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## COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 15, 16, 17, 18, 19, 21, and 37

RIN 3038-AC22

### Market and Large Trader Reporting

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission is adopting new and amended market and large trader reporting rules. The final rules accomplish the following: Codify a reporting level for contracts based on 3-Year U.S. Treasury Notes; clarify the reporting obligations of registered derivatives transaction execution facilities and their market participants; require designated contract markets to publicly disseminate integrated volume data for each contract that separately identifies the volume generated from block trades; establish a reporting framework for exclusively self-cleared contracts; and implement a number of conforming, clarifying, and technical amendments.

**DATES:** Effective July 3, 2006.

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### SUPPLEMENTARY INFORMATION:

## I. Market and Large Trader Reporting Rules

The market and large trader reporting rules (reporting rules) are contained in parts 15 through 21 of the Commission's regulations.<sup>1</sup> Collectively, the reporting rules effectuate the Commission's market and financial surveillance programs.<sup>2</sup> The market surveillance programs analyze market data to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs use market data to measure the financial risks that large contract positions may pose to Commission registrants and clearing organizations.

The Commission's reporting rules are implemented partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (Act or CEA).<sup>3</sup> Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits.<sup>4</sup> Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions involving commodity options.<sup>5</sup> Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities, and obligates futures commission merchants (FCMs), introducing brokers, floor brokers, and floor traders to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade.<sup>6</sup> Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on designated contract markets or registered derivatives transaction execution facilities (DTEFs) equal or exceed Commission-set levels.<sup>7</sup>

<sup>1</sup> 17 CFR parts 15 to 21.

<sup>2</sup> See 69 FR 76392 (December 21, 2004).

<sup>3</sup> 7 U.S.C. 1 *et seq.*

<sup>4</sup> 7 U.S.C. 6a.

<sup>5</sup> 7 U.S.C. 6c(b).

<sup>6</sup> 7 U.S.C. 6g.

<sup>7</sup> 7 U.S.C. 6i. In addition, CEA section 8a(5) is an enabling provision that grants to the Commission the authority to adopt rules that in its judgment are reasonably necessary to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Pursuant to CEA section 3(b), the Act seeks to ensure the financial integrity of regulated transactions and prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b). Together, these purposes warrant the maintenance of an effective and vigorous system of market and financial surveillance.

## II. Procedural Background

### A. The Proposed Rules

On December 15, 2005, the Commission published a notice of proposed rulemaking in the **Federal Register** for public comment.<sup>8</sup> In that notice, the Commission proposed new and amended reporting rules that addressed recent market developments and clarified the application of the reporting rules to transactions executed on DTEFs. The Commission received one comment letter from the Chicago Mercantile Exchange (CME).<sup>9</sup> In its comment letter, the CME expressed general support for the Commission's proposed rules. With two minor exceptions (a technical amendment to Commission rule 37.2 and a revised definition of an exclusively self-cleared contract), the Commission is adopting the new and amended reporting rules as proposed. For this reason, the CME's comments are discussed below in tandem with an overview of the final reporting rules.

### B. Overview of the Final Reporting Rules and CME Comments

The final rules effectuate several substantive changes to the Commission's reporting rules. First, the final rules codify a reporting level for 3-Year U.S. Treasury Note futures and option contracts (3-Year T-Notes). The codification in Commission rule 15.03(b) is in response to a designated contract market's listing of 3-Year T-Notes and the possibility that other designated contract markets will seek to offer 3-Year T-Notes for trading.

Second, the final rules clarify the application of the reporting rules to transactions executed on DTEFs. In the interest of regulatory clarity, the final rules define DTEFs directly into the reporting rules and emphasize the Commission's discretion to exempt DTEFs and their market participants from the reporting rules when necessary and appropriate. In its comment letter, the CME stated that defining DTEFs directly into the reporting rules would "avert any ambiguity regarding" the application of the reporting rules to

<sup>8</sup> 70 FR 74246.

<sup>9</sup> Letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange, to Jean A. Webb, Secretary of the Commission (February 13, 2006)(on file with the Commission), available at [http://www.cftc.gov/foia/comment05/foi05-009\\_1.htm](http://www.cftc.gov/foia/comment05/foi05-009_1.htm).

DTEFs. The CME remarked that the lack of regulatory ambiguity would discourage attempts to engage in regulatory arbitrage.

Third, the final reporting rules amend the public dissemination requirement of Commission rule 16.01. The final reporting rules require designated contract markets to present publicly disseminated market information, when required to do so by rule 16.01, in a format that readily enables the consideration of the data. The final reporting rules also require designated contract markets to publicly disseminate, for each contract, integrated volume data that separately identifies the volume generated from block trades. In its comment letter, the CME noted that integrated volume data that separately identifies the volume generated from block trades improves the ability of market participants to assess material variables such as a market's liquidity and the utility of contracts as vehicles for hedging and price basing.

Lastly, the final rules establish a specific reporting framework for contracts that are exclusively self-cleared. The final rules address certain aspects of the reporting rules that do not comport well with un-intermediated market structures. The final rules accomplish this by placing the exchange in the regulatory position of large traders with respect to any obligation to report under part 17 of the Commission's regulations. In its comment letter, the CME emphasized the relevance of large trader data to the protection of market integrity. Furthermore, the CME stated that the Commission's reporting framework struck an appropriate balance between relieving technical compliance burdens and requiring the timely submission of vital trading data.

### III. Establishing a Contract Reporting for Level 3-Year U.S. Treasury Notes

The Commission's reporting rules require FCMs, foreign brokers, and clearing members (collectively reporting firms) to identify and provide daily position reports on customer and proprietary accounts that maintain reportable positions.<sup>10</sup> Positions in commodity futures and option contracts become reportable when they equal or exceed the reporting levels codified in Commission rule 15.03(b).<sup>11</sup> Rule

15.03(b) establishes reporting levels for all contracts that are subject to the Commission's reporting rules. Rule 15.03(b) applies specified reporting levels to certain contracts and a standard default reporting level of 25 to all other contracts.<sup>12</sup> Since the default contract reporting level is strictly set at 25, its application to some newly listed contracts is (on occasion) inefficient from a regulatory surveillance perspective.

U.S. Futures Exchange, LLC listed 3-Year T-Notes for trading in January of 2005. As discussed in the proposed rules, rule 15.03(b) did not at that time specify a reporting level for 3-Year T-Notes. In order to employ regulatory resources more efficiently and lessen any undue burden associated with the obligation to report, staff in the Division of Market Oversight (DMO staff) granted no-action relief to reporting firms and traders holding or controlling positions in 3-Year T-Notes that, for the purpose of complying with the Commission's reporting rules, adhered to a reporting level of 750 contracts instead of the otherwise applicable default reporting level of 25.<sup>13</sup> DMO staff premised its grant of relief primarily on the conclusion that historical trading in 2-Year T-Notes served as precedent for trading in 3-Year T-Notes.<sup>14</sup> Based on the Commission's surveillance experience with 2-Year T-Notes, the liquidity of the securities underlying treasury futures and option contracts, and the securities available for delivery against 3-Year T-Notes,<sup>15</sup> the Commission is herein codifying a reporting level of 750 contracts for 3-Year T-Notes.

or control reportable positions (large traders) to verify and supplement the submitted data in accordance with part 18 of the Commission's regulations. See 17 CFR part 18.

<sup>12</sup> With respect to liquid contracts, the Commission typically calibrates contract reporting levels to ensure that the aggregate of all positions reported to the Commission represents approximately 70 to 90 percent of the open interest in any given contract. The Commission analyzes factors such as the terms and conditions of a contract, its trading volume, its level of open interest, its typical open position size, and the Commission's regulatory experience with similar contracts prior to revising or codifying new contract reporting levels in Commission rule 15.03(b). See 69 FR 76392, 76393 (December 21, 2004).

<sup>13</sup> CFTC Staff Letter 05-03 Comm. Fut. L. Rep. (CCH) ¶ 30,024 (January 26, 2005).

<sup>14</sup> *Id.* The contract reporting level for 2-Year T-Notes is currently 1,000 contracts. 17 CFR 15.03(b).

<sup>15</sup> The deliverable supply for the March 2005 3-Year T-Notes had a value of approximately \$95 billion.

### IV. Registered Derivatives Transaction Execution Facilities

#### A. Authority To Subject DTEFs to the Reporting Rules

As discussed in the proposed rules, the CEA, as amended by the Commodity Futures Modernization Act of 2000 (CFMA),<sup>16</sup> gives the Commission the statutory authority to subject transactions on DTEFs to the reporting rules.<sup>17</sup> Section 4c(b) of the Act, regardless of the venue of trading, gives the Commission plenary authority to regulate transactions involving commodity options. Sections 4a and 4i of the Act explicitly reference transactions executed on or subject to the rules of DTEFs. Lastly, section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and certain Commission registrants trading on registered entities and boards of trade. The term registered entity is defined by CEA section 1a(29) to include DTEFs.<sup>18</sup> Likewise, section 1a(2) of the Act defines a board of trade to include "any organized exchange or other trading facility."<sup>19</sup>

#### B. Commission Rule 37.2

In 2001, the Commission adopted a series of DTEF rules in part 37 to effectuate the CFMA.<sup>20</sup> With the exception of a limited grouping of reserved rules, the Commission (in rule 37.2) exempted DTEFs and transactions on DTEFs from all regulations otherwise pertinent to trading facilities. By including parts 15 to 21 in the limited grouping of reserved rules, the Commission, acting pursuant to its statutory authority, unambiguously reserved the applicability of the reporting rules to transactions executed on DTEFs.<sup>21</sup> Although unambiguously reserved, Commission rule 37.2 expressed the applicability of the reporting rules to DTEFs and their market participants through incorporation by reference and without substantial clarity. More specifically, Commission rule 37.2 provided that DTEFs are not, as applicable to the market, exempt from parts 15 to 21, and further provided that parts 15 to 21, when applicable to DTEFs, shall be viewed as though they were set forth in

<sup>16</sup> CFMA, Appendix E of Public Law 106-554, 114 Stat. 2763.

<sup>17</sup> Although the Commission has received indications of interest from potential DTEF applicants, no board of trade has registered or applied for registration with the Commission as a DTEF.

<sup>18</sup> 7 U.S.C. 1a(29).

<sup>19</sup> 7 U.S.C. 1a(2).

<sup>20</sup> 66 FR 42256 (August 10, 2001).

<sup>21</sup> 17 CFR 37.2.

<sup>10</sup> See 17 CFR part 17.

<sup>11</sup> See 17 CFR 15.00 and 15.03. The firms that carry accounts that become reportable are required to identify those accounts on Form 102 and report positions in the accounts to the Commission. See 17 CFR 17.00 and 17.01. When necessary, the Commission separately calls upon persons that own

rule 37.2 and included specific reference to DTEFs.

At the time Commission rule 37.2 was adopted, the incorporation of the reporting rules by reference was necessary because the expressed provisions of parts 15 to 21, with the exception of Commission rule 15.05, applied only to contract markets and did not mention DTEFs.<sup>22</sup> As part of the Commission's continuing effort to better implement the amendments introduced to the Act by the CFMA, the Commission is herein defining DTEFs directly into rules 15.00 to 15.04 and parts 16 through 21.<sup>23</sup> Defining DTEFs directly into the reporting rules clarifies the application of the rules to transactions executed on DTEFs. The final rules are not designed to alter the pre-existing reporting obligations of DTEFs or their market participants in any way.

### C. Clarification Through the Replacement of Terms

The final reporting rules define DTEFs directly into rules 15.00 to 15.04 and throughout the provisions of parts 16 through 21. The final rules accomplish this by replacing the term contract market with the new term reporting market throughout the applicable provisions of the reporting rules.<sup>24</sup> New Commission rule 15.00(m) defines reporting market to mean a designated contract market and, unless determined otherwise by the Commission with respect to some or all of the contracts listed by the facility, a DTEF.

The language that defines the term reporting market emphasizes the Commission's authority to exempt transactions on DTEFs from the

reporting rules when necessary and appropriate. As discussed in the notice of proposed rulemaking, the discretion embedded within the definition of reporting market reconciles the Commission's responsibility to diligently regulate transactions on DTEFs with the Congressional directive to permit DTEFs to operate more flexibly.<sup>25</sup> In determining whether to consider DTEFs reporting markets with respect to particular contracts, the Commission will consider several factors, including a DTEF's surveillance capabilities and the characteristics of the commodities that underlie DTEF transactions.<sup>26</sup> In all cases, the Commission will remain mindful of the operational flexibility granted to DTEFs.

### D. Market Data

Commission rule 16.01 requires the submission of market data to the Commission on a daily basis.<sup>27</sup> Amended rule 16.01 requires reporting markets, as opposed to contract markets, to submit directly to the Commission data on trading volume, open interest, futures delivery notices, exchanges of futures, option deltas, prices, and critical dates on a daily basis. Unless the Commission exercises the discretion embedded within the definition of reporting market to determine otherwise, data associated with contracts on DTEFs is data associated with contracts on reporting markets and therefore subject to inclusion in market reports submitted to the Commission.

Commission rule 16.01 also requires the dissemination of market data to the

general public. Section 5(d)(8) of the Act requires designated contract markets to disseminate a specific set of market data publicly for all actively traded contracts on a daily basis.<sup>28</sup> In contrast, section 5a(d)(5) of the Act requires DTEFs to publicly disseminate the same market data only for contracts that perform a significant price discovery function for transactions in the cash market for the commodity underlying the contract.<sup>29</sup> Because of the divergent statutory triggers, the Commission believes that designated contract markets and DTEFs should not of necessity be subject to the same public dissemination requirement. Therefore, amended rule 16.01 only requires designated contract markets, as opposed to reporting markets, to publicly disseminate data on trading volume, open interest, futures delivery notices, exchanges of futures, option deltas, and prices on a daily basis.

As discussed above, section 5a(d)(5) of the Act requires DTEFs to publicly disseminate a specific set of market data for contracts that perform a significant price discovery function for transactions in the cash market for the commodity underlying the contract.<sup>30</sup> Since amended rule 16.01 exempts DTEFs from its public dissemination requirement, the public dissemination requirement for DTEF transactions will be set by section 5a(d)(5) of the Act and implemented pursuant to any regulations adopted thereunder.<sup>31</sup> New paragraph (e) of rule 16.01 emphasizes this by clarifying that DTEFs, although exempt from the public dissemination

<sup>28</sup> 7 U.S.C. 7(d)(8).

<sup>29</sup> Compare 7 U.S.C. 7(d)(8) (designated contract market Core Principle 8), with 7 U.S.C. 7a(d)(5) (DTEF Core Principle 5). The language triggering the DTEF public dissemination requirement is similar to the language triggering the same requirement for exempt boards of trade (7 U.S.C. 7a-3(d)) and exempt commercial markets (7 U.S.C. 2(h)(4)(D)). Aside from the requirement to comply with minimal notice and reporting obligations, exempt boards of trade and exempt commercial markets are generally not subject to Commission oversight. See 17 CFR part 36.

<sup>30</sup> The Commission recently applied to DTEFs and exempt boards of trade the same standard that currently applies to exempt commercial markets for determining whether a contract performs a significant price discovery function for transactions in the cash market for an underlying commodity. 71 FR 1953, 1958 (January 12, 2006). More specifically, in making such a determination with respect to DTEFs and exempt boards of trades, the Commission will consider (1) whether cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or (2) whether market prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. *Id.*

<sup>31</sup> See Commission guidance on DTEF Core Principle 5 in Appendix B to part 37 of the Commission's regulations. 17 CFR part 37 Appendix B.

<sup>22</sup> Commission rule 15.05 relates to the appointment of an agent for service of process for foreign persons. 17 CFR 15.05. Rule 15.05 is self-effectuating and permits the Commission to expeditiously communicate with foreign persons and entities that trade on the domestic commodity exchanges. See 45 FR 30426 (May 8, 1980). The rule was amended in 2001 to explicitly apply to designated contract markets and registered derivatives transaction execution facilities. See 66 FR 42256 (August 10, 2001).

<sup>23</sup> The Commission is also implementing technical amendments to Commission rule 37.2 to reconcile that rule with the new and amended reporting rules.

<sup>24</sup> More specifically, the Commission is replacing the term contract market with the term reporting market in the rule 15.00 definition of a reportable position, in rules 15.01(a), 16.06, 18.05, and 21.01, and throughout the subparagraphs of rules 16.00, 16.01, 16.07, 17.00, 17.04, 18.00, 21.02, and 21.03. In addition, the Commission is replacing the term contract market with the term reporting market in the heading of part 16, part 17, and the heading of sections 21.02 and 21.03. Other conforming amendments that reconcile existing rules with the replacement of terms are discussed in Section VII of this notice of rulemaking.

<sup>25</sup> In comparison with designated contract markets, DTEFs are required to comply with a less comprehensive set of Core Principles. Compare 7 U.S.C. 7(d) (Core Principles for designated contract markets) with 7a(d) (Core Principles for DTEFs). In certain respects, DTEFs have greater operational flexibility than designated contract markets. For example, pursuant to section 5(d)(11) of the Act, transactions on designated contract markets, with the exception of security futures products, must be cleared through Commission registered derivatives clearing organizations. See 7 U.S.C. 7(d)(11) and guidance on Core Principle 11 in Appendix B to 17 CFR part 38. In contrast, pursuant to section 5a(c)(4) of the Act, transactions on DTEFs may be cleared through clearing organizations other than Commission registered clearing organizations. See 7 U.S.C. 7a(c)(4) and guidance on Registration Criterion 4 in Appendix A to 17 CFR part 37.

<sup>26</sup> When the Commission adopted rule 37.2 in August of 2001, it specifically determined to defer the extension of routine large trader reporting requirements to DTEF transactions involving Treasury instruments. See 66 FR 42256, 42261 (August 10, 2001). When the Commission adopted rule 41.25 in November of 2001, it specifically determined to require part 16 reports from all DTEFs listing security futures products. See 66 FR 55078 (November 1, 2001). Under the new and amended reporting rules, the Commission will, without exception, deem such DTEFs to be part 16 reporting markets for security futures products.

<sup>27</sup> 17 CFR 16.01.

requirement of Commission rule 16.01, must nonetheless comply with section 5a(d)(5) of the Act and any regulation adopted thereunder.

#### V. Block Trade Volume and the Publication of Market Data

The passage of the CFMA facilitated the availability of transactions, including block trades, that are subject to the rules of an exchange, but lawfully negotiated and executed away from the centralized marketplace.<sup>32</sup> Block trades are typically subject to exchange rules that establish minimum size thresholds, participant eligibility requirements, pricing limits, and trade reporting parameters.<sup>33</sup> It is generally believed that market participants trade within the constraints established by block trade rules to counter potential price and execution risks associated with the execution of larger sized orders in a centralized market.

Commission rule 1.38(b) currently requires designated contract markets to separately identify and mark all block trades and other off-centralized market transactions.<sup>34</sup> In December of 2004, the Commission recognized the growing importance and use of off-centralized market transactions by adopting final rules that required designated contract markets to separately identify, report, and publish for each contract the volume generated from exchanges of futures for commodities or for derivatives positions.<sup>35</sup> To more comprehensively recognize the growing importance and use of off-centralized market transactions, the Commission is now amending rule 16.01 to require designated contract markets to record and make readily available to the news media and the general public, as part of the total mix of market data publicly disseminated for each contract pursuant to rule 16.01, the volume generated from block trades.

As indicated in the proposed rules, several designated contract markets do disseminate public reports that separately account for the volume generated from block trades.<sup>36</sup> The final

amendments to rule 16.01 codify this industry practice, and require all designated contract markets to record the volume generated from block trades for each contract, and make that information readily available to the news media and the general public as a part of the total mix of market data publicly disseminated daily pursuant to rule 16.01.<sup>37</sup> However, final rule 16.01 does not separately require designated contract markets to submit a contract's block trade volume on a daily basis to the Commission. The Commission has assessed the cost of integrating separate block trade volume data into its information systems and has determined that cost to be considerable. The Commission will therefore independently derive and compile such data as necessary to fulfill its market and financial surveillance responsibilities.

The Commission believes that designated contract markets must generally satisfy their obligation to publicly disseminate market data on a daily basis by making such information readily available to the news media and the general public through the internet and on web pages that are conveniently accessed and easily navigable. Final rule 16.01(e), through two additional requirements, emphasizes the obligation to disseminate market data in a manner that is both useful and accessible. First, final rule 16.01(e) specifically requires designated contract markets to publish integrated volume data for each contract. Second, final rule 16.01(e) requires designated contract markets to present market data in a format that readily enables members of the news media and the general public to consider the data. The publication of a contract's total volume of trading, alongside the volume generated from exchanges of futures and block trades, will enhance the ability of market participants and the general public to effectively analyze the determinants of market prices, the depth of market liquidity, and the utility of contracts as hedging and pricing tools. The expressed requirement to present market data in a format that readily enables members of the news media and the general public to consider the data will make designated contract markets fully aware of their present obligation to

publicly disseminate market data in a format that is readily accessible and user friendly.

#### VI. Exclusively Self-Cleared Contracts

##### A. Market Structure

In February of 2004, the Commission designated HedgeStreet, Inc. (HedgeStreet or Exchange) as a contract market pursuant to sections 5 and 6(a) of the Act.<sup>38</sup> HedgeStreet initially offered, and continues to offer, small sized contracts to retail traders in a market structure that is substantially different from the structure of other active designated contract markets.<sup>39</sup> For example, HedgeStreet offers small sized and fully collateralized European style binary options on various commodities in a market structure that permits no intermediary to handle the orders or funds of traders.<sup>40</sup>

As discussed in the proposed rules and in more detail in the subsections below, market structures without clearing intermediation, in certain respects, do not comport well with the reporting rules. The reporting rules were designed to collect information from markets that hosted a select group of well-capitalized clearing intermediaries with direct access to the exchange.<sup>41</sup> The Commission is therefore establishing an alternative reporting framework for contracts that are cleared only by traders to rectify this inconsistency. For ease of reference, the term exclusively self-cleared contract is used herein to refer to such contracts, and defined by new Commission rule 15.00(f) to mean a contract for which no person, other than a reporting market and its clearing organization, is permitted to accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade.

In its prior notice of rulemaking, the Commission proposed to define the term exclusively self-cleared contract as a contract that did not involve an intermediary's handling of customer

<sup>38</sup> 7 U.S.C. 7 and 8(a); Order of Designation as a Contract Market (February 18, 2004).

<sup>39</sup> See Order of Registration as a Derivatives Clearing Organization (February 18, 2004); see also Staff Designation Memorandum from the Division of Market Oversight (Staff Memorandum) at 47 (February 10, 2004).

<sup>40</sup> Staff Memorandum at 29. In December of 2005, the Commission amended HedgeStreet's Order of Designation to permit the Exchange to offer larger sized contracts that could be cleared by members of The Clearing Corporation. See HedgeStreet's Amended Order of Designation as a Contract Market, paragraph B (December 5, 2005) (on file with the Commission), available at [http://www.cftc.gov/dea/deahedgestreet\\_submissions\\_comments.htm](http://www.cftc.gov/dea/deahedgestreet_submissions_comments.htm).

<sup>41</sup> See 17 CFR parts 16 to 18.

<sup>32</sup> For example, the CFMA specifically permitted designated contract markets to establish trading rules that authorize the exchange of futures for swaps, or allow a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of a designated contract market or DTEF. See 7 U.S.C. 7(b)(3).

<sup>33</sup> See 69 FR 39880, 39882 (July 1, 2004).

<sup>34</sup> 17 CFR 1.38(b).

<sup>35</sup> 69 FR 76392, 76394 (December 21, 2004).

<sup>36</sup> For example, the Chicago Board of Trade publicly disseminates daily block trade volume data for eligible contracts in a category of volume termed

Wholesale Trades. See CBOT Delayed Charts, available at <http://cbot.com/cbot/pub/page/0,3181,801,00.html>. The CME also disseminates daily volume data through its Web site that separately accounts for the volume generated from block trades.

<sup>37</sup> As previously discussed, the final rules do not subject DTEFs to the public dissemination requirement of rule 16.01.

funds.<sup>42</sup> Final Commission rule 15.00(f), however, adopts a narrowly worded definition that focuses only on the absence of certain intermediaries. More specifically, the definition hinges on the absence of clearing intermediaries that accept collateral or extend credit in lieu thereof to secure trades. The final definition clarifies that the presence of executing intermediaries will have no bearing on whether a contract comes within the regulatory definition of an exclusively self-cleared contract.<sup>43</sup>

#### *B. Commission Rules 17.00 and 17.01 and Exclusively Self-Cleared Contracts*

Pursuant to Commission rule 17.00, FCMs, foreign brokers, and clearing members file daily reports with the Commission particularizing futures and option positions when the accounts that they carry acquire positions that are at or above the contract reporting levels delineated in rule 15.03(b).<sup>44</sup> An FCM, by definition, is a person that accepts the property of customers to “margin, guarantee, or secure” customer trades.<sup>45</sup> Likewise, a foreign broker is a person located outside the United States or its territories “who carries an account” for any other person.<sup>46</sup> With respect to transactions in exclusively self-cleared contracts, there are no intermediaries that secure customer trades or carry customer accounts and therefore, there are no FCMs or foreign brokers with reporting obligations under part 17 of the Commission’s regulations. In contrast, the term clearing member is defined by Commission rule 1.3(c) to include “any person who is a member of, or enjoys the privileges of clearing trades in his own name through, the clearing organization of a contract market.”<sup>47</sup> As a result, all traders of exclusively self-cleared contracts squarely fit within the regulatory definition of a clearing member, and consequently, can have routine reporting obligations under part 17 of the Commission’s regulations.

As mentioned previously, the reporting rules were not designed to

impose routine position and identifying reporting obligations on traders.<sup>48</sup> In 1981, the Commission explicitly disposed of routine trader reporting obligations in order to “substantially decrease certain paperwork burdens on large traders and on the Commission itself.”<sup>49</sup> Instead, the Commission looked to intermediaries and well capitalized clearing members to “facilitate the Commission’s market surveillance efforts” in the absence of routine trader reporting.<sup>50</sup> Since 1981, the design of the reporting rules has been to place the burden of reporting large position and identifying data in the first instance on market intermediaries and well capitalized persons that clear customer or proprietary positions.<sup>51</sup>

Intermediaries and clearing members typically are Commission registrants with vigorous internal controls, substantial resources, and extensive experience with regulatory compliance. With respect to exclusively self-cleared contracts, and in particular with respect to retail oriented exclusively self-cleared contracts, traders in general may not have the requisite resources or regulatory experience to comply with part 17 of the Commission’s regulations. In order to not place any daily reporting burden on traders, the Commission is herein adopting final rules that place reporting markets in the regulatory position of market participants that trade in exclusively self-cleared contracts.<sup>52</sup> As discussed above, all traders in exclusively self-cleared contracts are effectively clearing members. Pursuant to the final reporting rules, reporting markets, a term which includes designated contract markets and DTEFs, with respect to exclusively self-cleared contracts, are obligated to submit reportable position and identifying data on behalf of all traders.<sup>53</sup>

The Commission believes that this is a desirable result since reporting markets, by virtue of their regulated status, substantial resources, internal controls, and lines of communication with the Commission, are better able to submit position and identifying data to

the Commission on a daily basis.<sup>54</sup> Therefore, under final Commission rules 17.00(i) and 17.01(h), reporting markets listing exclusively self-cleared contracts must, unless determined otherwise by the Commission, provide the data required by Commission rules 17.00(a) through (h) and 17.01(a) through (g), to the Commission on behalf of all market participants trading in exclusively self-cleared contracts. Individual traders remain subject to the special call provisions of part 18 of the Commission’s regulations.

#### *C. Clearing Member Reports*

Designated contract markets, on a daily basis, report each clearing member’s open long and short positions, purchases and sales, exchanges of futures, and futures delivery notices.<sup>55</sup> The data is reported separately by proprietary and customer accounts by futures month and, for options, by puts and calls by expiration date and strike price.<sup>56</sup> As previously discussed, all traders holding positions in exclusively self-cleared contracts on reporting markets are clearing members. In the absence of regulatory action, reporting markets listing such contracts would be required by Commission rule 16.00(a) to submit position data for every single trader on a daily basis regardless of the number of contracts that individual traders hold.

The Commission generally believes that the submission of voluminous and disaggregated clearing member reports for transactions in exclusively self-cleared contracts can place an undue burden on reporting markets without substantially furthering the Commission’s market or financial surveillance efforts. The Commission typically uses clearing member reports to spot account aggregation issues and audit the filings of reporting firms. The submission of clearing member reports for every trader that takes a position in an exclusively self-cleared contract will not typically facilitate the Commission’s aggregation of large positions. For exclusively self-cleared contracts, issuing appropriately worded special calls directly to traders under part 18 of the Commission’s regulations will better facilitate the Commission’s analysis of potential aggregation issues.

<sup>54</sup> The Commission may, at some future date, consider amending the reporting obligations of clearing members with respect to contracts with low notional values that are not exclusively self-cleared. The Commission would consider amending these reporting obligations when retail market participants that self-clear are responsible for a substantial proportion of a contract’s trading volume.

<sup>55</sup> 17 CFR 16.00(a).

<sup>56</sup> *Id.*

<sup>42</sup> See Proposed Commission rule 15.00(f), 70 FR 74246, 74254 (December 15, 2005).

<sup>43</sup> The definition of the term exclusively self-cleared contract is devised for use in parts 15 through 21 only and is not meant to give meaning to the terms intermediary, intermediation, principle-to-principle trading, or trading for one’s own account (or any variant of those terms) in any way as used by the Commission, in the Act, or in Commission regulations promulgated under the Act.

<sup>44</sup> See 17 CFR 15.00, 15.03 and 17.00.

<sup>45</sup> 7 U.S.C. 1a(20).

<sup>46</sup> 17 CFR 15.00.

<sup>47</sup> 17 CFR 1.3(h). The Commission is amending the regulatory definition of a clearing member in rule 1.3 to explicitly extend the definition to members of DTEFs.

<sup>48</sup> See 17 CFR parts 16 to 18.

<sup>49</sup> 46 FR 59960 (December 8, 1981).

<sup>50</sup> *Id.*

<sup>51</sup> See *Id.*

<sup>52</sup> The Commission, through an order, applied this reporting framework to HedgeStreet. See Order of Designation as a Contract Market, paragraph 5 (February 18, 2004).

<sup>53</sup> The reporting framework for exclusively self-cleared contracts is narrowly tailored to be contract specific. In other words, a reporting market may list both exclusively self-cleared and other contracts. The alternative reporting approach, however, would only apply to exclusively self-cleared contracts.

Furthermore, since clearing member and large trader reports for exclusively self-cleared contracts (in the absence of regulatory action) would be submitted by the same person, clearing member reports for exclusively self-cleared contracts would not typically facilitate the Commission's review of large trader reports. Based upon the foregoing, final rule 16.00 does not by default require clearing member reports for contracts that are exclusively self-cleared.

## VII. Conforming, Clarifying and Technical Amendments

The Commission is amending several other provisions to reconcile them with the substantive rules adopted herein, to update and better organize the layout of the reporting rules, and to correct certain non-substantive errors. These amendments are categorized below by their respective parts.

### A. Part 1 of the Commission's Regulations

Prior Commission rule 1.3(c) defined clearing member in terms of a member of a contract market. Prior Commission rule 1.3(d) defined a clearing organization in terms of an entity associated with a contract market. In conformity with the intent of this notice of final rulemaking, the Commission is amending rules 1.3(c) and 1.3(d) to make specific reference to DTEFs.

### B. Part 15 of the Commission's Regulations

The Commission is further amending rule 15.00, the definitional section for parts 15 through 21, to present the definitions contained in that section alphabetically. The Commission is also re-ordering the contract reporting levels and categories delineated in rule 15.03(b), for certain reporting levels and categories, in alphabetical order. The Commission is amending final paragraph (a) of rule 15.05 to clarify that the provisions of that rule apply to all regulated transactions executed on or subject to the rules of DTEFs.<sup>57</sup> Since the thrust of rule 15.05 relates to the appointment of an agent for service of process on foreign brokers and foreign customers, the term foreign broker is amended by final rule 15.00(g) to explicitly extend to transactions on DTEFs.

Commission rule 15.01 provides a list of persons that may be required to report pursuant to parts 15 through 21 of the Commission's regulations. Final paragraph (a) of rule 15.01 clarifies that both designated contract markets, and when applicable DTEFs, are required to

provide reports to the Commission pursuant to part 16, and that pursuant to this final notice of rulemaking, reporting markets may be required to provide reports under part 17 if they list exclusively self-cleared contracts. Final paragraph (b) of rule 15.01 clarifies that part 17 applies to all clearing members and that part 21 may require reports from introducing brokers and traders in addition to FCMs, clearing members, and foreign brokers. Final paragraph (b) of rule 15.01 deletes the reference to part 20 since that part remains reserved and contains no operative provisions.

### C. Part 16 of the Commission's Regulations

The prior heading to part 16 only referenced contract markets. The final heading to part 16 specifically refers to reporting markets. Prior rule 16.07(b) incorrectly referenced rule 16.00(d)(1) as a provision that gives the Commission the authority to approve the form and manner of filing reports with the Commission. The correct reference, as provided in final rule 16.07(b), is to Commission rule 16.01(d)(1). Paragraph (a) of prior rule 16.01 referred to the total quantity of futures exchanged for commodities or for derivatives positions. Since exchanges of futures generate trading volume, final rule 16.01(a)(5) now refers to the total volume of futures exchanged for commodities or for derivatives positions.

### D. Part 17 of the Commission's Regulations

The Commission is conforming the capitalization format of rule 17.00(b)(2) and 17.00(g)(2)(iv) with the format used in the other paragraphs of rule 17.00. The Commission is capitalizing the word form when used to refer to Form 102 throughout the provisions of rules 17.01, 17.02, and 17.03. Final rule 17.01(f) clarifies that Form 102 is alternately referred to as a report. Final rules 17.01(a), 17.01(b), and 17.01(d) provide the appropriate italicization format for each rule's introductory phrase. The final heading to part 17 and rule 17.02 reflect the possibility that under the alternative reporting approach for exclusively self-cleared contracts, reporting markets may be required to file reports with the Commission on behalf of their clearing members. Final rule 17.01(a) also replaces the second instance of the term identifier with the term designator. Lastly, the Commission is amending the introductory text of rule 17.03 to correctly refer to paragraph (d) of that section.

### E. Part 19 of the Commission's Regulations

As a result of the alphabetization of definitions, the Commission is amending paragraph (a) of rule 19.00 to correctly refer to the re-ordered sections defining the term reportable position in rule 15.00. A final amendment to rule 19.00(b) correctly refers to rule 19.01 instead of rule 19.10, which is inoperative and reserved. Lastly, final paragraph (a) of rule 19.01 capitalizes the word form when used to refer to Form 204.

### F. Part 21 of the Commission's Regulations

A final amendment to Commission rule 21.01, which was last updated in 1983, extends the rule's requirement that each FCM and introducing broker file with the Commission upon special call the names and addresses of all persons who exercise trading control over a customer's account in commodity futures to all persons who also exercise trading control over a customer's account in commodity options. An amendment to paragraph (d) of rule 21.03 replaces the phrase "by telex or a similarly expeditious means of communication" with the phrase "by email or a similarly expeditious means of communication."

### G. Part 37

The limited grouping of reserved rules in rule 37.2 is amended to indicate that the final rules define DTEFs directly into parts 15 through 21 of the Commission's regulations.

## VIII. Related Matters

### A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of the proposed regulations outweigh their costs. Rather, section 15(a) requires the Commission to "consider the cost and benefits" of the subject rules. As discussed in the notice of proposed rulemaking, the new and amended reporting rules tend to reduce the aggregate burden associated with the reporting requirements of parts 15 through 21 of the Commission's regulations.<sup>58</sup> The reporting level of 750 contracts for 3-Year T-Notes, for example, is significantly higher than the default reporting level that would be

<sup>57</sup> See note 22, *supra*.

<sup>58</sup> 70 FR 74246, 74251.

applicable in the absence of regulatory action. Contract reporting levels trigger reporting obligations that permit the Commission to be aware of significant positions that may affect the integrity and efficiency of the commodity derivatives markets. The information collected develops the Commission's understanding of market power, and gives the Commission the opportunity to prevent the occurrence, and contain the effects, of financial disturbances. Based upon the Commission's surveillance experience with 2-Year T-Notes, the liquidity of the securities underlying treasury futures and option contracts, and the securities available for delivery against 3-Year T-Notes, the Commission believes that a reporting level of 750 contracts will allow it to adequately protect market participants and the integrity of regulated markets, while limiting the regulatory burden of reporting.

With respect to transactions executed on or subject to the rules of DTEFs, the new and amended reporting rules merely clarify the reporting obligations of registered entities, intermediaries, and traders and are not designed to alter their pre-existing reporting obligations. The prior language of Commission rule 37.2 reserved the applicability of parts 15 to 21 to DTEFs, but did so through incorporation by reference and without clarity. As part of the Commission's continuing effort to better implement the amendments introduced to the Act by the CFMA, the new and amended reporting rules define DTEFs directly into rules 15.00 to 15.04 and parts 16 through 21 of the Commission's regulations. The Commission believes that the new and amended reporting rules will serve the public's interest by enhancing regulatory clarity.

The final amendments to Commission rule 16.01 relating to block trades and contract volume recognize the growing importance and use of off-centralized market transactions. The new and amended reporting rules require all reporting markets to record the volume generated from block trades for each contract, and require designated contract markets to make that information readily available to the news media and the general public. In order to emphasize the obligation to disseminate market data in a manner that is both useful and accessible, the new and amended reporting rules require designated contract markets to publish integrated volume data, and present all market data in a format that would readily enable members of the news media and the general public to consider the data. The Commission believes that the format requirement

will ensure that designated contract markets are fully aware of their present obligation to publicly disseminate market data in a user friendly manner. In addition, the integrated publication of volume, along with the public dissemination of block trade volume data, will benefit market participants and the general public by facilitating their ability to effectively analyze the key determinants of prices and market depth.

The new and amended reporting rules also establish a distinct reporting framework for exclusively self-cleared contracts. The new and amended reporting rules protect market participants and strengthen the financial integrity of the regulated markets by shifting the reporting responsibilities of traders onto reporting markets that are able to comply with routine reporting obligations. The reporting rules, prior to their amendment by this notice of rulemaking, were designed to collect information from heavily intermediated markets that permitted un-intermediated trading and clearing access only to well capitalized members. Intermediaries and clearing members typically are Commission registrants with vigorous internal controls, substantial resources, and extensive experience with regulatory compliance. Traders of exclusively self-cleared contracts, and in particular traders of retail oriented exclusively self-cleared contracts, do not in general have the resources or regulatory experience to comply with routine large trader reporting obligations. In the absence of Commission action, reporting obligations for exclusively self-cleared contracts would be placed on individual traders that do not have the ability to comply with technical requirements. The Commission's new and amended reporting rules address this deficiency and ensure that the Commission will receive the trading data it needs to protect market participants, the public, and the integrity of registered entities.

The Commission's notice of proposed rulemaking analyzed the aforementioned costs and benefits and solicited comment thereon.<sup>59</sup> No relevant comments were received with respect to the Commission's analysis. After considering these factors, the Commission has determined to amend parts 15, 16, 17, 18, 19, 21, and 37 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 exchanges, futures commission merchants and large traders are not "small entities" for the purposes of the RFA.<sup>60</sup> The requirements related to the new and amended reporting rules fall mainly on exchanges and FCMs. Similarly, foreign brokers and traders report only if holding large positions. In addition, the new and amended reporting rules tend to relieve regulatory burdens. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions adopted herein will not have a significant economic impact on a substantial number of small entities.

#### *C. The Paperwork Reduction Act*

When publicizing notices of rulemaking, the Paperwork Reduction Act (PRA)<sup>61</sup> imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. 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. The revision of collections of information contained in this final notice of rulemaking have been reviewed and approved by the Office of Management and Budget pursuant to the PRA, under control numbers 3038-0009 and 3038-0012. In the notice of proposed rulemaking, the Commission estimated the paperwork burden that would be imposed by these rules and solicited comments on the estimates. The Commission received no relevant comments.<sup>62</sup> The Commission continually invites comment on the accuracy of 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 1*

Brokers, Commodities futures, Consumer protection, Reporting and recordkeeping requirements.

<sup>60</sup> 47 FR 18618 (April 30, 1982).

<sup>61</sup> Public Law 104-13 (May 13, 1995).

<sup>62</sup> 70 FR 74246, 74253.

<sup>59</sup> *Id.*



## 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

Commodity futures, Reporting and recordkeeping requirements.

## 17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

## 17 CFR Part 19

Brokers, Commodity futures, Reporting and recordkeeping requirements.

## 17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements.

## 17 CFR Part 37

Commodity futures, Reporting and recordkeeping requirements.

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

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Public Law 106-554, 114 Stat. 2763 (2000).

■ 2. Revise paragraphs (c) and (d) of § 1.3 to read as follows:

### § 1.3 Definitions

\* \* \* \* \*

(c) *Clearing member*. This term means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market or registered derivatives transaction execution facility.

(d) *Clearing organization*. This term means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements

of contracts for future delivery or commodity option transactions, for and between members of any designated contract market or registered derivatives transaction execution facility.

\* \* \* \* \*

## PART 15—REPORTS—GENERAL PROVISIONS

■ 3. 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).

■ 4. Revise § 15.00 to read as follows:

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

As used in parts 15 to 21 of this chapter:

(a) *Cash or Spot*, when used in connection with any commodity, means the actual commodity as distinguished from a futures or option contract in such commodity.

(b) *Compatible data processing media* means data processing media approved by the Commission or its designee. The Commission hereby delegates, until the Commission orders otherwise, the authority to approve data processing media for data submissions to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Executive Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(c) *Customer* means “customer” (as defined in § 1.3(k)) and “option customer” (as defined in § 1.3(j)).

(d) *Customer trading program* means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise, directly or indirectly controls trading done and positions held by any other person. The term includes, but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and

makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

(e) *Discretionary account* means a commodity futures or commodity option trading account for which buying or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

(f) *Exclusively self-cleared contract* means a contract for which no persons, other than a reporting market and its clearing organization, are permitted to accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade.

(g) *Foreign broker* means any person located outside the United States or its territories that carries an account in commodity futures or commodity options on any designated contract market or registered derivatives transaction execution facility for any other person.

(h) *Foreign trader* means any trader (as defined in paragraph (o) of this section) who resides or is domiciled outside of the United States, its territories or possessions.

(i) *Guided account program* means any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of a commodity or a particular commodity option that is advised or recommended to the participant in the program.

(j) *Managed Account Program* means a customer trading program which includes two or more discretionary accounts traded pursuant to a common plan, advice or recommendations.

(k) *Open contracts* means “open contracts” (as defined in § 1.3(t)) and commodity option positions held by any person on or subject to the rules of a designated contract market or registered derivatives transaction execution facility which have not expired, been exercised, or offset.

(l) *Reportable position* means:

(1) For reports specified in parts 17, 18 and § 19.00(a)(2) and (a)(3) of this chapter any open contract position that at the close of the market on any



business day equals or exceeds the quantity specified in § 15.03 of this part in either:

(i) Any one future of any commodity on any one reporting market, excluding future contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market; or

(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 reporting market.

(2) For the purposes of reports specified in § 19.00(a)(1) of this chapter, any combined futures and futures-equivalent option open contract position as defined in part 150 of this chapter in any one month or in all months combined, either net long or net short in any commodity on any one

reporting market, excluding futures positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all-months fixed in § 150.2 of this chapter for the particular commodity and reporting market.

(m) *Reporting market* means a designated contract market and, unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a registered derivatives transaction execution facility.

(n) *Special account* means any commodity futures or option account in which there is a reportable position.

(o) *Trader* means a person who, for his own account or for an account which he controls, makes transactions

in commodity futures or options, or has such transactions made.

■ 5. Revise paragraphs (a) and (b) in § 15.01 to read as follows:

**§ 15.01 Persons required to report.**

\* \* \* \* \*

(a) Reporting markets—as specified in part 16, 17, and 21 of this chapter.

(b) Futures commission merchants, clearing members, foreign brokers, introducing brokers, and traders—as specified in parts 17 and 21 of this chapter.

\* \* \* \* \*

■ 6. Revise paragraph (b) in § 15.03 to read as follows:

**§ 15.03 Reporting levels.**

\* \* \* \* \*

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

Commodity	Number of contracts
<b>Agricultural:</b>	
Cocoa .....	100
Coffee .....	50
Corn .....	250
Cotton .....	100
Feeder Cattle .....	50
Frozen Concentrated Orange Juice .....	50
Lean Hogs .....	100
Live Cattle .....	100
Milk, Class III .....	50
Oats .....	60
Rough Rice .....	50
Soybeans .....	150
Soybean Meal .....	200
Soybean Oil .....	200
Sugar No. 11 .....	500
Sugar No. 14 .....	100
Wheat .....	150
<b>Broad-Based Security Indexes:</b>	
Municipal Bond Index .....	300
S&P 500 Stock Price Index .....	1,000
Other Broad-Based Securities Indexes .....	200
<b>Financial:</b>	
30-Day Fed Funds .....	600
3-Month (13-Week) U.S. Treasury Bills .....	150
2-Year U.S. Treasury Notes .....	1,000
3-Year U.S. Treasury Notes .....	750
5-Year U.S. Treasury Notes .....	2,000
10-Year U.S. Treasury Notes .....	2,000
30-Year U.S. Treasury Bonds .....	1,500
1-Month LIBOR Rates .....	600
3-Month Eurodollar Time Deposit Rates .....	3,000
3-Month Euroyen .....	100
2-Year German Federal Government Debt .....	500
5-Year German Federal Government Debt .....	800
10-Year German Federal Government Debt .....	1,000
Goldman Sachs Commodity Index .....	100
Major Foreign Currencies .....	400
Other Foreign Currencies .....	100
U.S. Dollar Index .....	50
<b>Natural Resources:</b>	
Copper .....	100
Crude Oil, Sweet .....	350
Crude Oil, Sweet—No. 2 Heating Oil Crack Spread .....	250
Crude Oil, Sweet—Unleaded Gasoline Crack Spread .....	150
Gold .....	200

Commodity	Number of contracts
Natural Gas .....	200
No. 2 Heating Oil .....	250
Platinum .....	50
Silver Bullion .....	150
Unleaded Gasoline .....	150
Unleaded Gasoline—No. 2 Heating Oil Spread Swap .....	150
Security Futures Products:	
Individual Equity Security .....	1,000
Narrow-Based Security Index .....	200
Hedge Street Products .....	<sup>1</sup> 125,000
TRAKRS .....	<sup>1</sup> 50,000
All Other Commodities .....	25

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

■ 7. Revise paragraphs (a) and (h) in § 15.05 to read as follows:

**§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.**

(a) For purposes of this section, the term “futures contract” means any contract for the purchase or sale of any commodity for future delivery traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility; the term “option contract” means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act pursuant to section 5a(g) of the Act, traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility; the term “customer” means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term “communication” means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

\* \* \* \* \*

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a designated contract market or registered derivatives transaction execution facility on which all transactions of foreign brokers, their customers or foreign traders in futures or option contracts are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraphs (a), (b), (c) and (d) of this section.

\* \* \* \* \*

**PART 16—REPORTS BY REPORTING MARKETS**

■ 8. Revise the heading of part 16 as set forth above.

■ 9. The authority citation for part 16 is revised to read as follows:

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

■ 10. In § 16.00, revise paragraphs (a) introductory text, (a)(1), (a)(5), and (b) introductory text; and add paragraph (c) to read as follows:

**§ 16.00 Clearing member reports.**

(a) *Information to be provided.* Each reporting market shall submit to the Commission, in accordance with paragraph (b) of this section, a report for each business day, showing for each clearing member, by proprietary and customer account, the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) The total of all long open contracts and the total of all short open contracts carried at the end of the day covered by the report, excluding from open futures contracts the number of contracts against which delivery notices have been stopped or against which delivery notices have been issued by the clearing organization of the reporting market;

\* \* \* \* \*

(5) For futures, the quantity of the commodity for which delivery notices have been issued by the clearing organization of the reporting market and the quantity for which notices have been stopped during the day covered by the report.

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, reporting markets shall submit the

information required by paragraph (a) of this section as follows:

\* \* \* \* \*

(c) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, paragraph (a) of this section shall not apply to transactions involving exclusively self-cleared contracts.

\* \* \* \* \*

■ 11. In § 16.01 revise paragraphs (a), (b), (c), and (d) introductory text; and delete the Note to paragraph (a); and add paragraph (e) to read as follows:

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

(a) *Trading volume and open contracts.* Each reporting market shall record for each business day the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) The option delta, where a delta system is used;

(2) The total gross open contracts, excluding from futures those contracts against which notices have been stopped;

(3) For futures, open contracts against which delivery notices have been stopped on that business day;

(4) The total volume of trading, excluding transfer trades or office trades;

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

(6) The total volume of block trades which are included in the total volume of trading.

(b) *Prices.* Each reporting market shall record the following information separately for futures, by commodity and by future, and, for options, by underlying futures contract for options

on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) For the trading session and for the opening and closing periods of trading as determined by each reporting market:

(i) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the reporting market reasonably determines accurately reflect market conditions. If vacated or withdrawn, bids and offers shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

(ii) If there are no transactions, bids, or offers during the opening or closing periods, the reporting market may record as appropriate:

(A) The first price (in lieu of opening price data) or the last price (in lieu of closing price data) occurring during the trading session, clearly indicating that such prices are the first and the last price; or

(B) Nominal opening or nominal closing prices which the reporting market reasonably determines accurately reflect market conditions, clearly indicating that such prices are nominal.

(2) The settlement price established by each reporting market or its clearing organization.

(3) *Additional information.* Each reporting market shall record the following information with respect to transactions in commodity futures and commodity options on that reporting market:

(i) The method used by the reporting market in determining nominal prices and settlement prices; and

(ii) If discretion is used by the reporting market in determining the opening and closing ranges or the settlement prices, an explanation that certain discretion may be employed by the reporting market and a description of the manner in which that discretion may be employed.

(c) *Critical dates.* Each reporting market shall report to the Commission for each futures contract the first notice date and the last trading date and for each option contract the expiration date in accordance with paragraph (d) of this section.

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, reporting markets shall submit to the Commission the information specified in paragraphs (a)(1) through (a)(5), (b) and (c) of this section as follows:

\* \* \* \* \*

(e) *Publication of recorded information.* (1) Designated contract markets shall make the information in paragraph (a) of this section readily available to the news media and the general public without charge, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. The information in paragraphs (a)(4) through (a)(6) of this section shall be made readily available in a format that presents the information together.

(2) Designated contract markets shall make the information in paragraphs (b)(1) and (b)(2) of this section readily available to the news media and the general public, and the information in paragraph (b)(3) of this section readily available to the general public, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains.

(3) Registered derivatives transaction execution facilities shall comply with the publication of trading information requirement of section 5a(d)(5) of the Act and any Commission regulation adopted thereunder.

\* \* \* \* \*

■ 12. Revise § 16.06 to read as follows:

**§ 16.06 Errors or omissions.**

Unless otherwise approved by the Commission or its designee, reporting 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.

■ 13. 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), as applicable, the authority to determine whether reporting markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a reporting market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.01(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by reporting markets.

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

■ 14. Revise the heading of part 17 as set forth above.

■ 15. The authority citation for part 17 is revised to read as follows:

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

■ 16. In § 17.00, revise paragraphs (a)(1), (b)(2), and (g)(2)(iv); and add paragraph (i) to read as follows:

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

(a) \* \* \*

(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 and coding provisions set forth in paragraph (g) of this section. The report shall show each futures position, separately for each reporting market and for each future, and each put and call options position separately for each reporting 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 reporting 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 reporting market for which the special account is reportable.

\* \* \* \* \*

(b) \* \* \*

(2) *Accounts controlled by two or more persons*—Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(iv) *Report date.* The format is YYYYMMDD, where YYYY is the year,

MM is the month, and DD is the day of the month.

\* \* \* \* \*

(i) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) through (h) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

■ 17. In § 17.01, revise the introductory text and paragraphs (a), (b) introductory text, (d), (f) and (g); and add paragraph (h) 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.

(a) *Special account designator.* A unique identifier for the account, *provided*, that the same designator is assigned for option and futures reporting, and the designator is not changed or assigned to another account without prior approval of the Commission or its designee.

(b) *Special account identification.* The name, address, business phone, and for individuals, the person's job title and employer for the following:

\* \* \* \* \*

(d) *Commercial use.* For futures or options, commodities in which positions or transactions in the account are associated with a commercial activity of the account owner in a related cash commodity or activity (*i.e.*, those considered as hedging, risk-reducing, or otherwise off-setting with respect to the cash commodity or activity).

\* \* \* \* \*

(f) *Reporting firms.* The name and address of the futures commission merchant, clearing member, or foreign broker carrying the account, and 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 Form 102 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.

(h) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) through (g) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

■ 18. 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 reporting markets, 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.

■ 19. In § 17.03, revise the introductory text and 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.**

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) and (b) of this section to the Director of the Division of Market Oversight and the authority set forth in paragraphs (c) and (d) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Director of the Division of Market Oversight or the Executive Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

\* \* \* \* \*

(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.

\* \* \* \* \*

■ 20. In § 17.04, revise paragraphs (a), (b)(1)(i), and (b)(2) to read as follows:

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

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity and, for commodity options transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity options expiration date and each strike price in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with part 17 of these regulations and reporting requirements established by the reporting markets.

(b) \* \* \*

(1) \* \* \*

(i) The positions represent transactions on a reporting 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 reporting 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

■ 21. 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.

■ 22. In § 18.00 revise the introductory text 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 reporting market:

\* \* \* \* \*

■ 23. Revise § 18.05 to read as follows:

### § 18.05 Maintenance of books and records.

Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions for future delivery in the commodity on all reporting markets, all positions and transactions in the commodity option, and all positions and transactions in the cash commodity, its products and byproducts and, in addition, commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable, and shall upon request furnish to the Commission any pertinent information concerning such positions, transactions or activities.

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

## 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

■ 24. 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.

■ 25. In § 19.00, revise paragraphs (a) and (b) introductory text to read as follows:

### § 19.00 General provisions.

(a) *Who must file series '04 reports.* The following persons are required to file series '04 reports:

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

(2) Merchants and dealers of cotton holding or controlling positions for futures delivery in cotton that are reportable pursuant to § 15.00(l)(1)(i) of this chapter, or

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(l)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Market Oversight, or to such other person designated by the Director, authority to issue calls for series '04 reports.

(b) *Manner of reporting.* The manner of reporting the information required in § 19.01 is subject to the following:

\* \* \* \* \*

■ 26. In § 19.01, revise paragraph (a) introductory text to read as follows:

### § 19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.

(a) *Information required.* Persons required to file '04 reports under § 19.00(a)(1) or § 19.00(a)(3) of this chapter shall file CFTC Form 304 reports for cotton and Form 204 reports for other commodities showing the composition of the fixed price cash position of each commodity hedged including:

\* \* \* \* \*

## PART 21—SPECIAL CALLS

■ 27. The authority 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.

■ 28. Revise § 21.01 to read as follows:

### § 21.01 Special calls for information on controlled accounts from futures commission merchants and introducing brokers.

Upon call by the Commission, each futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in commodity futures or commodity options on any reporting market.

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

■ 29. Revise the heading and introductory text of § 21.02 to read as follows:

### § 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of reporting markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a reporting market, introducing broker, or foreign broker, and, in addition, for option information, each reporting market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant, as may be specified in the call:

\* \* \* \* \*

■ 30. Revise the heading and paragraphs (c), (d), (e) introductory text, and (f) of § 21.03 to read as follows:

### § 21.03 Selected special calls—duties of foreign brokers, domestic and foreign traders, futures commission merchants, introducing brokers, and reporting markets.

\* \* \* \* \*

(c) Upon a determination by the Commission that information concerning accounts may be relevant information in enabling the Commission to determine whether the threat of a market manipulation, corner, squeeze, or other market disorder exists on any reporting market, the Commission may issue a call for information from a

futures commission merchant or customer pursuant to the provisions of this section.

(d) In the event the call is issued to a foreign broker or foreign trader, its agent, designated pursuant to § 15.05 of this chapter, shall, if directed, promptly transmit calls made by the Commission pursuant to this section by electronic mail or a similarly expeditious means of communication.

(e) The futures commission merchant, introducing broker, or customer to whom the special call is issued must provide to the Commission the information specified below for the commodity, reporting market and delivery months or option expiration dates named in the call. Such information shall be filed at the place and within the time specified by the Commission.

\* \* \* \* \*

(f) If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call made pursuant to this section, the Commission in writing may inform the reporting market specified in the call and that reporting market shall prohibit the execution of, and no futures commission merchant, introducing broker, or foreign broker shall accept an order for, trades on the reporting market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

\* \* \* \* \*

## PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

■ 31. The authority for part 37 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7a and 12a, as amended by Appendix E of Public Law 106-554, 114 Stat. 2763A-365.

■ 32. Revise § 37.2 to read as follows:

### § 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and:

(a) Parts 15 through 21, part 40 and part 41 of this chapter, including any

related definitions and cross-referenced sections; and

(b) Sections 1.3, 1.31, 1.59(d), 1.60, 1.63(c), 33.10, and part 190 of this chapter, including any related definitions and cross-referenced sections, which are applicable as though they were set forth in this part 37 and included specific reference to derivatives transaction execution facilities.

Issued in Washington, DC, on June 28, 2006, by the Commission.

**Eileen A. Donovan,**

*Acting Secretary of the Commission.*

[FR Doc. E6-10383 Filed 6-30-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[CGD09-06-080]

RIN 1625-AA00

### Safety Zone; 4th of July Fireworks Display, Kenosha, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the 4th of July Fireworks Display in Kenosha, Wisconsin. This safety zone is necessary to safeguard vessels and spectators from hazards associated with fireworks displays. This rule is intended to restrict vessel traffic from a portion of Lake Michigan and Kenosha Harbor.

**DATES:** This safety zone is effective from 8:15 p.m. (local) to 10:30 p.m. on July 4, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09-06-080] and are available for inspection or copying at U.S. Coast Guard Sector Lake Michigan between 7 a.m. and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer Brad Hinken, U.S. Coast Guard Sector Lake Michigan, at (414) 747-7154.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to

publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

### Background and Purpose

This safety zone is necessary to protect the public from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port, Sector Lake Michigan, has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. As such, the COTP is proposing to implement a safety zone to ensure the safety of both participants and spectators in these areas.

The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

### Discussion of Rule

The Coast Guard is establishing a safety zone on the waters of Lake Michigan near Kenosha, Wisconsin. The safety zone will include all waters of Lake Michigan surrounding the fireworks launch platform bounded by the arc of a circle with a 560-foot radius with its center in the approximate position 42°35.17' N, 087°48.27' W (NAD 83). Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF-FM channels 16 or 23A.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of