§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2000–NM–102–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes having serial numbers 003 through 540 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the nuts of the Wiggins fuel couplers and the stiffener on the access panel of the upper surface of the right wing, which could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion, accomplish the following:

General Visual or X-ray Inspection

(a) Within 90 days after the effective date of this AD: Perform a one-time general visual or x-ray inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line and scavenge line in the right wing at station 249, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000.

Action for Airplanes Having Correctly Oriented Fuel Couplers

(b) For airplanes on which the orientation of all Wiggins fuel couplers is found to be correct, as specified in Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000: Within 5,000 flight hours after the effective date of this AD, rework the stiffener on the access panel of the upper surface of the right wing in accordance with Part B of the Accomplishment Instructions of the alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions for Airplanes Having an Incorrectly Oriented Fuel Coupler

(c) For airplanes on which the orientation of any Wiggins fuel coupler is incorrect, as specified in Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000: Prior to further flight, remove the incorrectly oriented Wiggins fuel coupler, and perform a one-time detailed visual inspection to detect damage of the fuel coupler, in accordance with Part A of the Accomplishment Instructions of the alert service bulletin.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no damage is found: Prior to further flight, reinstall the Wiggins fuel coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

(2) If any damage is found, prior to further flight, blend out the damage and perform a detailed visual inspection of the fuel coupler for cracks, in accordance with the alert service bulletin.

(i) If no crack is found, and blending CAN be accomplished to meet the limits specified in the Accomplishment Instructions of the alert service bulletin: Prior to further flight, reinstall the Wiggins fuel coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

(ii) If any crack is found, or if blending CANNOT be accomplished to meet the limits specified in the Accomplishment Instructions of the alert service bulletin: Prior to further flight, replace the Wiggins fuel coupler with a new or serviceable coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–05, dated February 28, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28481 Filed 11–06–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

14 CFR Part 285

[Docket No. 000831249–0249–01]

RIN 0693–ZA39

National Voluntary Laboratory Accreditation Program; Operating Procedures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking: request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on proposed amendments to regulations pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). NIST proposes to revise the NVLAP procedures to ensure continued consistency with international standards and guidelines currently set forth in the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025:1999, General requirements for the competence of testing and calibration laboratories, and ISO/IEC Guide 58:1993, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, thereby facilitating and promoting acceptance of test and calibration results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies, assist in the exchange of information

and experience and in the harmonization of standards and procedures, and establish the basis for national and international mutual recognition arrangements.

In addition, NIST proposes to reorganize and simplify part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST proposes to rewrite in plain English and consolidate sections previously contained in subparts A through C of part 285.

DATES: Submit comments on or before January 8, 2001.

ADDRESSES: Address all comments concerning this proposed rule to David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaitehrsburg, MD 20899–2140.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, 301–975–4016.

SUPPLEMENTARY INFORMATION:

Background

Part 285 of title 15 of the Code of Federal Regulations sets out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories.

The NVLAP procedures were first published in the **Federal Register** as part 7 of title 15 of the Code of Federal Regulations (CFR) (41 FR 8163, February 25, 1976). On June 2, 1994, the procedures were redesignated as part 285 of title 15 of the CFR, expanded to include accreditation of calibration laboratories, and updated to be compatible with conformity assurance and assessment concepts, including the provisions contained in ISO/IEC Guide 25:1990, General requirements for the competence of calibration and testing laboratories (59 FR 22742, May 3, 1994).

Description and Explanation of Proposed Changes

The National Institute of Standards and Technology proposes to revise 15 CFR Part 285 to ensure continued consistency with international standards and guidelines. At this time, the management and technical requirements of the new standard, ISO/IEC 17025:1999, General requirements for the competence of testing and calibration laboratories, and the internationally accepted requirements for accrediting bodies, including those found in ISO/IEC Guide 58:1993, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, are applicable; however, the proposed revisions include provisions allowing for updated versions and replacements of these documents. ISO/IEC 17025:1999 supersedes and replaces ISO/IEC Guide 25:1990, upon which the current NVLAP accreditation criteria are based.

In addition, NIST proposes to reorganize the simplify part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST proposes to rewrite in plain English and consolidate sections previously contained in subparts A through C of part 285. Since the consolidated format does not require subparts, NIST proposes to remove subparts A through C. The removal of these subparts will not alter the operations of NVLAP, but will promote ease of use and facilitate understanding of the program's operations.

To ensure continued consistency with applicable international standards and guidelines, NIST proposes to remove subpart D, Conditions and Criteria for Accreditation, and to apply the conditions and criteria contained in the applicable internationally accepted documents as they are revised from time to time, as set forth in new section 285.14, Criteria for Accreditation.

Request for Comments

The Director of the National Institute of Standards and Technology, United States Department of Commerce, requests comments on proposed changes to regulations found at 15 CFR Part 285 pertaining to the National Voluntary Laboratory Accreditation Program.

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection Facility, room 6022, 14th and Constitution Ave. NW, Washington, DC 20230.

Classification Section

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act. The collection has been forwarded to the Office of Management and Budget (OMB) for approval under the Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, no collection of information subject to the requirements of the Act, Unless that collection of information displays a currently valid OMB control number. The information collected will be used by NVLAP to help assess laboratory compliance with the applicable criteria. Responses to the collection of information are required for a laboratory to be considered for NVLAP accreditation. Confidentiality of the information submitted will be handled in accordance with § 285.2 of this proposed rule. It is estimated that the annual public burden for the collection will average 2.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attention: NIST Desk Officer).

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) the regulation is procedural and has no impact on any entity unless that entity chooses to participate, in which case, the cost to any participant is the same, small cost ($500/application; other associated costs cannot be projected because they are dependent upon in which LAP an entity is participating, and in some cases LAPs have not yet been established) for any size participant; (2) access to NVLAP's

accreditation system is not conditional upon the size of a laboratory or membership of any association or group, nor are there undue financial conditions to restrict participation; and (3) the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not significantly changed by this proposal.

List of Subjects in 15 CFR Part 285

Laboratories, Measurement standards, Reporting and recordkeeping requirements, Voluntary standards

Dated: October 30, 2000.

Karen H. Brown,

Deputy Director.

For reasons set forth in the preamble, it is proposed that 15 CFR. chapter II, be amended by revising part 285 to read as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

Sec.

Authority: 15 U.S.C. 272 et seq.

§ 285.1 Purpose.

The purpose of Part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed, depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

§ 285.2 Confidentiality.

To the extent permitted by applicable laws, NVLAP will protect the confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

§ 285.3 Referencing NVLAP accreditation.

The term *NVLAP* (represented by the NVLAP logo) is a federally registered certification mark of the National Institute of Standards and Technology and the federal government, who retain exclusive rights to control the use thereof. Permission to use the term and/or logo is granted to NVLAP-accredited laboratories for the limited purposes of announcing their accredited status, and for use on reports that describe only testing and calibration within the scope of accreditation. NIST reserves the right to control the quality of the use of the term *NVLAP* and of the logo itself.

§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.

NVLAP establishes LAPs in response to legislative actions or to requests from private sector entities and government agencies. For legislatively mandated LAPs, NVLAP shall establish the LAP. For requests from private sector entities and government agencies, the Chief of NVLAP shall analyze each request, and after consultation with interested parties through public workshops and other means shall establish the requested LAP if the Chief of NVLAP determines there is need for the requested LAP.

§ 285.5 Termination of a LAP.

(a) The Chief of NVLAP may terminate a LAP when he/she determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Chief of NVLAP proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

(b) When a LAP is terminated, NVLAP will no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted shall remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by NVLAP. Technical expertise will be maintained by NVLAP while any accreditation remains effective.

§ 285.6 Application for accreditation.

A laboratory may apply for accreditation in any of the established LAPs. The applicant laboratory shall provide a completed application to NVLAP, pay all required fees and agree to certain conditions as set forth in the NVLAP Application for Accreditation, and provide a quality manual to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

§ 285.7 Assessment.

(a) *Frequency and scheduling.* Before initial accreditation, during the first renewal year, and every two years thereafter, an on-site assessment of each laboratory is conducted to determine compliance with the NVLAP criteria.

(b) *Assessors.* NVLAP shall select qualified assessors to evaluate all information collected from an applicant laboratory pursuant to § 285.6 of this part and to conduct the assessment on its behalf at the laboratory and any other sites where activities to be covered by the accreditation are performed.

(c) *Conduct of assessment.* (1) Assessors use checklists provided by NVLAP so that each laboratory receives an assessment comparable to that received by others.

(2) During the assessment, the assessor meets with management and laboratory personnel, examines the quality system, reviews staff information, examines equipment and facilities, observes demonstrations of testing or calibrations, and examines tests or calibration reports.

(3) The assessor reviews laboratory records including resumes, job descriptions of key personnel, training, and competency evaluations for all staff members who routinely perform, or affect the quality of the testing or calibration for which accreditation is sought. The assessor need not be given information which violates individual privacy, such as salary, medical information, or performance reviews outside the scope of the accreditation program. The staff information may be kept in the laboratory's official personnel folders or separate folders that contain only the information that the NVLAP assessor needs to review.

(4) At the conclusion of the assessment, the assessor conducts an exit briefing to discuss observations and any deficiencies with the authorized representative who signed the NVLAP application and other responsible laboratory staff.

(d) *Assessment report.* At the exit briefing, the assessor submits a written report on the compliance of the laboratory with the accreditation requirements, together with the completed checklists, where appropriate.

(e) *Deficiency notification and resolution.* (1) Laboratories are informed of deficiencies during the on-site assessment, and deficiencies are documented in the assessment report (see paragraph (d) of this section).

(2) A laboratory shall, within thirty days of the date of the assessment report, provide documentation that the specified deficiencies have either been corrected and/or a plan of corrective actions as described in the NVLAP handbooks.

(3) If substantial deficiencies have been cited, NVLAP may require an additional on-site assessment, at additional cost to the laboratory, prior to granting accreditation. All deficiencies and resolutions will be subject to thorough review and evaluation prior to an accreditation decision.

(4) After the assessor submits their final report, NVLAP reviews the report and the laboratory's response to determine if the laboratory has met all of the on-site assessment requirements.

§ 285.8 Proficiency testing.

(a) NVLAP proficiency testing is consistent with the provisions contained in ISO/IEC Guide 43 (Parts 1 and 2), Proficiency testing by interlaboratory comparisons, where applicable, including revisions from time to time. Proficiency testing may be organized by NVLAP itself or a NVLAP-approved provider of services. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing data are analyzed by NVLAP and reports of the results are made known to the participants. Summary results are available upon request to other interested parties; e.g., professional societies and standards writing bodies. The identity and performance of individual laboratories are kept confidential.

(c) *Proficiency testing deficiencies.* (1) Unsatisfactory participation in any NVLAP proficiency testing program is a technical deficiency which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing deficiencies are defined as, but not limited to, one or more of the following:

(i) Failure to meet specified proficiency testing performance requirements prescribed by NVLAP;

(ii) Failure to participate in a regularly scheduled ''round'' of proficiency testing for which the laboratory has received instructions and/or materials;

(iii) Failure to submit laboratory control data as required; and

(iv) Failure to produce acceptable test or calibration results when using NIST Standard Reference Materials or special artifacts whose properties are well-characterized and known to NIST/NVLAP.

(3) NVLAP will notify the laboratory of proficiency testing deficiencies and actions to be taken to resolve the deficiencies. Denial or suspension of accreditation will result from failure to resolve deficiencies.

§ 285.9 Granting accreditation.

(a) The Chief of NVLAP is responsible for all NVLAP accreditation actions, including granting, denying, renewing, suspending, and revoking any NVLAP accreditation.

(b) Initial accreditation is granted when a laboratory has met all NVLAP requirements. One of four accreditation renewal dates (January 1, April 1, July 1, or October 1) is assigned to the laboratory and is usually retained as long as the laboratory remains in the program. Initial accreditation is granted for a period of one year; accreditation expires and is renewable on the assigned date.

(c) Renewal dates may be reassigned to provide benefits to the laboratory and/or NVLAP. If a renewal date is changed, the laboratory will be notified in writing of the change and any related adjustment in fees.

(d) when accredition is granted, NVLAP shall provide to the laboratory a Certificate of Accredition and a Scope of Accreditation.

§ 285.10 Renewal of accredition.

(a) An accredited laboratory must submit both its application for renewal and fees to NVLAP prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(b) On-site assessments of currently accredited laboratories are performed in accordance with the procedures in § 285.7. If deficiencies are found during the assessment of an accredited laboratory, the laboratory must follow the procedures set forth in § 285.7(e)(2) of this part or face possible suspension or revocation of accreditation.

§ 285.11 Changes to scope of accreditation.

A laboratory may request in writing changes to its Scope of Accreditation. If the laboratory requests additions to its Scope, it must meet all NVLAP criteria for the additional tests or calibrations, types of tests or calibrations, or standards. The need for an additional on-site assessment and/or proficiency testing will be determined on a case-by-case basis.

§ 285.12 Monitoring visits.

(a) In addition to regularly scheduled assessments, monitoring visits may be conducted by NVLAP at any time during the accreditation period. They may occur for cause or on a random selection basis. While most monitoring visits will be scheduled in advance with the laboratory, NVLAP may conduct unannounced monitoring visits.

(b) The scope of a monitoring visit may range from checking a few designated items to a complete review. The assessors may review deficiency resolutions, verify reported changes in the laboratory's personnel, facilities, or operations, or administer proficiency testing, when appropriate.

§ 285.13 Denial, suspension, revocation or termination of accreditation.

(a) A laboratory may at any time voluntarily terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so.

(b) If NVLAP finds that an accredited laboratory does not meet all NVLAP requirements, has violated the terms of its accreditation, or does not continue to comply with the provisions of these procedures, NVLAP may suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation.

(1) If a laboratory's accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports, correspondence, or advertising during the suspension period in the area(s) affected by the suspension.

(2) NVLAP will not require a suspended laboratory to return its Certificate and Scope of Accreditation, but the laboratory must refrain from using the NVLAP logo in the area(s) affected until such time as the problem(s) leading to the suspension has been resolved. When accreditation is reinstated, NVLAP will authorize the laboratory to resume testing or calibration activities in the previously suspended area(s) as an accredited laboratory.

(c) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(1) The laboratory will have thirty days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or

revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within the thirty-day period.

(2) If accreditation is revoked, the laboratory may be given the option of voluntarily terminating the accreditation.

(3) A laboratory whose accreditation has been revoked must cease use of the NVLAP logo on any of its reports, correspondence, or advertising related to the area(s) affected by the revocation. If the revocation is total, NVLAP will instruct the laboratory to return its Certificate and Scope of Accreditation and to remove the NVLAP logo from all test or calibration reports, correspondence, or advertising. If the revocation affects only some, but not all of the items listed on a laboratory's Scope of Accreditation, NVLAP will issue a revised Scope that excludes the revoked area(s) in order that the laboratory might continue operations in accredited areas.

(d) A laboratory whose accreditation has been voluntarily terminated, denied or revoked, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the NVLAP conditions and criteria for accreditation.

§ 285.14 Criteria for accreditation.

The requirements for laboratories to be recognized by the National Voluntary Laboratory Accreditation Program as competent to carry out tests and/or calibrations are contained in clauses 4 and 5 of ISO/IEC 17025, General requirements for the competence of testing and calibration laboratories, including revisions from time to time.

§ 285.15 Obtaining documents.

(1) Application forms, NVLAP handbooks, and other NVLAP documents and information may be obtained by contacting the NVLAP, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, Maryland 20899–2140; phone: 301–975–4016; fax: 301–926–2884; e-mail: nvlap@nist.gov.

(b) Copies of all ISO/IEC documents are available from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York, 10036; phone: 212–642–4900; fax: 212–398–0023; web site: <www.ansi.org>. You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 820 West Diamond Avenue, Room 297, Gaithersburg, MD.

[FR Doc. 00–28577 Filed 11–6–00; 8:45 am]
BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Extension of Time To File Annual Reports for Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule amendments.

SUMMARY: Commodity Futures Trading Commission (''Commission'') Rules 4.22(c) and (d) [1] require that commodity pool operators (''CPOs'') distribute annual reports containing specified information, certified by an independent public accountant, to each pool participant within 90 calendar days after the end of the pool's fiscal year.[2] The proposed revisions to Rule 4.22 would permit CPOs to file a claim for an extension of time to file the pool's annual report where the pool is invested in other collective investment vehicles, and the CPO's independent accountant cannot obtain the information necessary to comply with the rule in a timely manner.

DATES: Comments must be received by December 7, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Extension of Time to File Annual Reports for Commodity Pools.''

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5463; electronic mail: ''kwalek@cftc.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 4.22(c) requires a CPO to distribute to pool participants, and file with the Commission, an Annual Report containing specified financial information for each pool that it operates. The annual report requirement is intended to ensure that the CPO is dealing fairly with its participants and to provide a mechanism to facilitate the Commission's inspection of the registrant's operations. Rule 4.22(d) requires that an independent public accountant certify the financial statements contained in the Annual Report. The CPO must file this certified Annual Report within 90 days of the close of the pool's fiscal year. Rule 4.22(f) currently allows CPOs to apply for extensions of the 90-day time requirement where the CPO cannot distribute the report in the required time period without ''substantial undue hardship.'' The Commission has had the benefit of the assistance of National Futures Association (''NFA'') in processing these requests.

In recent years, the number of extensions has risen dramatically. [3] The majority of such requests are made by CPOs of commodity pools that invest in other collective investment vehicles. (These commodity pools are commonly referred to as ''funds of funds.'') The CPOs of these funds of funds have explained that they cannot obtain the information necessary for their independent public accountants to finish auditing the pools' financial statements by the time specified in Rule 4.22(c). In order to complete the audit of the financial statements of the pool, the independent public accountant needs information establishing the value of the pool's material investments. These investments may be in a number of collective investment vehicles, such as other commodity pools, securities funds, or hedge funds, both domestic and offshore. The information that the independent accountant requires is frequently unavailable until the collective investment vehicles complete their own certified financial statements. Thus, in many cases, the CPO cannot obtain the information its independent accountant requires about the collective investment vehicle in time for the pool's Annual Report to be prepared, audited, and distributed by the due date.

Due to the increasing number of requests for extensions of time to file annual reports for funds of funds, the Commission proposes to amend its

[1] Commission rules referred to herein can be found at 17 CFR Ch. I (2000).

[2] Rule 4.7(b)(3) provides the requirements for annual report filings for pools for which exemption from the specific requirements of Rules 4.22(c) and (d) has been claimed pursuant to Rule 4.7(b)(3)(i).

[3] For filing year 1998 there were more than 200 such extensions and for filing year 1999 there were over 300 such extensions.