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**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 1**

**Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Establish a new schedule of fees.

**SUMMARY:** The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (17 CFR part 1 Appendix B) (NFA and the contract markets are referred to as SROs). Newly-designated contract markets are not being assessed any fees for Fiscal 2001 because to date they have modest, if any, volume.

The calculation of the fee amounts to be charged for the upcoming year is based on an average of actual program costs incurred in the most recent three full fiscal years, as explained below. The new fee schedule is set forth in the **SUPPLEMENTARY INFORMATION** and information is provided on the effective date of the fees and the due date for payment.

**EFFECTIVE DATES:** The fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than August 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Madge A. Bolinger, Acting Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5160.

**SUPPLEMENTARY INFORMATION:**

**I. General**

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

**II. Schedule of Fees**

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

Entity	Fee amount
Cantor Financial Futures Exchange	\$5,606
Chicago Board of Trade	199,253
Chicago Mercantile Exchange	192,731
Kansas City Board of Trade	9,262
New York Mercantile Exchange/COMEX	158,927
Minneapolis Grain Exchange	6,978
National Futures Association	206,046
New York Board of Trade	92,612
Philadelphia Board of Trade	0
<b>Total</b>	<b>871,415</b>

**III. Background Information**

**A. General**

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.<sup>1</sup> All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

**B. Overhead Rate**

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 105 percent for fiscal year 1999, and 105 percent for fiscal year 2000, and 117 percent for fiscal year 2001. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

**C. Conduct of SRO Rule Enforcement Reviews**

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993) which appears at 17 CFR part 1 appendix B, the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on a three-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging is intended to smooth out year-to-year variations in cost. Timing of reviews may affect costs—a review may span two fiscal years and reviews are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each contract market is equal to the lesser of actual costs based on the three-year historical average of costs for that contract market or one-half of average costs incurred by the Commission for each contract market for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all contract markets for the most recent three years. The formula for calculating the second factor is:  $0.5a + 0.5vt = \text{current fee}$ . In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years, and "t" equals the average annual cost for all exchanges. NFA, the only registered futures association regulated by the Commission, has no contracts traded; hence its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

<sup>1</sup> See Section 237 of the Futures Trading Act of 1982, 7 USC 16a and 31 USC 9701. For a broader

discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

	Three-year average actual costs	Three-year percentage of volume	Average year 2002 fee
Cantor Financial Futures Exchange .....	\$10,990	0.0286	\$5,606
Chicago Board of Trade .....	199,253	39.0619	199,253
Chicago Mercantile Exchange .....	192,731	40.8601	192,731
NYMEX/COMEX .....	191,576	16.3441	158,927
New York Board of Trade .....	161,025	3.1319	92,612
Kansas City Board of Trade .....	15,396	.4047	9,262
Minneapolis Grain Exchange .....	12,645	.1696	6,978
Philadelphia Board of Trade .....	0	.0000	0
Subtotal .....	772,627	100.0000	665,369
National Futures Association .....	206,046	N/A	206,046
Total .....	978,673	100.0000	871,415

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal \$12,645.

b. The alternative computation is:

$(.5)(\$12,645) + (.5)(.001696)(\$772,627) = \$6,978.$

c. The fee is the lesser of a or b; in this case \$6,978.

As noted above, the alternative calculation based on contracts traded, is not applicable to the NFA because it is not a contract market and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 1999 through 2001 was \$206,046 (one-third of \$618,139). The fee to be paid by the NFA for the current fiscal year is \$206,046.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets (also referred to as exchanges) and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman on behalf of the Commission, certifies pursuant to 5 USC 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on June 21, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1904

[Docket No. R-02A]

RIN 1218-AC06

#### Occupational Injury and Illness Recording and Reporting Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is revising the hearing loss recording provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001 (66 FR 5916-6135), scheduled to take effect on January 1, 2003 (66 FR 52031-52034). This final rule revises the criteria for recording hearing loss cases in several ways, including requiring the recording of Standard Threshold Shifts (10 dB shifts in hearing acuity) that have resulted in a total 25 dB level of hearing above audiometric zero, averaged over the frequencies at 2000, 3000, and 4000 Hz, beginning in year 2003.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In January, 2001 (66 FR 5916-6135), OSHA published revisions to its rule on recording and reporting occupational

injuries and illnesses (29 CFR parts 1904 and 1952) to take effect on January 1, 2002. On July 3, 2001, the agency proposed to delay the effective date of §§ 1904.10 *Recording criteria for cases involving occupational hearing loss*, and 1904.12 *Recording criteria for cases involving work-related musculoskeletal disorders*, until January 1, 2003 (66 FR 35113-35115). In that notice, OSHA explained that the Agency was reconsidering the requirement in § 1904.10 to record all cases involving an occupational hearing loss averaging 10 decibels (dB) or more. OSHA found that there were reasons to question the appropriateness of 10 dB as the recording criterion, and asked for comment on other approaches and criteria, including recording losses averaging 15, 20 or 25 dB. OSHA also stated that it was reconsidering the requirement in § 1904.12 that employers check the MSD column on the OSHA Log for a case involving a "musculoskeletal disorder" as defined in that section.

OSHA received a total of 77 written comments on the July 3, 2001 proposal. After considering the views of interested parties, OSHA published a final rule on October 12, 2001 (66 FR 52031-52034) delaying the effective date of §§ 1904.10(a) and 1904.12(a) and (b) until January 1, 2003, adding a new paragraph (c) to § 1904.10 establishing a 25-dB recording criterion for hearing loss cases for calendar year 2002, and modifying the regulatory note to paragraph 1904.29(b)(7)(vi) to delay the language referring to privacy case consideration for MSD cases.

This final rule contains amended hearing loss recording criteria codified at 29 CFR 1904.10(a) and 1904.10(b)(1)-(7). In a separate **Federal Register** document published today, OSHA is proposing to delay the effective date of § 1904.10(b)(7), which requires employers to check the hearing loss column on the Log for hearing loss cases