

effect on production processes or on the types or amounts of materials used for the manufacture of carpets and rugs. The amendments will not render existing inventories unsalable, or require destruction of existing goods. The Commission has no information indicating any special circumstances in which these amendments may affect the human environment. For that reason, as discussed in the proposed rule, neither an environmental assessment nor an environmental impact statement is required. 71 FR 66145.

3. Executive Order 12988

Executive Order 12988, Civil Justice Reform, (February 5, 1996), requires that the Commission specify the preemptive effect, if any, to be given each new regulation. This technical amendment does not alter the preemptive effect of the underlying regulation.

List of Subjects in 16 CFR Parts 1630 and 1631

Carpets, Consumer protection, Flammable materials, Floor coverings, Labeling, Records, Rugs, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, parts 1630 and 1631 to read as follows:

PART 1630—STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS

1. The authority for subpart A of part 1630 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1630.1(f) is revised to read as follows:

§ 1630.1 Definitions.

* * * * *

(f) *Timed Burning Tablet* (pill) means a methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg +/- 5mg and a nominal diameter of 6mm.

* * * * *

3. Section 1630.4 is amended by revising the first sentence of paragraph (a) (3) to read as follows:

§ 1630.4 Test procedure.

(a) * * *

(3) *Standard igniting source.* A methenamine tablet, flat, with a

nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg +/- 5 mg and a nominal diameter of 6mm.

PART 1631—STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS

1. The authority for subpart A of part 1631 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1631.1(f) is revised to read as follows:

§ 1631.1 Definitions.

* * * * *

(f) *Timed Burning Tablet* (pill) means a methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg +/- 5mg and a nominal diameter of 6mm.

* * * * *

3. Section 1631.4 is amended by revising the first sentence of paragraph (a)(3) to read as follows:

§ 1631.4 Test procedure.

(a) * * *

(3) *Standard igniting source.* A methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg +/- 5 mg and a nominal diameter of 6mm.

* * * * *

Dated: October 16, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. "Briefing Package: Technical Amendment to the Flammability Standards for Carpets and Rugs, 16 CFR part 1630 and 16 CFR part 1631," U.S. Consumer Product Safety Commission, October 3, 2006.

2. Technical Amendment to the Flammability Standards for Carpets and Rugs; Proposed Amendments, 71 FR 66145 (November 13, 2006).

3. Proposed Technical Amendment to the Flammability Standards for Carpets and Rugs; Notice of Opportunity for Oral Comment, 72 FR 1472 (January 12, 2007).

[FR Doc. E7–20666 Filed 10–25–07; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 18

RIN 3038–AC22

Maintenance of Books, Records and Reports by Traders

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending Commission Regulation 18.05 in two respects: to make it explicit that persons holding or controlling reportable positions on a designated contract market (DCM) or derivatives transaction execution facility (DTEF) must retain books and records and make available to the Commission upon request any pertinent information with respect to all other positions and transactions in the commodity in which the trader has a reportable position, including positions held or controlled or transactions executed on all reporting markets, over-the-counter (OTC) and/or pursuant to Sections 2(d), 2(g) or 2(h)(1)–(2) of the Commodity Exchange Act (Act) or Part 35 of the Commission's regulations, on exempt commercial markets operating pursuant to Sections 2(h)(3)–(5) of the Act (ECMs), on exempt boards of trade operating pursuant to Section 5d of the Act (EBOTs), and on foreign boards of trade (FBOTs); and to make the regulation clearer and more complete with respect to hedging activity. The amendments will enhance the Commission's ability to deter and prevent price manipulation or any other disruptions to the integrity of the regulated futures markets, help to ensure the avoidance of systemic risk, and clarify the meaning of the regulation.

DATES: *Effective Date:* November 26, 2007.

FOR FURTHER INFORMATION CONTACT:

Duane C. Andresen, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone 202–418–5492; e-mail dandresen@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of Regulation 18.05 and Statutory Basis

Section 3(b) of the Act¹ declares that the purpose of the Act is to, among

¹ 7 U.S.C. § 5(b) (2007). § 3(b) of the Act provides in full:

It is the purpose of this chapter to serve the public interests described in subsection (a) of this section through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of

other things, deter and prevent price manipulation or any other disruptions to market integrity and to ensure the financial integrity of all transactions subject to the Act and the avoidance of systemic risk. Section 4i of the Act² requires persons holding futures or option positions at DCMs or DTEFs at or above certain levels to keep books and records of all:

(1) Transactions and positions in the exchange-traded commodity;

(2) Transactions and positions in any such commodity traded on or subject to the rules of any other board of trade; and

(3) Cash or spot transactions in, and inventories and purchase and sale commitments of such commodity.

Such books and records must be open at all times for inspection by any representative of the Commission or the Department of Justice.

Section 8a(5) of the Act³ provides explicit authority to the Commission to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. In order to accomplish the

customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

² 7 U.S.C. § 6i (2007). § 4i of the Act provides:

It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility—

(1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and sale commitments of such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

³ 7 U.S.C. 12a(5) (2007).

purposes of Sections 3(b) and 4i set forth above, the Commission has promulgated regulations creating market and large trader reporting requirements.⁴ Included among these regulations is a requirement that persons holding futures or option positions at DCMs or DTEFs (reporting markets)⁵ at or above reportable levels (reportable positions)⁶ be identified to the Commission through the large trader reporting system (LTRS).

The LTRS, which requires that clearing members, futures commission merchants (FCM) and foreign brokers file daily reports with the Commission, enables the Commission to assess an individual trader's activities and potential market power and to enforce the Commission or DCM-set limits on speculative positions.⁷ Once a trader holds a reportable position, the trader is subject to Commission Regulation 18.05,⁸ which requires that the trader

⁴ The Commission's market and large trader reporting rules are contained in Parts 15 through 21 of the Commission's regulations.

⁵ Pursuant to Commission Regulation 15.00(m), a reporting market means a DCM and, unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a DTEF.

⁶ Pursuant to Commission Regulation 15.00(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.

⁷ The Commission also uses large trader reporting information as a means to ensure the avoidance of systemic risk in that such information enables Commission staff to determine which FCMs carrying accounts might have exposure in particular markets.

⁸ Regulation 18.05 states in full:

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,

keep books and records showing all details concerning:

(1) All positions and transactions for future delivery in the commodity on all reporting markets;

(2) All positions and transactions in the commodity option;

(3) All positions and transactions in the cash commodity, its products and byproducts; and

(4) Commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable.⁹

A reportable trader is required to furnish to the Commission, upon request, any pertinent information concerning these positions, transactions or activities.¹⁰ Traders who do not hold reportable positions do not have obligations under Regulation 18.05.

II. Proposal

A. Introduction

In order to enhance its ability to detect and prevent manipulation of regulated markets and products and to ensure the avoidance of systemic risk, as well as to clarify the meaning of the regulation and bring it up to date, the Commission published in the **Federal Register** a proposal to amend Regulation 18.05 in the following respects:¹¹

1. To make it explicit that persons holding or controlling reportable positions on a reporting market must retain books and records and make available to the Commission upon request pertinent information with respect to all non-reporting transactions, *i.e.*, all positions and transactions in the commodity in which the trader is reportable, including transactions

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.

⁹ In describing the requirements of Regulation 18.05 in 1981, the Commission stated:

The regulation requires reportable traders to maintain books and records of futures positions and transactions in the commodity in which they are reportable and all positions and transactions in the cash commodity and its products and byproducts * * *. [T]he Commission wishes to underscore its view that the book and recordkeeping requirements and inspection provision contained therein are essential to accomplish the purposes of the Act and within the Commission's authority to adopt pursuant to section[s] 4i and 8a(5) of the Act. These requirements have always applied to the traders who hold or control a reportable position, and have not been restricted in any way. "Reporting Requirements for Contract Markets, Futures Commission Merchants, Members of Exchanges and Large Traders," 46 FR 59960, 59963 (December 8, 1981) (footnote omitted).

¹⁰ The Commission currently requests such information an average of three times per year.

¹¹ 72 FR 34413 (June 22, 2007).

executed on all reporting markets, OTC and/or pursuant to Sections 2(d), 2(g) or 2(h)(1)–(2) of the Act or Part 35 of the Commission's regulations, on ECMs operating pursuant to Sections 2(h)(3)–(5) of the Act, on EBOTs operating pursuant to Section 5d of the Act, and on FBOTs; and

2. To make the regulation clearer and more complete with respect to hedging activity.

B. Proposed Amendments Related to Recordkeeping and Reporting

The proposal recognized that there is a close relationship among transactions conducted on reporting markets and non-reporting transactions and that it is sometimes necessary to determine all transactions and positions in the commodity in which the trader is reportable in order to more effectively detect and prevent manipulation of regulated markets and products and to ensure the avoidance of systemic risk.¹² The Commission recognized that it is particularly important that staff be able to assess the reportable trader's overall position in the same commodity in light of the growing volume of trading on the non-reporting markets, the close relationship among the various products and markets, the increasing globalization of the futures markets, and the growth of trading on FBOTs.¹³

The proposal noted that while Regulation 18.05 explicitly requires that a trader holding reportable positions keep books and records and provide to the Commission, upon request, pertinent information with respect to positions and transactions in the underlying commodity on DCMs and DTEFs, it does not explicitly do so with respect to positions and transactions in virtually identical contracts executed on ECMs, EBOTs or FBOTs or in the same commodity executed OTC and/or pursuant to Sections 2(d), 2(g) or 2(h)(1)–(2) of the Act or Part 35 of the Commission's regulations. The Commission noted that information concerning non-reporting transactions is important to its ability to conduct effective market surveillance of the DCM and DTEF contracts. Thus, if a trader is reportable because of futures or option positions in a contract on a DCM or DTEF, the trader's books and records with respect to non-reporting positions and transactions in the same commodity

are relevant to effective surveillance and supervision of the DCM or DTEF contract in which the trader is reportable.

The proposal noted that the Act provides ample authority to require keeping books and records and providing pertinent information concerning non-reporting transactions. Section 4i explicitly encompasses non-reporting transactions on "any other board of trade" (such as FBOTs, ECMs operating pursuant to Sections 2(h)(3)–(5) of the Act, and EBOTs operating pursuant to Section 5d of the Act) and in the form of cash or spot transactions, inventories, and purchase and sale commitments. Further, Section 3(b) of the Act declares that the purpose of the Act is to, among other things, deter and prevent price manipulation or any other disruptions to market integrity and to ensure the avoidance of systemic risk. Section 8a(5) of the Act authorizes the Commission to promulgate such regulations as, in its judgment, are reasonably necessary to accomplish any of the purposes of the Act. As noted in the proposal, amending Regulation 18.05 to clearly require that reportable traders keep books and records showing all details concerning non-reporting transactions in the reportable commodity is a reasonably necessary means of accomplishing the purposes of Section 3(b) of the Act.

The proposal also noted that although non-reporting transactions themselves generally are not subject to most regulatory provisions of the Act, the futures or option transactions executed and maintained on a DCM or DTEF that result in a reportable position are subject to such provisions and, pursuant to Section 3(a) of the Act, are affected with a national public interest. It is the purpose of the Act pursuant to Section 3(b) that the Commission deter and prevent price manipulation of all commodities traded on these regulated markets. The proposal stated that to accomplish this purpose, it is necessary that the Commission have the ability to review all activities in commodities traded on these markets, regardless of where the transactions are executed. By taking a position on a regulated market, a trader agrees to abide by the rules of the market and the Commission, including prohibitions against manipulation. To enhance its ability to detect and deter manipulation and other threats to market integrity, the Commission requires persons holding reportable positions to maintain books and records of transactions that could impact the regulated market and related cash market, including non-reporting transactions.

Finally, the proposal noted that staff has interpreted Regulation 18.05 to include position and transaction data for non-reporting transactions and has received such information in response to requests made pursuant to the Regulation. Thus, consistent with the Act and Commission practice, the Commission proposed to amend Regulation 18.05 to make explicit that a trader with a reportable position must keep books and records showing all details concerning all non-reporting transactions in the same commodity and provide pertinent information to the Commission upon request.

C. Amendments Related to Clarity and Completeness

The proposal also noted that there are two issues that arise in connection with the Regulation 18.05 requirement that traders keep books and records showing all details concerning "commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable." First, the phrase has led to some confusion. Originally inserted into the paragraph as "commercial activities that the trader hedges in the futures commodity in which the trader is reportable," its purpose was to require that, "in addition to books and records of positions or transactions in a cash commodity, a reportable trader must also maintain records of commercial activities which the trader hedges."¹⁴ Second, the proposal stated that reportable positions can be option positions, as well as futures positions, but it is not clear that the current language also addresses commercial activities that the trader hedges in the commodity underlying any option contract in which the trader is reportable.

The Commission therefore proposed to amend the regulation to revert to the original approach and include hedges in the option contract in which the trader is reportable. By modifying the phrase to read "commercial activities that the trader hedges in the futures or option contract in which the trader is reportable," Regulation 18.05 captures information with respect to hedges in other than the cash commodity, its products or byproducts (i.e., a trader with a reportable position in gold futures or options that is a hedge of a cash position in silver would be required to comply with the Regulation 18.05 requirements with respect to the silver position).

¹² See sections 6(c), 6c, 6(d) and 9(a)(2) of the Act for the Commission's antimaniipulation authority.

¹³ For instance, since 1999, Commission staff, through foreign terminal no-action letters, has allowed 19 FBOTs to make their trading systems available by direct access to members and other participants in the U.S. without requiring the FBOTs to register as DCMs or DTEFs.

¹⁴ 46 FR 42463, 42466 (August 21, 1981).

III. Comments Regarding the Proposal

The Commission received six comment letters on its proposal. Commenters included the American Public Gas Association (APGA), the Industrial Energy Consumers of America (IECA), the International Swaps and Derivatives Association, Inc. (ISDA), the Managed Funds Association (MFA), the New York Public Service Commission (NYPSC), and the New York Mercantile Exchange (NYMEX). Most of the commenters generally endorsed the proposal and/or its underlying purpose, but felt that additional steps are necessary to resolve the underlying matters that the proposal is intended to address. Two commenters raised concerns regarding the recordkeeping and reporting aspects of the proposal.

The APGA commented that it strongly supports the proposed amendment but is concerned about the economic links between NYMEX and OTC contracts and believes that further steps are necessary for the Commission to carry out surveillance of the natural gas markets. It expressed concern that the LTRS does not routinely reach traders' large OTC positions and noted that it has petitioned Congress to provide the Commission with authority for a LTRS with respect to trading in financial contracts in natural gas. Further, the APGA commented that reliance on special call authority leaves open the potential for manipulation or other disruptive behavior with little risk of detection until after damage to the market has been done.

The IECA commented that it supports the proposal but noted that requiring companies to keep books and records does not prevent market manipulation and that preemptive monitoring of entities with large positions that cover both futures and OTC markets is necessary. Further, such entities should be required to report daily to the Commission. The IECA also recommended that the Commission support the establishment of an advisory panel on energy markets with consumer participation thereon.

The NYPSC noted that it supports the proposed rule and its underlying purpose and that given the increases in natural gas prices over the past several years, the relevant government entities must take all available steps to prevent market manipulation and ensure the integrity of the natural gas markets. The NYPSC maintained that it is essential to evaluate exposure on both NYMEX and the InterContinental Exchange (ICE), an ECM, and stated that the Commission's inability to directly regulate traders that use ICE exclusively creates a serious

loophole in effective regulatory oversight of the financial markets. Concerned that traders will avoid regulatory oversight by trading exclusively on ICE, the NYPSC recommended that the Commission should monitor the migration of traders that currently utilize NYMEX to ICE as the exclusive means of trading natural gas contracts.

The ISDA and the MFA voiced support for the proposal but raised concerns about the proposal's recordkeeping and reporting obligations. The ISDA stated its view that the proposal does not create additional recordkeeping or reporting obligations and requested clarification with respect to the scope of Regulation 1.35(a), which contains recordkeeping and reporting language similar to that in proposed Regulation 18.05. Further, the ISDA requested clarification that the records required to be retained under proposed Regulation 18.05 are subject to Regulation 1.31 retention requirements and consist of accurate records of positions and actual transaction documentation created in the ordinary course of business. The MFA requested that the Commission confirm that the current system of books and records maintained by traders in the normal course of business and in the format created in the normal course of business would meet the proposal's recordkeeping and retention requirements.

The NYMEX voiced support for the intention underlying the proposal but commented that the purpose of the proposal can be met only by imposing identical requirements on linked trading facilities meeting specified criteria. NYMEX posited that the proposal, if implemented, would create an incentive for market participants to do all their trading at unregulated or non-transparent venues or to trade at a level below the reportable level on the regulated exchange. Further, NYMEX commented that the proposal was limited in effectiveness because of the anticipated infrequent use of the special call procedure; would impose a cost on the regulated exchanges because of the shift in trading activity; and would have adverse public policy consequences. NYMEX recommended that the Commission defer the amendments to Regulation 18.05 in favor of a more comprehensive legislative approach that would result in the implementation of reporting requirements on organized trading facilities that have triggered specified criteria.¹⁵

¹⁵ As noted above, other commenters also recommended legislative action, i.e., to provide the

The Commission has carefully considered the comments submitted and has decided, for reasons cited herein and in the proposal, to amend the regulation as proposed. As previously stated, staff has interpreted Regulation 18.05 to include position and transaction data for non-reporting transactions and has received such information in response to requests made pursuant to the Regulation. Thus, the proposal to amend Regulation 18.05 merely makes explicit what has been implicit.

NYMEX's comment that the proposal would lead market participants to move their trading activity to unregulated or non-transparent venues, or trade at a level below the reportable level on the regulated exchange in order to avoid the consequences of holding reportable positions, is highly speculative and, in the Commission's estimation, unlikely. As previously discussed, the amendments to Regulation 18.05 clarify existing authority and, accordingly, any "disincentive" for traders to trade on a regulated market already exists, with or without the amendments. In addition, the Commission sees little merit in following NYMEX's suggestion to defer in favor of a legislative approach. The Commission can control neither the timing nor the terms of legislation addressing reporting obligations on currently non-reporting markets, or even whether such legislation is enacted in the first instance. Should legislation in this area be enacted which expands the Commission's jurisdiction with respect to transactions that are currently non-reportable, further amendments to the regulation could be considered.

With respect to the comments regarding the proposal's recordkeeping and reporting obligations, the Commission confirms that the amendments should not change current recordkeeping or reporting obligations, assuming that traders are currently keeping complete transaction records. Records required to be retained under Regulation 18.05 consist of accurate records of positions and actual transaction documentation created in the ordinary course of business. Thus, books and records that currently should be maintained by traders in the normal course of business and in the format created in the normal course of business would meet the regulation's recordkeeping requirements. Such records are subject to the Regulation 1.31 retention requirements. Finally,

Commission with authority for a LTRS with respect to trading in financial contracts in natural gas on non-reporting markets and to require entities that control large positions in the OTC market to report daily to the Commission.

Regulation 18.05 does not alter or add to the Regulation 1.35(a) recordkeeping and reporting requirements.

IV. Related Matters

A. Cost Benefit Analysis

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

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

The Commission’s proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. As previously noted, NYMEX commented that the proposal, by adding another incentive for market participants to shift their trading activity from regulated and transparent venues to unregulated and non-transparent venues, would impose a cost on the regulated exchanges and would have adverse public policy consequences. NYMEX also questioned the extent of the benefits to be obtained from the proposal in light of the acknowledgement that special calls for information would continue to be made on an infrequent basis.

The Commission believes, as it stated in the discussion of NYMEX’s comments above, that attempting to discern what impact amended Regulation 18.05 will have on potential large traders, or what costs to the regulated exchanges would be associated with any shift in trading activity, is highly speculative. Because the amendments clarify existing authority, any “disincentive” for traders to trade on a regulated market already

exists, with or without the amendments. Additionally, the Commission finds no merit in the contention that the extent of the benefits to be obtained from the amendments are questionable in light of the acknowledgement that special calls for information would continue to be made on an infrequent basis. The Commission is confident that such special calls will be made when deemed necessary and that the information provided in response to such special calls will assist the Commission in meeting its regulatory responsibilities.

After consideration of the costs and benefits and the public comments received thereon, the Commission has determined to adopt the amendments to Regulation 18.05 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.¹⁶ The requirements related to the amended recordkeeping and reporting rule fall on large traders. Accordingly, the Acting 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

The Paperwork Reduction Act (PRA)¹⁷ 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. In its proposal, the Commission noted that the proposed amendments would require traders with reportable positions to keep books and records showing all details concerning all positions and transactions in the commodity in which the trader is reportable and to furnish to the Commission, upon request, any pertinent information concerning such positions, transactions or activities in a form acceptable to the Commission and that this information is part of an approved collection of information. The Commission further noted that the proposed amendments would not result

in any material modifications to this approved collection. Accordingly, for purposes of the PRA, the Commission certified that the proposed amendment did not impose any new reporting or recordkeeping requirements.

The Commission submitted the proposed rule amendments and their associated information collection requirements to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission’s invitation in the notice of proposed rulemaking to comment on the information which would be required by the proposed rule amendments.

List of Subjects in 17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

■ Accordingly, 17 CFR Chapter I is amended as follows:

PART 18—REPORTS BY TRADERS

■ 1. The authority citation for part 18 is revised to read as follows:

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

■ 2. Revise § 18.05 to read as follows:

§ 18.05 Maintenance of books and records.

(a) 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 in the commodity:

- (1) On all reporting markets;
- (2) Over the counter and/or pursuant to Sections 2(d), 2(g) or 2(h)(1)–(2) of the Act or Part 35 of this chapter;
- (3) On exempt commercial markets operating pursuant to Sections 2(h)(3)–(5) of the Act;
- (4) On exempt boards of trade operating pursuant to Section 5d of the Act; and
- (5) On foreign boards of trade.

(b) Every such trader shall also keep books and records showing all details concerning all positions and transactions in the cash commodity, its products and byproducts, and all commercial activities that the trader hedges in the futures or option contract in which the trader is reportable.

(c) The trader shall upon request furnish to the Commission any pertinent information concerning such positions, transactions, or activities in a form acceptable to the Commission.

Issued in Washington, DC, this 22nd day of October, 2007, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7–21077 Filed 10–25–07; 8:45 am]

BILLING CODE 6351-01-P

¹⁶ 47 FR 18618, 18618–21 (April 30, 1982).

¹⁷ Public Law 104–13 (May 13, 1995).