

kiwifruit order. Accordingly, these actions would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. However, as previously stated, California kiwifruit must meet the "tight-fill" requirements, as specified in the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 12, 2003, meeting, was a public meeting and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen-days is deemed appropriate because this rule should be in place by September 10, 2004, as the shipping season is expected to begin early this season and these changes, if adopted, should be made as soon as possible. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

**PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

**§ 920.302 [Amended]**

2. In § 920.302, paragraphs (a)(4)(iii), (a)(4)(iv), and (b) are revised to read as follows:

**§ 920.302 Grade, size, pack, and container regulations.**

\* \* \* \* \*

(4) \* \* \*

(iii) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used:

SIZE DESIGNATION CHART

| Column 1 size designation | Column 2 maximum number of fruit per 8 pound sample |
|---------------------------|-----------------------------------------------------|
| 18 .....                  | 25                                                  |
| 20 .....                  | 27                                                  |
| 23 .....                  | 30                                                  |
| 25 .....                  | 32                                                  |
| 27/28 .....               | 35                                                  |
| 30 .....                  | 39                                                  |
| 33 .....                  | 43                                                  |
| 36 .....                  | 46                                                  |
| 39 .....                  | 49                                                  |
| 42 .....                  | 53                                                  |
| 45 .....                  | 55                                                  |

(iv) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be "not badly misshapen," and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen," and except that all varieties of kiwifruit are exempt from the "tightly packed" standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

\* \* \* \* \*

3. In § 920.303, paragraph (c)(1) is revised to read as follows:

**§ 920.303 Container marking regulations.**

\* \* \* \* \*

(c) \* \* \*

(1) The quantity shall be indicated in terms of count and size for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

Dated: July 23, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–17271 Filed 7–27–04; 8:45 am]

BILLING CODE 3410–02–P

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Parts 40, 41, and 145**

**Confidential Information and Commission Records and Information**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission is proposing to revise its regulations to specify which portions of an application for registration as a derivatives transaction execution facility (DTEF), derivatives clearing organization (DCO), or designated contract market (DCM) will be public. The Commission also proposes to implement a procedure requiring registered entities to submit a cover sheet for all rule submissions. Additionally, the Commission proposes to amend its regulations under the Freedom of Information Act (FOIA) to implement the 1996 amendments to the FOIA. The proposed rules implement expedited processing and increased time limits; update the schedule of fees for FOIA requests; and correct certain provisions concerning publicly available records.

**DATES:** Submit comments on or before August 27, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Mail/Hand Deliver: Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- E-mail: [secretary@cftc.gov](mailto:secretary@cftc.gov).

**FOR FURTHER INFORMATION CONTACT:** Eileen A. Donovan, Assistant Secretary to the Commission for FOIA Matters, (202) 418–5096, electronic mail: [edonovan@cftc.gov](mailto:edonovan@cftc.gov), or David Steinberg, Attorney Advisor, (202) 418–5102, electronic mail: [dsteinberg@cftc.gov](mailto:dsteinberg@cftc.gov), Office of the Secretariat, Commodity

Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

### I. Background—Need for Revisions

#### A. Appendix D—Submission Cover Sheet and Instructions and Public Availability of Rule Submissions

On August 4, 2003, the Commission circulated a letter to all registered entities advising them of the Commission's new policy of posting rules submitted by DTEFs, DCOs, and DCMs on the Commission's Web site. In this letter, the Commission requested that a Commission-generated rule submission cover sheet accompany all self-certified rules,<sup>1</sup> self-certified products,<sup>2</sup> rules submitted for Commission approval,<sup>3</sup> products submitted for Commission approval,<sup>4</sup> notifications of rule amendments,<sup>5</sup> and non-material agricultural rule changes.<sup>6</sup> The Commission proposes to incorporate this policy into parts 40 and 41 of the Commission's regulations.

Specifically, the Commission proposes adding the phrase "A copy of the submission cover sheet in accordance with the instructions in Appendix D" to all of the applicable sections of the part 40 and 41 regulations.<sup>7</sup> Appendix D has been added to part 40 to include a copy of the cover sheet along with step-by-step instructions for completing and returning the form to the Commission. This cover sheet will assist Commission staff in preparing and maintaining the accuracy of the submissions being published on the Commission's Web site. Publishing these submissions on the Commission's website is consistent with the Commission's history of making certified rules and products and other rule submissions public.<sup>8</sup>

<sup>1</sup> Commission Regulations 40.6(a) and 41.24.

<sup>2</sup> Commission Regulations 40.2 and 41.23.

<sup>3</sup> Commission Regulations 40.4(a) and 40.5.

<sup>4</sup> Commission Regulation 40.3.

<sup>5</sup> Commission Regulation 40.6(c).

<sup>6</sup> Commission Regulation 40.4(b).

<sup>7</sup> Commission Regulations 40.3(a)(4) and (a)(5), 40.5(a)(1)(vi) and (a)(1)(vii), 40.6(a)(3)(iv) and (a)(3)(v), 41.23(a)(4) and (a)(5), and 41.24(a)(3) and (a)(4) are being revised to accommodate the addition of a new paragraph to the respective sections that will require the submission of the cover sheet. (See, e.g., 40.3(a)(3) with deletion of "and" at the end of the paragraph and 40.3(a)(4) by replacing the ";" with "." at the end of the paragraph).

<sup>8</sup> Previously, rule submissions were only available in the Commission's reading room. Commission staff had consistently determined that submissions filed pursuant to section 5a(a)(12) of the Commodity Exchange Act (CEA) were public. See 7 U.S.C. 1 *et seq.* (2000). Section 5a(a)(12) was removed from the CEA with the passage of the Commodity Futures Modernization Act of 2000.

Therefore, making these submissions available on the Commission's Web site will continue the policy of providing the public with access to industry information.

#### B. Public Availability of DTEF, DCO, and DCM Applications

The Commission proposes designating the current text in § 40.8 of the Commission's regulations as paragraph (b) and adding paragraph (a) to specify that certain portions of DTEF, DCO, and DCM applications are publicly available.<sup>9</sup> The proposed addition to § 40.8 is intended to address the absence in the Commission's regulations of any guidance to applicants or the public about the availability of the applications.

Commission staff have consistently determined that the release of the following documents does not cause any competitive harm to the applicant and that they should be made publicly available: transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status (e.g., corporate charters), and documents setting forth the applicant's governance structure.<sup>10</sup> Consequently, this list of documents has been incorporated into the proposed changes to § 40.8(a).

#### C. Expedited Processing of FOIA Requests

The FOIA, 5 U.S.C. 552 (2000), requires Federal agencies to promulgate regulations providing for expedited processing of requests for records. 5 U.S.C. 522(a)(6)(E)(i). Under the Commission's proposed regulation, to receive expedited processing a requester must demonstrate either (1) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety, or (2) if the request is from a person primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged federal government activity. The requester will receive a decision within ten days after the date of the request

The Commission believes these submissions filed under new sections of the CEA should continue to be made publicly available, as they do not cause any competitive harm to the applicant. See, e.g., sections 5c(c)(1) and 5c(c)(2) of the CEA.

<sup>9</sup> In addition to posting applications for designation and registration, the Commission will post proposed amendments to applications on the Commission's Web site. The Commission also will post requests for relief pursuant to part 30 of the Commission's regulations.

<sup>10</sup> The identical sections of applications seeking designation or registration as a DCM or DTEF under section 6(a) of the CEA will be publicly available.

and, if expedited processing is denied, may appeal the decision to the Office of General Counsel.

#### D. Appendix A—Compilation of Commission Records Available to the Public

Appendix A to 17 CFR Part 145 lists documents available, upon request, directly from the Commission offices indicated. Under the current Commission regulations, the Office of the Secretariat can provide terms and conditions of proposed contracts after the publication of notice of availability in the **Federal Register**, as well as exchange section 5a(a)(12) rule amendment proposals and Commission responses.

The Commission is amending Appendix A (b)(2) to reflect that terms and conditions of proposed contracts and products are now publicly available at the time of their submission to the Commission, in accordance with § 40.2 of the Commission's regulations for certified products and § 40.6 for certified rules.<sup>11</sup> In Appendix A (b)(3), the reference to § 5a(a)(12) is being removed, as § 5a(a)(12) has been deleted from the CEA. The term "exchange" is being replaced with "registered entity" as defined by § 1a(29) of the CEA to include submissions filed by a DCM, DTEF, or a DCO, and a reference to § 40.1 is being added to define the rules available under this provision.

The Commission also proposes adding Appendix A (b)(13) to reflect that certain portions of applications submitted by entities seeking to become designated as a DCM or registered as a DTEF or DCO are publicly available. The proposed list of publicly available material in paragraph (b)(13) is identical to the proposed list in § 40.8(a). The Commission proposes placing this list in Appendix A (b)(13) and § 40.8(a) to ensure that applicants are fully aware at the time of filing which sections are public and the public will be on notice that this information is available.

#### E. Appendix B—Schedule of Fees

The FOIA requires Federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with guidelines issued by the Office of Management and Budget (OMB). 5 U.S.C. 552(a)(4)(A)(i). Agencies' fee schedules can provide for the recovery of only the direct costs of searching for, reviewing, and duplicating records, and OMB's Uniform Freedom of Information Act

<sup>11</sup> Notification of rule amendments under Commission Regulation 40.6(c) will also be available at the time of submission.

Fee Schedule and Guidelines define the direct costs of search and review as the salary rate (basic pay plus 16 percent to cover benefits) of the employee performing the task. 52 FR 10018 (Mar. 27, 1987).

On May 22, 1987, the Commission published its FOIA fee schedule at 52 FR 19306, based on the average salary rates for professional and clerical staff under the General Schedule effective January 1987. The Commission is now revising its fee schedule to correspond with modifications in the rate of pay since the fee schedule was established. Using the General Schedule currently in effect, the Commission has calculated its direct costs for search and review of records by professional staff (average salary rate of GS-13, Step 4) as \$41.75 per hour and by clerical staff (average salary rate of GS-7, Step 4) as \$19.79 per hour. After rounding, the current quarter-hourly fee increases from \$4.50 to \$10.25 for professional search and review, and from \$3.00 to \$4.75 for clerical search and review. The Commission will continue to charge \$0.15 per page for photocopying.

The FOIA also requires agencies to waive any fee for which the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. 5 U.S.C. 552(a)(4)(A)(iv). Due to increased costs, the Commission is increasing its waiver amount from \$5.00 to \$10.00.

In addition, the Commission is revising Appendix B (a)(3) to remove a description of fees for searches of records stored on the Commission's mainframe computer, which is no longer in use.

#### F. Other Changes

The Commission is removing the reference to § 145.0(c) from § 145.6(a), which pertains to Commission records available to the public. Section 145.0(c) does not exist.

The Commission is also revising § 145.9(e)(2), which allows the Assistant Secretary to grant an extension of time for submission of a detailed written justification of a request for confidential treatment "only under exceptional circumstances", to be consistent with § 145.9(d)(7), which allows an extension to be granted "upon request and for good cause shown."

Finally, the Commission is removing Appendix D to 17 CFR part 145 because the Commission no longer charges for publication of its weekly advisory calendar. This information is now available on the Commission's Web site, and paragraph (a)(2) of Appendix A to 17 CFR part 145 is being amended to reflect this change.

## II. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (2000), requires that agencies, in proposing regulations, consider the impact of those regulations on small entities. The regulations discussed herein would affect contract markets and other registered entities. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations in accordance with the RFA.<sup>12</sup> In its previous determinations, the Commission has concluded that DCMs, DTEFs, and DCOs are not small entities for purposes of the RFA.<sup>13</sup>

The Commission has previously determined, pursuant to 5 U.S.C. 605(b), that part 145 regulations do not have a significant economic impact on a substantial number of small entities. Because they do not impose regulatory obligations on commodity professionals and small commodity firms and because, if instituted, the changes will improve public access to Commission records and information, the Commission does not expect the proposed regulations to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the changes proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites the public to comment on the significance of the economic impact of the proposed regulations, if any, on small entities.

### B. Paperwork Reduction Act

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3504(h)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

*Collection of Information:* Rules Relating to Part 40, Provisions Common to DCMs, DTEFs, and DCOs, OMB Control Number 3038-0022.

The expected effect of the proposed amended rules will be to increase the burden previously approved by OMB for this collection of information by 20.625 hours as it will result in the filing of one additional page for each submission

under Commission regulations 40.2, 40.3, 40.4, 40.5, and 40.6.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 16.  
*Annual responses by each respondent:* 39.0625.

*Total annual responses:* 625.  
*Estimated average hours per response:* .033.

*Annual reporting burden:* 20.625.  
*Collection of Information:* Rules Relating to Part 41, Security Futures Products, OMB Control Number 3038-0059.

The expected effect of the proposed amended rules will be to increase the burden previously approved by OMB for this collection of information by 2.475 hours as it will result in the filing of one additional page for each submission under commission regulations 41.23 and 41.24.

*Estimated number of respondents:* 3.  
*Annual responses by each respondent:* 25.

*Total annual responses:* 75.  
*Estimated average hours per response:* .033.

*Annual reporting burden:* 2.475.  
Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

In compliance with the PRA, the Commission through these proposed rules solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, usefulness, and clarity of the information to be collected; and (4) minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

<sup>12</sup> 47 FR 18618-21 (Apr. 30, 1982).

<sup>13</sup> 47 FR 18618, 18619 (April 30, 1982) (discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTEFs); 66 FR 45605, 45609 (August 29, 2001) (discussing DCOs).

**Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5160.

### C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended 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) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was 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 proposed rulemaking consists of several amendments requiring registered entities to attach a submission cover sheet with all rule filings. The Commission is considering the costs and benefits of these proposed rules in light of the specified provisions of section 15(a) of the Act:

1. Protection of market participants and the public. The proposed amendments should have no effect on the Commission’s ability to protect market participants and the public.

2. Efficiency and competition. The proposed amendments are expected to benefit efficiency by making rule submissions available to the public on the Commission’s Web site. The Commission anticipates that the costs of compliance with the proposed filing requirements will be minimal and the submission cover sheet will assist in maintaining the accuracy of publishing the rule filings on the Commission’s

Web site. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on competition in the futures and options markets.

3. Financial integrity of futures markets and price discovery. The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. Sound risk management practices. The amendments being proposed herein should have no effect on the risk management practices of the futures and options industry.

5. Other public considerations. No additional public considerations could be determined.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

### List of Subjects

#### 17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

#### 17 CFR Part 41

Security futures.

#### 17 CFR Part 145

Freedom of information.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR parts 40, 41, and 145 as follows:

### PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

1. The authority for part 40 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106-554, 114 Stat. 2763A-365.

2. Section 40.2 is revised to read as follows:

#### § 40.2 Listing products for trading by certification.

To list a new product for trading, to list a product for trading that has become dormant, or to accept for clearing a product (not traded on a designated contract market or a registered derivatives transaction execution facility), a registered entity

must file with the Secretary of the Commission at its Washington, DC, headquarters no later than the close of business of the business day preceding the product’s listing or acceptance for clearing, either in electronic or hard copy form, a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part, a copy of the product’s rules, including its terms and conditions, or the rules establishing the terms and conditions of products that make them acceptable for clearing, and a certification by the registered entity that the trading product or other instrument, or the clearing of the trading product or other instrument, including any rules establishing the terms and conditions of products that make them acceptable for clearing, complies with the Act and regulations thereunder.

3. Section 40.3 is amended by revising paragraphs (a)(4) and (a)(5) and by adding paragraph (a)(6) to read as follows:

#### § 40.3 Voluntary submission of new products for Commission review and approval.

(a) \* \* \*

(4) The submission identifies with particularity information in the submission, except for the product’s terms and conditions which are made publicly available at the time of submission, that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification;

(5) The submission includes the fee required under Appendix B to this part; and

(6) The submission includes a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

\* \* \* \* \*

4. Section 40.5 is amended by revising paragraphs (a)(1)(vi) and (a)(1)(vii) and by adding paragraph (a)(1)(viii) to read as follows:

#### § 40.5 Voluntary submission of rules for Commission review and approval.

(a) \* \* \*

(1) \* \* \*

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission’s rule or interpretation;

(vii) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification; and

(viii) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

\* \* \* \* \*

5. Section 40.6 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(v) and adding paragraph (a)(3)(vi) to read as follows:

**§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.**

(a) \* \* \*

(3) \* \* \*

(iv) A brief explanation of any substantive opposing views not incorporated into the rule;

(v) A certification by the entity that the rule complies with the Act and regulations thereunder; and

(vi) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part.

\* \* \* \* \*

6. Section 40.8 is amended by redesignating the current paragraph as

paragraph (b) and by adding new paragraph (a) to read as follows:

**§ 40.8 Availability of public information.**

(a) The following sections of all applications to become a registered entity will be public: transmittal letter, proposed rules (as defined in § 40.1 of this chapter), the applicant's regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's governance structure, and any other part of the application not covered by a request for confidential treatment.

\* \* \* \* \*

6a. Appendix C to part 40 is added and reserved.

**Appendix C to Part 40 [Reserved]**

7. Appendix D is added to part 40 to read as follows:

**Appendix D to Part 40—Submission Cover Sheet and Instructions**

A properly completed submission cover sheet must accompany all rule submissions submitted by a designated contract market, registered derivatives clearing organization, or registered derivatives transaction execution facility and forwarded either in hard copy form or electronically to the Secretary of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 or electronically to *submissions@cftc.gov* in a

format specified by the Secretary of the Commission. Each submission should include the following:

1. *Identifier Code (optional)*—If applicable, the exchange or clearing organization Identifier Code at the top of the cover sheet. Such codes are commonly generated by the exchanges or clearing organizations to provide an identifier that is unique to each filing (e.g., NYMEX Submission 03-116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (e.g., CBOT).

4. *Filing as a*—Check the appropriate box for a designated contract market (DCM), derivatives clearing organization (DCO), or derivatives transaction execution facility (DTEF).

5. *Type of Filing*—Indicate whether the filing is a rule amendment or new product and the applicable category under that heading.

6. *Rule Numbers*—For rule filings only, identify rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings only, enter a brief description of the new rule or rule amendment. This narrative should describe the substance of the submission with enough specificity to characterize all essential aspects of the filing.

A sample of the required submission cover sheet follows.

**BILLING CODE 6351-01-P**

## SUBMISSION COVER SHEET

Exchange Identifier Code (optional) \_\_\_\_\_

Date \_\_\_\_\_

**ORGANIZATION**

**FILING AS A:**

**DCM**

**DCO**

**DTEF**

**TYPE OF FILING**

- **Rule Amendments**

Self-Certification Under Reg. 40.6(a) or 41.24

Commission Approval Requested Under Reg. 40.5 or 40.4 (a)

Notification of Rule Amendment Under Reg. 40.6(c)

Non-Material Agricultural Rule Change Determination Under Reg. 40.4(b)

- **New Products**

Self-Certification Under Reg. 40.2 or 41.23

Commission Approval Requested Under Reg. 40.3

**RULE NUMBERS**

**DESCRIPTION (Rule Amendments Only)**

BILLING CODE 6351-01-C

**PART 41—SECURITY FUTURES PRODUCTS**

8. The authority citation for part 41 continues to read as follows:

**Authority:** Sections 206, 251 and 252, Pub. L. 106-554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a-2, 12a; 15 U.S.C. 78g(c)(2).

9. Section 41.23 is amended by revising paragraphs (a)(4) and (a)(5) and

by adding paragraph (a)(6) to read as follows:

**§ 41.23 Listing of security futures products for trading.**

(a) \* \* \*

(4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of § 41.25;

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act or a registered derivatives transaction execution facility pursuant to section 5a of the Act, it includes a certification that the security futures product complies with the Act and rules thereunder; and

(6) Includes a copy of the submission cover sheet in accordance with the instructions in Appendix D of Part 40.

10. Section 41.24 is amended by revising paragraphs (a)(3) and (a)(4) and by adding paragraph (a)(5) to read as follows:

**§ 41.24 Rule amendments to security futures products.**

(a) (3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required;

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to § 40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder; and

(5) Includes a copy of the submission cover sheet in accordance with the instructions in Appendix D of Part 40.

**PART 145—COMMISSION RECORDS AND INFORMATION**

11. The authority citation for part 145 continues to read as follows:

**Authority:** Pub. L. 99–570, 100 Stat. 3207, Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

12. Section 145.7 is amended by revising the first sentence of paragraph (h)(3), by redesignating paragraph (j) as paragraph (i)(7), and by adding a new paragraph (j) to read as follows:

**§ 145.7 Requests for Commission records and copies thereof.**

(3) The Assistant Secretary, or his or her designee, will issue an initial

determination with respect to a FOIA request within twenty business days after receipt by the Assistant Secretary.

(j) *Expedited processing.* A request may be given expedited processing if the requester demonstrates a compelling need for the requested records. For purposes of this section, the term “compelling need” means: That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity. A requester who seeks expedited processing must demonstrate a compelling need by submitting a statement that is certified by the requester to be true and correct to the best of that person’s knowledge and belief. The Assistant Secretary, or his or her designee, will determine whether to provide expedited processing, and notice of the determination will be provided to the requester, within ten days after the date of the request. If the request for expedited processing is denied, the requester may file an appeal with the Office of General Counsel within ten days of the date of the denial by the Assistant Secretary. The Office of General Counsel will respond to the appeal within ten days after the date of the appeal.

13. Section 145.9 is amended by revising paragraph (e)(2) to read as follows:

**§ 145.9 Petition for confidential treatment of information submitted to the Commission.**

(2) The period for filing a detailed written justification may be extended upon request and for good cause shown.

14. Appendix A to part 145 is amended by revising paragraph (a)(2), the heading of paragraph (b), paragraphs (b)(2) and (b)(3), and adding paragraph (b)(13) to read as follows:

**Appendix A To Part 145—Compilation of Commission Records Available to the Public**

(2) Weekly Advisory (solely available on the Commission’s Web site at [www.cftc.gov/cftc/cftcpressoffice.htm](http://www.cftc.gov/cftc/cftcpressoffice.htm)).

(b) *Office of the Secretariat (Public reading area with copying facilities available).*

(2) Terms and conditions of proposed contracts.

(3) Registered entity filings relating to rules as defined in § 40.1 of this chapter, unless covered by a request for confidential treatment.

(13) Publicly available portions of applications to become a registered entity including the transmittal letter, proposed rules, proposed bylaws, corporate documents, any overview or similar summary provided by the applicant, any documents pertaining to the applicant’s legal status and governance structure, including governance fitness information, and any other part of the application not covered by a request for confidential treatment.

15. Appendix B to part 145 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6) and (b) to read as follows:

**Appendix B to Part 145—Schedule of Fees**

(1) \$4.75 for each quarter hour spent by clerical personnel in searching for or reviewing records.

(2) When a search or review cannot be performed by clerical personnel, \$10.25 for each quarter hour spent by professional personnel in searching or reviewing records.

(3) When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at \$10.25 per quarter hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using the workstation as set forth in paragraph (a) of this appendix.

(5) For copies of materials other than paper records, the requester will be charged the actual cost of materials and reproduction, including the time of clerical personnel at a rate of \$4.75 per quarter hour.

(6) When a request has been made and granted to examine Commission records at an office of the Commission other than the office in which the records are routinely maintained, the requester:

(i) Will reimburse the Commission for the actual cost of transporting the records; and  
 (ii) Will be charged at a rate of \$4.75 for each quarter hour spent by clerical personnel in preparing the records for transit.

(b) *Waiver or reduction of fees.* Fees will be waived or reduced by the Commission if:

(1) The fee is less than or equal to \$10.00, the approximate cost to the Commission of collecting the fee; or,

(2) If the Commission determines that the disclosure of the information is likely to

contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

\* \* \* \* \*

16. Appendix D to part 145 is removed.

Issued in Washington, DC, on July 21, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04-17051 Filed 7-27-04; 8:45 am]

BILLING CODE 6351-01-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 242

[Release No. 34-50056; International Series Release No. 1279; File No. S7-26-04]

RIN 3235-AJ28

#### Regulation B

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed Rule; extension of comment period.

**SUMMARY:** On June 17, 2004, the Securities and Exchange Commission ("Commission") issued and requested comment on proposed Regulation B (69 FR 39682, June 30, 2004). Regulation B proposes a number of new exemptions for banks from the definition of the term "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Gramm-Leach-Bliley Act ("GLBA"). The proposal would broaden a number of exemptions already available to banks, savings associations, and savings banks that effect transactions in securities. It also would define certain terms used in the GLBA. The Commission is extending the comment period on the Regulation B until September 1, 2004. This action will allow interested persons additional time to analyze the issues and prepare their comments.

**DATES:** Comments should be received on or before September 1, 2004.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-26-04 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow

the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number S7-26-04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identify information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Linda Stamp Sundberg, Attorney Fellow, or Brice Prince, Special Counsel at (202) 942-0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

**SUPPLEMENTARY INFORMATION:** On June 17, 2004, the Commission requested comment on its proposed Regulation B concerning the securities activities of banks, savings associations, savings banks and credit unions.<sup>1</sup> Proposed Regulation B would establish a number of new exemptions for banks from the definition of the term "broker" under Section 3(a)(4) of the Exchange Act, as amended by the GLBA. The proposal would broaden a number of exemptions already available to banks, savings associations, and savings banks that effect transactions in securities. It also would define certain terms used in the GLBA.

Several trade associations that represent banks, savings associations, and savings banks have requested that the Commission extend the public comment period for the proposed Regulation B for an additional 30-day period. The trade associations have indicated that such an extension would enable them and their members to better analyze and address the substantive, operational and legal issues associated with the proposed Regulation B.

<sup>1</sup> Exchange Act Release No. 49879, International Series Release No. 1278 (June 17, 2004); 69 FR 39682 (June 30, 2004).

In light of these requests, the Commission is providing the public additional time until September 1, 2004 to comment on the proposed Regulation B.

Dated: July 22, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-17112 Filed 7-27-04; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-208246-90]

RIN 1545-BD47

#### Allocation and Apportionment of Deductions for Charitable Contributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

**SUMMARY:** This document withdraws the notice of proposed rulemaking published on March 12, 1991 (the 1991 proposed regulations), relating to the allocation and apportionment of charitable deductions. In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations providing that the deduction for a charitable contribution (as defined in section 170(c)) is to be allocated to all of the taxpayer's gross income and apportioned on the basis of income from sources within the United States. The text of the temporary regulations also serves as the text of these proposed regulations. Further, regulations are proposed in this document, without cross-reference to temporary regulations, with respect to deductions for charitable contributions that are provided by an income tax treaty rather than by sections 170, 873(b)(2), and 882(c)(1)(B). This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 26, 2004. Outlines of topics to be discussed at the public hearing scheduled for December 2, 2004, at 10 a.m. must be received by November 12, 2004.