Kelly, Office of Field Operations, Anti-Smuggling Division, (202) 927-0458.

**SUPPLEMENTARY INFORMATION:**

##### Background

In 1984 Customs began an air and sea Carrier Initiative Program (CIP), in part because of Customs growing awareness of an increase in the smuggling of marijuana and cocaine in the South Florida area. Developed under Customs remission and mitigation of penalties authority pursuant to section 618 of the Tariff Act of 1930 (19 U.S.C. 1618), the CIP was grounded in the execution of written Carrier Initiative Agreements between Customs and the common carrier, whereby the carrier agrees to improve cargo and conveyance security, and Customs provides security and drug awareness training.

In 1986, Congress enacted the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, 100 Stat. 3207; 21 U.S.C. 801 note) (the 1986 Act) to, among other things, strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments. Pursuant to the drug interdiction mandates contained in the 1986 Act, in 1995 Customs decided to expand the CIP to land border carriers to address the increasing drug smuggling threat along the southwest border.

This new Land Border Carrier Initiative Program (LBCIP) is designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program solicits land and rail carriers to voluntarily enter into agreements with Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs in identifying and reporting suspected smuggling conduct in exchange for