

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 14 CFR 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 Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

\* \* \* \* \*

*Paragraph 6002 Class E airspace designated as surface area.*

\* \* \* \* \*

**AAL AK E2 Kotzebue, AK—[Revised]**

Kotzebue, Ralph Wien Memorial Airport, AK (Lat. 66°53'05" N., long. 162°35'55" W.)

Kotzebue VOR/DME

(Lat. 66°53'08" N, long. 162°32'24" W)

Hotham NDB

(Lat. 66°54'05" N, long. 162°33'52" W)

Within a 4.8-mile radius of the Ralph Wien Memorial Airport and within 2.6 miles each side of the 039° bearing from Hotham NDB extending from the 4.8 mile radius to 8.9 miles northeast of the airport and within 2.4 miles each side of the 091° radial from the Kotzebue VOR/DME extending from the 4.8-mile radius to 11.5 miles east of the airport and within 2.4 miles each side of the 278° radial from the KotzebueVOR/DME extending from the 4.8-mile radius to 10.2 miles west of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in Anchorage, AK, on December 10, 2004.

**Anthony M. Wylie,**

*Acting Area Director, Alaska Flight Services Area Office.*

[FR Doc. 04–27826 Filed 12–20–04; 8:45 am]

**BILLING CODE 4910–13–P**

**COMMODITY FUTURES TRADING COMMISSION****17 CFR Parts 15, 16, 17, 18, 19 and 21**

**RIN 3038–AC08**

**Reporting Levels and Recordkeeping**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) has adopted several amendments to its contract market and large trader reporting rules (reporting rules). First, with regard to contract reporting levels, the Commission has raised existing levels for certain commodities, established a new default contract reporting level for broad-based securities indexes, and introduced additional reporting levels to address recent market developments. Second, the Commission has adopted rules to specify the manner in which a set of new transactions, such as exchanges of futures for swaps, are reported to the Commission. Third, the Commission has updated its reporting rules to acknowledge current data transmission practices, to foster innovative means of filing forms identifying the owners of accounts with reportable positions, and to eliminate the use of Form 103 for the submission of special call data. Finally, the Commission has adopted a number of clarifying and technical amendments.

**DATES:** Effective January 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section (telephone 202–418–5209, e-mail [gmartinaitis@cftc.gov](mailto:gmartinaitis@cftc.gov)), or Bruce Fekrat, Attorney, Office of the Director (telephone 202–418–5578, e-mail [bfekrat@cftc.gov](mailto:bfekrat@cftc.gov)), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:****I. Large Trader Reporting Rules****A. Background**

The Commission's reporting rules provide an important tool for market oversight and other surveillance activities. The rules governing this system, among other things, require futures commission merchants (FCMs), clearing members and foreign brokers (collectively reporting firms) to report position and identifying information of the largest futures and option traders, and require traders themselves to provide certain position and identifying

information to the Commission.

Reporting levels are set for futures and option contracts under the authority of sections 4c and 4i of the Commodity Exchange Act (CEA or Act) to ensure that the Commission receives adequate information to carry out its market surveillance programs.<sup>1</sup> These market surveillance programs are designed to detect and prevent price manipulation and market congestion on designated contract markets (DCMs), and to enforce speculative position limits pursuant to section 4a of the Act. The Commission's market surveillance programs also provide information on the overall hedging and speculative use of, and foreign participation in, the futures and option markets and other matters of public interest.<sup>2</sup> On May 12, 2004, the Commission published a notice of rulemaking for public comment proposing to amend its reporting rules.<sup>3</sup> With several minor exceptions, the Commission herein is adopting the amendments as proposed.

**B. Raising Contract Reporting Levels for Certain Commodities****1. Amended Reporting Levels**

Generally, the firm carrying a trader's reportable position files large trader reports.<sup>4</sup> The Commission has traditionally calibrated contract

<sup>1</sup> Section 4i of the Act requires the filing of such reports as the Commission may require when transactions or positions made or obtained on contract markets or derivatives transaction execution facilities equal or exceed Commission set levels. Section 4g of the Act requires each registrant, whether an FCM, introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer transactions or positions executed on any board of trade in the United States or elsewhere.

<sup>2</sup> Information collected through the large trader reporting system is also important to the Commission's financial surveillance efforts in furtherance of its responsibility to oversee the financial, as well as the economic, integrity of the markets. For example, the Division of Clearing and Intermediary Oversight uses various automated tools to combine position information with financial information routinely collected from FCMs to assess and analyze financial risks presented by large customer positions to both the firms carrying those positions and the respective clearing organizations.

<sup>3</sup> 69 FR 26333 (May 12, 2004).

<sup>4</sup> Specifically, parts 17 and 18 of the Commission's regulations require reports from firms and traders, respectively, when a trader holds a "reportable position." See 17 CFR parts 17 and 18. A reportable position is any open contract position, as further defined in the rules, that at the close of the market on any business day equals or exceeds the quantity specified in Rule 15.03. See 17 CFR 15.00. The firms that carry accounts for traders holding reportable positions are required to identify those accounts on Form 102 and to report positions in the accounts to the Commission. The individual trader who holds or controls a reportable position, however, is required to report position and identifying information to the Commission only in response to a special call.

reporting levels to ensure that the aggregate of all positions reported to the Commission typically represents 70 to 90 percent of the open interest in any given contract. The Commission periodically reviews for each contract information concerning trading volume, open interest, the number and position sizes of individual traders relative to the reporting levels, and the Commission's surveillance experience with specific contracts, to determine if coverage of open interest is adequate for effective market surveillance. In this regard, the Commission is mindful of the burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the commodity futures and option markets. The Commission's most recent review of reporting levels indicates that the relative size of trading volume, open interest, and positions of traders enables the Commission to raise reporting levels as follows: (1) Milk, Class III from 25 to 50 contracts; (2) Soybeans from 100 to 150 contracts; (3) Wheat from 100 to 150 contracts; (4) Corn from 150 to 250 contracts; (5) Sugar No. 11 from 400 to 500 contracts; (6) Cotton from 50 to 100 contracts; (7) Natural Gas from 175 to 200 contracts; (8) Crude Oil, Sweet—No. 2 Heating Oil Crack Spread from 25 to 250 contracts; (9) Crude Oil, Sweet—Unleaded Gasoline Crack Spread from 25 to 150 contracts; (10) Unleaded Gasoline—No. 2 Heating Oil Spread Swap from 25 to 150 contracts; (11) 1-Month LIBOR from 300 to 600 contracts; (12) 30-Day Fed Funds from 300 to 600 contracts; (13) 3-Month Eurodollar Time Deposit Rates from 1,000 to 3,000 contracts; (14) TRAKRS from 25,000 to 50,000 contracts; (15) E-Mini S&P 500 Stock Price Index from 300 to 1,000 contracts<sup>5</sup>; (16) 2-Year U.S. Treasury Notes from 500 to 1,000 contracts; (17) 5-Year U.S. Treasury Notes from 800 to 2,000 contracts; (18) 10-Year U.S. Treasury Notes from 1,000 to 2,000 contracts; and (19) 30-Year U.S. Treasury Bonds from 1,000 to 1,500 contracts.

In response to the proposed rulemaking's request for public

<sup>5</sup> Previously, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract were 1,000 and 300 contracts, respectively. As amended, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract will be the same. Accordingly, the Commission is deleting the separate reference to the E-Mini S&P 500 Stock Price Index in Rule 15.03. Subject to this single exception for the E-Mini S&P 500 Stock Price Index contract, the Commission's practice has been to apply the same reporting level to both e-mini and related full-size contracts.

comment, U.S. Futures Exchange, L.L.C. (Eurex US), a Commission designated board of trade, recommended increasing the contract reporting level for all U.S. Treasury Notes and Bonds to the 5,000 contract range.<sup>6</sup> As stated in its comment letter, Eurex US based its recommendation on the amount of deliverable supply, increases in trading volume, and the average size of specific transactions.<sup>7</sup> The Commission carefully considered Eurex US's recommendation, but concluded that more modest increases in contract reporting levels better facilitate the Commission's obligation to rigorously surveil the market for U.S. Treasury Notes and Bonds.

## 2. The Impact of Raising Reporting Levels

The adjustments to reporting levels will decrease the number of daily position and identifying reports, such as Series '01 Reports and Forms 102, that reporting firms are currently required to file.<sup>8</sup> The number of Forms 40 filed by large traders will also decrease.<sup>9</sup> However, according to administrative experience and analysis performed by the Commission's surveillance staff, the percent of total market open interest reported through the large trader reporting system will remain at a level deemed sufficient for rigorous market surveillance.

Furthermore, not all reporting firms may elect to report under the Commission's higher, and therefore potentially less burdensome, reporting levels because exchanges also maintain large trader reporting systems that are similar in most respects to the Commission's system. The exchanges set their own reporting levels, which for particular contracts may vary from Commission set levels. When exchange reporting levels are set lower than those set by the Commission, firms may report to the Commission at the lower exchange set level, thereby saving any

<sup>6</sup> Letter from Satish Nandapurkar, CEO, U.S. Futures Exchange, L.L.C. to Jean A. Webb, Secretary of the Commission at 1 (June 10, 2004) (on file with the Commission).

<sup>7</sup> *Id.*

<sup>8</sup> A Series '01 Report itemizes the account number and certain positions, deliveries, and exchanges of futures associated with each account carrying a reportable position. See 17 CFR 17.00. The name, address, and occupation of the person or persons who own such accounts are separately identified on Form 102. See 17 CFR 17.01.

<sup>9</sup> Form 40 is a statement filed by a reporting trader on special call from the Commission. Reporting traders must list their name, address, telephone number, and principal occupation. Reporting traders are also required to disclose certain information relating to their business associations and their financial interest in, and control of, accounts that carry reportable positions. See 17 CFR part 18.

cost associated with reprogramming their reporting systems.<sup>10</sup> The Commission, however, only requires the filing of large trader reports for positions that equal or exceed its reporting levels.

## C. Default Reporting Level for Broad-Based Securities Indexes

The general default reporting level for all positions, including positions in broad-based securities indexes, is currently 25 contracts. The Commission is adopting, as proposed, a new default reporting level of 200 contracts specifically for broad-based securities indexes. By adopting such a default reporting level, the following commodities will no longer be enumerated in Rule 15.03, and therefore, will be subject to the new default reporting level of 200 contracts: (1) S&P 400 Midcap Stock Index—currently 100 contracts; (2) Dow Jones Industrial Average Index—currently 100 contracts; (3) New York Stock Exchange Composite Index—currently 50 contracts; (4) Amex Major Market Index, Maxi—currently 100 contracts; (5) NASDAQ 100 Stock Index—currently 100 contracts; (6) Russell 2000 Stock Index—currently 100 contracts; (7) Value Line Average Index—currently 50 contracts; and (8) NIKKEI Stock Index—currently 100 contracts. The reporting level for the S&P 500 Stock Price Index and the Municipal Bond Index, however, will remain at 1,000 and 300 contracts, respectively.

## D. Additional Contract Reporting Levels

To address recent market developments, the Commission is establishing enumerated reporting levels for three German federal government debt instruments, as well as a reporting level for products that are offered by HedgeStreet, Inc. (HedgeStreet), a new DCM. The reporting levels for the German debt instruments and the products offered by HedgeStreet are as follows: (1) 10-Year German Federal Government Debt—1,000 contracts; (2) 5-Year German Federal Government Debt—800 contracts; (3) 2-Year German Federal Government Debt—500 contracts; and (4) HedgeStreet Products—125,000 contracts.

The reporting level enumerated for HedgeStreet products is applicable to HedgeStreet contracts that pay a maximum of \$10.00 if in the money upon expiration. In light of the relatively low value of these products, the Commission is adopting a reporting level of 125,000 contracts. Since the value of HedgeStreet products could result in the reporting of positions that

<sup>10</sup> See 62 FR 24026, 24028 n. 7 (May 2, 1997).

numerically are very large, and due to current limitations in the Commission's large trader record format, HedgeStreet positions are to be reported under part 17 of the Commission's regulations by rounding down to the nearest 1,000 contracts and then dividing by 1,000. For example, a position of 177,955 contracts would be rounded down to 177,000 contracts, divided by 1,000, and then reported as 177.<sup>11</sup>

As initially structured by the Commission, the proposed enumerated reporting level for HedgeStreet products applied only to European-style binary options that were derivatives of economic indexes and paid a fixed \$10.00 when in the money upon expiration. The terms of the proposed reporting level were based upon the Commission's understanding that HedgeStreet contracts would initially have economic indexes as their underlying. However, in its comment letter on the proposed rulemaking, HedgeStreet requested that the Commission apply the 125,000 contract reporting level to HedgeStreet products that would not have economic indexes as their underlying.<sup>12</sup>

Because of the relatively low notional value of HedgeStreet products, the reporting levels otherwise applicable to such contracts, including the default reporting level of 25 contracts, may place an undue reporting burden on HedgeStreet and its members without substantially facilitating the Commission's objective of, and responsibility for, conducting meaningful market surveillance. The Commission, therefore, believes that a reporting level of 125,000 contracts for all HedgeStreet commodity futures and option contracts with a maximum payout of \$10 appropriately apprises the Commission of significant positions and relieves unnecessary burdens on HedgeStreet and its members.<sup>13</sup>

## II. Trades Involving the Exchange of Commodity Futures Contracts

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), extensively revising the CEA.<sup>14</sup> The CFMA facilitated the introduction of certain new transactions by the exchanges, including certain off-

centralized-market trades such as exchanges of futures for swaps (EFS).<sup>15</sup> Currently, several exchanges have rules permitting EFSs and other types of off-centralized-market trades referred to as exchanges of futures for risk (EFR) and exchanges of futures for options (EFO).<sup>16</sup> However, parts 16 and 17 of the Commission's regulations previously required contract markets and reporting firms to separately account only for volume attributable to EFPs.<sup>17</sup>

In order to recognize the growing use of these off-centralized-market trades, the final rules require exchanges and reporting firms to report all trades involving the exchange of futures for a commodity or for a derivatives position in the same manner as they previously reported EFP transactions. Therefore, exchanges and reporting firms will group together all EFPs, EFSs, EFRs, EFOs or other exchanges of futures for a commodity or for a derivatives position permitted by exchange rules, and report the sum under the same category. This is an appropriate approach because all of these trades are similar in that they permit the exchange of a futures position for an off-exchange position. Block trades, however, will not be included in this total because they do not involve the exchange of a commodity futures contract for a commodity or for a derivatives position. Volume attributable to block trades shall be reported with other volume.

With regard to the reporting of exchanges of futures, one commenter, Rolfe and Nolan Systems, Inc., a recordkeeping and reporting service provider, requested that the Commission allow at least 90 days after the finalization of the reporting rules for

<sup>15</sup> For instance, section 5(b)(3)(B) of the Act provides that DCM rules may authorize "an exchange of—(i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps \* \* \*." 7 U.S.C. 7(b)(3)(B).

<sup>16</sup> An EFS, EFR, and EFO works similarly to a transaction involving the exchange of futures for physicals (EFP). EFPs allow market participants to exchange a position in a futures contract with a similar cash market position. EFSs allow market participants to exchange a position in a futures contract for a cash-settled swap position. EFRs allow market participants to exchange a position in a futures contract for an over-the-counter derivatives position. EFOs allow market participants to exchange a position in a futures contract for an off-exchange options position.

<sup>17</sup> In the notice of proposed rulemaking, the Commission referred to transactions involving the exchange of futures as "exchanges of futures for a commodity or transaction other than a futures product." 69 FR 26335. The final rules, however, refer to such transactions as "exchanges of futures for a commodity or for a derivatives position" in order to capture a broader set of transactions and remain consistent with terminology used in another Commission notice of rulemaking. See 69 FR 39880 (July 1, 2004).

FCMs to comply with the requirement to aggregate exchanges of futures.<sup>18</sup> The commenter indicated that compliance with the new requirement would compel certain programming modifications.<sup>19</sup> In the Commission's view, this request is reasonable. In order to permit ample time for persons with reporting obligations to implement any necessary programming modifications, the Commission will not institute any enforcement proceeding under parts 15 through 18, and part 21, for non-compliance with the adopted reporting requirements applicable to exchanges of futures other than EFPs until the expiration of 90 days from the date of publication of these rules in the **Federal Register**. During this interval, compliance with the rules applicable to exchanges of futures is voluntary, however, persons with reporting obligations must continue to comply with all reporting requirements that are applicable to EFPs.

## III. Modernization of Rules Covering Data and Hard Copy Submissions

The Commission is adopting a series of rule amendments that are designed to update the reporting process in recognition of technological advancements. Parts 16 through 18, and part 21, previously required the submission of reports in hard copy form or through the dial-up transmission of data. The final rules amend these requirements to reflect the existing industry practice of using Internet data transmissions in place of dial-up transmissions and the use of exchange websites as a store of daily data in place of compiling information in hard copy form. The Commission, in addition to making certain other minor amendments that affect the reporting process, is also eliminating the use of Form 103 for the submission of special call data under part 18, and adopting final rules designed to foster innovation in the means reporting firms use to file Forms 102 as required by part 17.<sup>20</sup>

<sup>18</sup> Letter from John Munro, Senior Vice President of Product Design, Rolfe and Nolan Systems, Inc. to Jean A. Webb, Secretary of the Commission at 1 (June 1, 2004) (on file with the Commission).

<sup>19</sup> *Id.*

<sup>20</sup> Although generally supportive of the Commission's efforts to encourage electronic methods for publishing information and making regulatory filings, Eurex US commented that the Commission should adopt a consistent electronic protocol for the submission of data. Letter from Satish Nandapurkar, CEO, U.S. Futures Exchange, L.L.C. to Jean A. Webb, Secretary of the Commission at 2 (June 10, 2004) (on file with the Commission). As requested, the Commission will endeavor to adopt consistent and uniform electronic data submission procedures where appropriate. Nevertheless, the Commission believes that in order to lessen reporting and filing burdens

<sup>11</sup> See 17 CFR 17.00(g)(1).

<sup>12</sup> Letter from Michael Connor, President, HedgeStreet, Inc. to Jean A. Webb, Secretary of the Commission at 1 (June 8, 2004) (on file with the Commission).

<sup>13</sup> See Division of Market Oversight No-Action Letter to HedgeStreet, Inc. (July 26, 2004) (on file with the Commission).

<sup>14</sup> Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

The rules contained within part 16 of the Commission's regulations require reports from contract markets. The final rules eliminate the requirement for filing daily hard copy clearing member reports and daily hard copy submissions of data on trading volume, exchanges of futures, open contracts, delivery notices, option deltas, prices, and critical dates. These reports will only be required in hard copy form upon the request of the Commission or its staff. Also, the Commission is replacing the requirement of providing printed forms of data on trading volume, exchanges of futures, open contracts, delivery notices, and option deltas to the news media and members of the public with a general requirement that such information be made readily available to such persons.

The Commission is also replacing explicit requirements in part 16 for the dial-up transmission of data with more general data transmission requirements. Finally, in light of advances in technology, the Commission is requiring the submission of clearing member reports and certain data regarding trading volume, open interest, prices and critical dates by 12 noon on the business day following the day to which the information pertains. Previously, such information was required to be submitted by 3 p.m. on the business day following the day to which the information pertained. The Commission believes that the information is currently being submitted within the adopted noon deadline.

In part 17, which governs reports submitted by reporting firms, the Commission is substituting specific requirements pertaining to the use of dial-up transmissions, submissions of '01 forms, and computer printouts with more general data transmission requirements. Furthermore, the Commission will permit reporting firms to authenticate Forms 102 by a means other than manually signing the form. The signature requirement necessitates the physical filing of Forms 102. Physically filing these forms remains one of the more costly aspects of large trader reporting for the industry. In order to foster innovative and cost effective means of fulfilling this reporting requirement, including the possibility of electronic filing, the Commission will accept alternative means of authentication. While a manual signature will remain the default method of authentication, the Commission will retain the authority to

on all exchanges and market participants, electronic data submission protocols must inherently incorporate a reasonable measure of procedural flexibility.

approve other means of authentication as new filing solutions become available and accepted by market participants.

In part 18, which governs reports filed by traders, the Commission is eliminating the use of Form 103 for data requested by the Commission on special call. The format of the submitted data will be per instruction contained in the call.<sup>21</sup> In addition, consistent with the newly adopted requirements for the daily submission of large trader data, the Commission will also require traders to identify exchanges of futures for commodities or for derivatives positions in response to such a call.

The Commission is also deleting Rule 18.02 which provides for the use of code numbers for the designation and identification of accounts. Rule 18.02 was relevant to a reporting structure that relied on the routine receipt of large trader reports directly from traders. The Commission has not assigned a code number under Rule 18.02 in many years and, if a request for such assignment is made in the future, the Commission can accommodate the request informally. Finally, the Commission is amending part 18 by deleting Rule 18.06 as the referenced technology is no longer in use.

In part 21, which governs special calls, the requirement for machine-readable information adhering to a specific record layout is deleted. The requirement for the information to be prepared in accordance with instructions in the call will remain. This matches current industry and Commission practice.

#### IV. Clarifying and Technical Amendments

The Commission has identified a number of other provisions of the reporting rules that either do not reflect current industry or Commission practice or otherwise should be corrected or updated. First, the Commission is amending Rule 15.00(b)(1)(ii) to clarify that options on physicals are included in the definition of reportable position.<sup>22</sup> Second, the Commission is

<sup>21</sup> This matches current industry and Commission practice. The Commission is also amending Rule 15.02 to remove Form 103 from the list of forms to be used in filing reports.

<sup>22</sup> Prior to 1997, the definition of a reportable position explicitly referenced options on physicals. 17 CFR 15.00(b)(2) (1996). When the Commission amended that definition in 1997, that reference was deleted. 62 FR 24026 (May 2, 1997). The Commission believes that this deletion was unintentional as no explanation was provided at the time. *Id.*; see also 61 FR 37409 (July 18, 1996). Furthermore, both the Commission and the industry have continued to include options on physicals in reports filed under parts 15 through 21. See 17 CFR 16.00(a), 16.01(a), 21.02a(b)(4)(vii). Accordingly, the Commission believes that it is appropriate at this

amending Rule 17.00(a) to clarify that a reportable position in a commodity in a special account requires that all positions in that same commodity on the same exchange in the special account be reported.<sup>23</sup> Third, the Commission is amending Rule 17.04 to clarify that option positions are to be included in reports of omnibus accounts. Each of these clarifications is reflective of current industry and Commission practice.

The Commission is also amending Rules 16.00(b)(2) and 16.01(d)(2) to provide that the time by which the market reports required by those rules must be filed is governed by a particular time zone, unless otherwise specified by the Commission or its designee. The Commission specified eastern time for markets located in that time zone and central time for markets located elsewhere because Commission staff in Chicago and Kansas City assume surveillance duties for markets located outside of New York. The Commission is also adopting certain technical amendments to Rule 17.00(g). Specifically, it is removing the references to particular exchanges in subsection (2)(v) and making certain editorial changes in subsections (2)(vi) and (2)(xi). The Commission is also altering the requirement in Rule 17.01 regarding identification of special accounts to exchanges on Form 102.<sup>24</sup> Finally, the Commission is updating and correcting certain outdated references to the provisions of part 15 that appear in part 19.

#### V. Related Matters

##### A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) requires the

time to amend the definition of reportable position to clarify that it includes options on physicals, both to correct what appears to have been an unintentional limitation of the definition in 1997 and to align the definition with current industry and Commission reporting practices.

<sup>23</sup> Part 17 was amended in 1997 to reflect this requirement. See 62 FR 24026, 24028 n. 7 (May 2, 1997). In practice, however, it appears that further clarification would be helpful.

<sup>24</sup> This change is consistent with earlier changes made to the Commission's rules and does not relieve reporting firms from their obligation to comply with any applicable exchange requirements regarding the submission of Forms 102 to the exchanges. See 62 FR 24026 (May 2, 1997).

Commission to “consider the costs and benefits” of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission’s notice of proposed rulemaking contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.<sup>25</sup> The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules. The Commission, however, received no comment letter that considered the costs and benefits of the proposed rules. The Commission has considered the costs and benefits of these rules in light of the specific areas of concern identified in section 15. The Commission has endeavored in these rules to impose the minimum requirements necessary to enable the Commission to perform its oversight functions, to carry out its mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse. After considering these factors, the Commission has determined to adopt the revisions to parts 15 through 19, and part 21, as set forth below.

#### B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that contract markets, futures commission merchants and large traders are not “small entities” for purposes of the RFA.<sup>26</sup> The requirements of the proposed amendments fall mainly on contract markets and FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable large positions. In addition, these amendments relieve regulatory

burdens. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions taken herein will not have a significant economic impact on a substantial number of small entities.

#### C. The Paperwork Reduction Act

The revision of collections of information in these final rules have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), under control numbers 3038–0009 and 3038–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In the notice of proposed rulemaking, the Commission estimated the paperwork burden that would be imposed by the rules and sought comments on the estimates.<sup>27</sup> Only a single comment pertained tangentially to the collections of information requirements. Rolfe and Nolan Systems, Inc., a recordkeeping and reporting service provider, requested that the Commission allow at least 90 days for FCMs to comply with the requirement to aggregate exchanges of futures for reporting purposes.<sup>28</sup> The Commission has determined to grant that request.

##### 1. Scope of the Collections of Information

Parts 15 through 21 of the Commission’s regulations require reports from exchanges and large trader reports from clearing members, FCMs, foreign brokers, and traders. These rules are designed to provide the Commission with information to effectively conduct its market surveillance program, which includes the detection and prevention of price manipulation and enforcement of speculative position limits. The final rules give exchanges, reporting firms, and traders substantial flexibility in adopting technologically advanced techniques for data collection, retention, and submission.

Part 16 of the Commission’s regulations requires reports from exchanges. The final rules eliminate the requirements for daily hard copy clearing member and market data reports to the Commission. Furthermore, the Commission has replaced explicit requirements for a dial-up form of data transmission with

more general requirements for data transmission.

In part 17, which governs reports by reporting firms, the Commission has replaced specific requirements pertaining to the use of dial-up transmissions with more general data transmission requirements. In order to foster more innovative and cost efficient means for filing Forms 102, including the possibility of electronic filing, the Commission has adopted a final rule that facilitates the adoption of alternative means for authenticating Forms 102.

In part 18, which governs reports by traders, the Commission will no longer use Form 103 when seeking data via special call. The form of the data will now be per instruction contained in the call. In part 21, which governs special calls, the requirement for machine-readable information adhering to a specific record layout as contained in the rules has been eliminated. The requirement for the information to be prepared in accordance with instructions in the call remains.

##### 2. Respondents and Estimated Reporting Burden

Twelve exchanges provide the data required under Rule 16.00 once on each of an estimated 220 business days per year. All twelve exchanges provide a set of information which includes daily options and futures market data showing open contracts, volume of trading, deliveries and exchanges of futures for physicals (EFPs) by clearing member firms associated with the exchange’s derivatives clearing organization. The final rules require the reporting of all exchanges of futures. The burden associated with this reporting obligation is minimal. The final rules only require that exchanges aggregate all exchanges of futures and report them as a single sum without further itemization. The total burden in hours for the reporting of trading data by the exchanges is estimated at 879 hours.

The twelve exchanges also provide the market information required by Rule 16.01 for each of approximately 220 trading days per year. We have estimated that it takes the exchanges about 30 minutes per day to generate and transmit each data file. This results in an annual burden of approximately 1,760 hours. The total estimated annual burden for this collection of information has increased by 440 hours. The increase, however, is mainly attributable to an increase in the number of exchanges with market data reporting obligations.

<sup>27</sup> 69 FR 26333, 26337.

<sup>28</sup> Letter from John Munro, Senior Vice President of Product Design, Rolfe and Nolan Systems, Inc. to Jean A. Webb, Secretary of the Commission at 1 (June 1, 2004) (on file with the Commission).

<sup>25</sup> 69 FR at 26336.

<sup>26</sup> 47 FR 18618–21 (April 30, 1982).

Approximately 750 clearing members, FCMs, and foreign brokers are subject to routine reporting requirements. The final rules do not increase the aggregate burden hours required for such persons to comply with the routine reporting requirements. Under Rule 17.00, routine reports are filed only for accounts with futures and option positions that meet or exceed levels set by the Commission in Rule 15.03(b). It is estimated that this represents about 10 percent of all accounts carried by potential respondents and that less than one-half (approximately 264) of all respondents may be required to file reports at any one time. Of the 264 firms, two service bureaus file reports for approximately 40 firms. Therefore, the Commission receives reports electronically from 226 sources. Less than 15 minutes per day are expended by each source in generating files and transmitting them to the Commission. Over a 220-day period, the routine reporting burden on these firms is 12,430 hours.

Each account reported to the Commission must also be identified on Form 102. Form 102 provides information that allows the Commission to combine different accounts held or controlled by the same trader and to identify commercial firms using the markets for hedging. The total number of Forms 102 filed with the Commission is estimated at 4,000 per year for a burden of 800 hours. The final rules require the reporting of all exchanges of futures. The burden associated with this reporting obligation is minimal. The final rules only require that reporting firms aggregate all exchanges of futures and report them as a single sum without further itemization.

Traders file Forms 40 under Rule 18.04, and Forms 103 on call by the Commission under Rule 18.00. The number of traders filing Forms 40 is estimated at 2,400 per year, and the total annual burden for filing such information is estimated to be 800 hours. The Commission has maintained the authority to make special calls on traders under part 18 of the regulations when the information obtained routinely under part 17 of the regulations is incomplete for its purposes. In order to streamline this collection of information, the final rules eliminate Forms 103 altogether for the submission of special call data by large traders. The form of the data collected will be per instruction contained in the special call. The final rules also require the reporting of all exchanges of futures. The burden associated with this reporting obligation for traders is minimal. The final rules only require that traders aggregate all exchanges of

futures and report them as a single sum without further itemization.

3. Request for Comment

The Commission invites comment on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments should be directed to Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 (telephone 202-418-5209, e-mail [gmartinaitis@cftc.gov](mailto:gmartinaitis@cftc.gov)).

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 19

Commodity futures, Cotton, Grains, Reporting and recordkeeping requirements.

17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

2. In § 15.00, revise paragraph (b)(1)(ii) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(ii) Long or short put or call options that exercise into the same future of any commodity, or long or short put or call options for options on physicals that have identical expirations and exercise into the same physical, on any one contract market.

\* \* \* \* \*

3. Revise § 15.02 to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission or via the Internet (<http://www.cftc.gov>). Forms to be used for the filing of reports follow, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40 .....	Statement of Reporting Trader.	18.04
'01 .....	Positions of Special Accounts.	17.00
102 .....	Identification of Special Accounts.	17.01
204 .....	Cash Positions of Grain Traders (including Oilseeds and Products).	19.00
304 .....	Cash Positions of Cotton Traders.	19.00

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0009)

4. Revise § 15.03 to read as follows:

§ 15.03 Reporting levels.

(a) *Definitions.* For purposes of this section:

*Broad-based security index* is a group or index of securities that does not constitute a narrow-based security index.

*HedgeStreet products* are contracts offered by HedgeStreet, Inc., a designated contract market, that pay up to \$10.00 if in the money upon expiration.

*Major foreign currency* is the currency, and the cross-rates between the currencies, of Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union.

*Narrow-based security index* has the same meaning as in section 1a(25) of the Commodity Exchange Act.

*Security futures product* has the same meaning as in section 1a(32) of the Commodity Exchange Act.

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat .....	150
Corn .....	250
Oats .....	60
Soybeans .....	150
Soybean Oil .....	200
Soybean Meal .....	200
Cotton .....	100
Frozen Concentrated Orange Juice .....	50
Milk, Class III .....	50
Rough Rice .....	50
Live Cattle .....	100
Feeder Cattle .....	50
Lean Hogs .....	100
Sugar No. 11 .....	500
Sugar No. 14 .....	100
Cocoa .....	100
Coffee .....	50
Natural Resources:	
Copper .....	100
Gold .....	200
Silver Bullion .....	150
Platinum .....	50
No. 2 Heating Oil .....	250
Crude Oil, Sweet .....	350
Unleaded Gasoline .....	150
Natural Gas .....	200
Crude Oil, Sweet—No. 2 Heating Oil Crack Spread .....	250
Crude Oil, Sweet—Unleaded Gasoline Crack Spread .....	150
Unleaded Gasoline—No. 2 Heating Oil Spread Swap .....	150
Financial:	
3-month (13-Week) U.S. Treasury Bills .....	150
30-Year U.S. Treasury Bonds .....	1,500
10-Year U.S. Treasury Notes .....	2,000
5-Year U.S. Treasury Notes .....	2,000
2-Year U.S. Treasury Notes .....	1,000
10-Year German Federal Government Debt .....	1,000
5-Year German Federal Government Debt .....	800
2-Year German Federal Government Debt .....	500
3-Month Eurodollar Time Deposit Rates .....	3,000
30-Day Fed Funds .....	600
1-month LIBOR Rates .....	600
3-month Euroyen .....	100
Major-Foreign Currencies .....	400
Other Foreign Currencies .....	100
U.S. Dollar Index .....	50
Goldman Sachs Commodity Index .....	100
Broad-Based Security Indexes:	
S&P 500 Stock Price Index .....	1,000
Municipal Bond Index .....	300
Other Broad-Based Securities Indexes .....	200
Security Futures Products:	
Individual Equity Security .....	1,000
Narrow-Based Security Index .....	200
TRAKRS .....	150,000
HedgeStreet Products .....	125,000
All Other Commodities .....	25

<sup>1</sup> For purposes of part 17, positions in TRAKRS and HedgeStreet products should both be reported by rounding down to the nearest 1,000 contracts and dividing by 1,000.

**PART 16—REPORTS BY CONTRACT MARKETS**

■ 5. The authority citation for part 16 continues to read as follows:

**Authority:** 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12a, unless otherwise noted.

■ 6. In § 16.00, revise paragraphs (a)(4) and (b) to read as follows:

**§ 16.00 Clearing member reports.**

(a) \* \* \*

(4) The quantity of purchases of futures for commodities or for derivatives positions and the quantity of sales of futures for commodities or for derivatives positions which are included in the total quantity of contracts bought and sold during the day covered by the report, and the

names of the clearing members who made the purchases or sales;

\* \* \* \* \*

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however*, the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When such data is first available but not later than 12:00 p.m. on the business day following the day to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

\* \* \* \* \*

■ 7. In § 16.01:

■ a. Revise paragraph (a)(2) and the concluding text of paragraph (a), which follows paragraph (a)(5);

■ b. Remove the phrase “, in printed form at the office of the contract market,” from paragraph (b)(3); and

■ c. Revise paragraph (d).

The revisions read as follows:

**§ 16.01 Trading volume, open contracts, prices, and critical dates.**

(a) \* \* \*

(2) The total quantity of futures exchanged for commodities or for derivatives positions which are included in the total volume of trading;

(5) \* \* \*

**Note to paragraph (a):** This information shall be made readily available to the news media and the general public without charge no later than the business day following the day for which publication is made.

\* \* \* \* \*

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit to the Commission the information specified in paragraphs (a), (b) and (c) of this section as follows:

(1) Using the format, coding structure and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however*, the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When each such form of the data is first available but not later than 7:00 a.m. on the business day following the day to which the information pertains for the delta factor and settlement price and not later than 12:00 p.m. for the remainder of the information. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

\* \* \* \* \*

■ 8. Revise § 16.06 to read as follows:

**§ 16.06 Errors or omissions.**

Unless otherwise approved by the Commission or its designee, contract markets shall file corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01 in the format and using the coding structure and electronic data submission procedures approved in writing by the Commission or its designee.

■ 9. In § 16.07, revise paragraphs (a) and (b) to read as follows:

**§ 16.07 Delegation of authority to the Director of the Division of Market Oversight and the Executive Director.**

\* \* \* \* \*

(a) Pursuant to §§ 16.00(b) and 16.01(d), the authority to determine whether contract markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a contract market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.00(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by contract markets.

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

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

**Authority:** 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a, unless otherwise noted.

■ 11. In § 17.00, revise paragraph (a) heading, add paragraph (a)(1), and revise paragraphs (g)(2)(i), (g)(2)(v), (g)(2)(vi), (g)(2)(xi), and (h) to read as follows:

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

(a) *Special Accounts—Reportable futures and options positions, delivery notices, and exchanges of futures.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made in accordance with the format, coding and data transmission procedures set forth

in paragraph (g) of this section. The report shall show each futures position, separately for each contract market and for each future, and each put and call options position separately for each contract market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for commodities or for derivatives positions and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account. The report shall also show all positions in all futures months and option expirations of that same commodity on the same contract market for which the special account is reportable.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) *Report type.* This report format will be used to report three types of data: long and short futures and options positions, futures delivery notices issued and stopped, and exchanges of futures for a commodity or for a derivatives position bought and sold. Valid values for the report type are “RP” for reporting positions, “DN” for reporting notices, and “EP” for reporting exchanges of futures for a commodity or for a derivatives position.

\* \* \* \* \*

(v) *Exchange.* This is a two-character field approved by the Commission to identify the exchange on which a position is held.

(vi) *Put or Call.* Valid values for this field are “C” for a call option and “P” for a put option. For futures, the field is blank.

\* \* \* \* \*

(xi) *Long-Buy-Stopped (Short-Sell-Issued).* When report type is “RP”, report long (short) positions open at the end of a trading day. When report is “DN”, report delivery notices stopped (issued) on behalf of the account. When report type is “EP”, report purchases (sales) of futures for a commodity or for a derivatives position for the account. Report all information in contracts. Position data are reported on a net or gross basis in accordance with paragraphs (d) and (e) of this section.

\* \* \* \* \*

(h) *Correction of errors and omissions.* Unless otherwise approved by the Commission or its designee, corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be filed on series ‘01 forms or in the format, coding structure and data transmission

procedures approved in writing by the Commission or its designee.

\* \* \* \* \*

■ 12. In § 17.01, revise the introductory text and paragraphs (e), (f) and (g) to read as follows:

**§ 17.01 Special account designation and identification.**

When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the account to the Commission on form 102, in the form and manner specified in § 17.02, showing the information in paragraphs (a) through (f) of this section.

\* \* \* \* \*

(e) *Account executive.* The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker who introduced the account.

(f) *Reporting firms.* The name and address of the futures commission merchant, clearing member, or foreign broker carrying the account, the name, title and business phone of the authorized representative of the firm filing the form 102 and the date of the form 102. The authorized representative shall sign the report or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.

(g) *Form 102 updates.* If, at the time an account is in special account status and a form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraph (b) of this section since the previous filing, the futures commission merchant, clearing member, or foreign broker shall file an updated form 102 with the Commission within three business days after such change occurs.

■ 13. Revise § 17.02 to read as follows:

**§ 17.02 Form, manner and time of filing reports.**

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) and (b) of this section.

(a) *Section 17.00(a) reports.* Reports filed under § 17.00(a) shall be submitted through electronic data transmission

procedures approved in writing by the Commission or its designee not later than 9 a.m. on the business day following that to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(b) *Section 17.01 reports.* For data submitted pursuant to § 17.01 on form 102:

(1) On call by the Commission or its designee, identify the type of special account specified by items 1(a), 1(b), or 1(c) of form 102, and the name and location of the person to be identified in item 1(d) on the form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its designee, on the same day that the special account in question is first reported to the Commission; and

(2) Submit a completed form 102 within three business days of the first day that the special account in question is reported to the Commission in accordance with instructions by the Commission or its designee.

■ 14. In § 17.03, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 17.03 Delegation of authority to the Director of the Division of Market Oversight and to the Executive Director.**

\* \* \* \* \*

(a) Pursuant to § 17.00(a) and (h), the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under Rule 17.00(a) and Rule 17.00(h) on series '01 forms or using some other format upon a determination that such person is unable to report the information using the format, coding structure or electronic data transmission procedures otherwise required.

(b) Pursuant to § 17.02, the authority to instruct and/or approve the time at which the information required under Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in §§ 17.01(g) and 17.02.

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the form 102 to use a means of authenticating the report other than by signing the form 102 and, if so, to

determine the alternative means of authentication that shall be used.

\* \* \* \* \*

■ 15. In § 17.04, revise the second sentence of paragraph (b) and paragraphs (b)(1)(i) and (b)(2) to read as follows:

**§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.**

\* \* \* \* \*

(b) \* \* \* The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future or option are carried for the same trader, compute open long or open short positions as instructed in this paragraph.

(1) \* \* \*

(i) The positions represent transactions on a contract market which requires long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis; or

\* \* \* \* \*

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a contract market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

\* \* \* \* \*

**PART 18—REPORTS BY TRADERS**

■ 16. 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.

■ 17. Revise § 18.00 to read as follows:

**§ 18.00 Information to be furnished by traders.**

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each contract market:

- (a) Open contracts;
- (b) Purchases and sales;
- (c) Delivery notices issued and stopped;

(d) Purchases and sales of futures for commodities or for derivatives positions; and

(e) Options exercised.

(Approved by the Office of Management and Budget under control number 3038-0009)

#### § 18.02 [Removed and Reserved.]

- 18. Remove and reserve § 18.02.

#### § 18.06 [Removed and Reserved.]

- 19. Remove and reserve § 18.06.

### PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

- 20. The authority citation for part 19 continues to read as follows:

**Authority:** 7 U.S.C. 6g(a), 6i and 12a(5), unless otherwise noted.

- 21. In § 19.00, revise paragraph (a)(1) and the first sentence of (a)(3) to read as follows:

#### § 19.00 General provisions.

(a) \* \* \*

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(b)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

\* \* \* \* \*

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(b)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. \* \* \*

\* \* \* \* \*

### PART 21—SPECIAL CALLS

- 22. The authority citation for part 21 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

#### § 21.02a [Removed]

- 23. Remove § 21.02a.

Issued in Washington, DC on December 14, 2004 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04-27750 Filed 12-20-04; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 179

[Docket No. 1993F-0357]

### Irradiation in the Production, Processing, and Handling of Food

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a source of fast (high energy) neutrons to inspect containers that may contain food. This action is in response to a petition filed by Science Applications International Corp. (SAIC). **DATES:** This rule is effective December 21, 2004. Submit written or electronic objections and requests for a hearing by January 20, 2005. See section VII of this document for information on the filing of objections.

**ADDRESSES:** You may submit written objections and requests for a hearing, identified by Docket No. 1993F-0357, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site.

- E-mail: [fdadockets@oc.fda.gov](mailto:fdadockets@oc.fda.gov). Include Docket No. 1993F-0357 in the subject line of your e-mail message.

- FAX: 301-827-6870.

- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For detailed instructions on submitting objections, see the "Objections" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number, found in brackets in the heading of this document, into the

"Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 301-436-1282.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

In a notice published in the **Federal Register** of November 18, 1993 (58 FR 60860), FDA announced that a food additive petition (FAP 3M4399) had been filed by Science Applications International Corp., 2950 Patrick Henry Dr., Santa Clara, CA 95054. The petition proposed that the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) be amended to provide for the safe use of a source of fast (high energy) neutrons to inspect cargo containers that may contain food. In a letter dated January 9, 1998, FDA was informed by Ancore Corp. that they were previously the division of SAIC responsible for this petition but had been reorganized into a separate company. The letter explained that as part of this reorganization, the rights to FAP 3M4399 had been transferred from SAIC to Ancore Corp. (same address as SAIC).

When the petition was filed on November 18, 1993, it contained an environmental assessment (EA). In the notice of filing for this petition, the agency announced that it was placing the EA submitted with this petition on display at the Division of Dockets Management for public review and comment. No comments on the EA were received. Based on the original EA, FDA prepared a finding of no significant impact to the environment dated May 31, 1994. On July 29, 1997, FDA published revised regulations under part 25 (21 CFR part 25), which became effective on August 28, 1997. On May 12, 2003, the petitioner submitted a claim of categorical exclusion under the new § 25.32(j), in accordance with the procedures in § 25.15(a) and (d). Because the environmental record for the FAP was outdated, the agency reviewed the claim of categorical exclusion under § 25.32(j) for this final rule and found it to be warranted.

##### II. Evaluation of Safety

A source of radiation used for the purpose of inspection of foods meets the definition of a food additive under